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APPLICATION OF THE CITY OF AUSTIN DBA AUSTIN WATER FOR AUTHORITY TO CHANGE WATER AND WASTEWATER RATES	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**AUSTIN WATER’S RESPONSE TO DISTRICTS’ AMENDED MOTION
FOR SANCTIONS AND ABATEMENT OF PROCEEDINGS AND
REQUEST FOR PRELIMINARY HEARING**

COMES NOW, the City of Austin (City) d/b/a Austin Water (AW or Austin Water) and files this Response to North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility District’s (Districts) Amended Motion for Sanctions and Abatement of Proceedings and Request for Preliminary Hearing filed on October 11, 2019 (Motion).¹

After an extended proceeding, the Public Utility Commission (Commission) established AW’s water and wastewater rates for the Districts in Docket No. 42857. Under Texas Water Code (TWC) § 13.044(b), AW may not “increase such rates without the approval of the utility commission.”² Thus, the Districts benefit from any delay in the approval of rates in this proceeding. As the Administrative Law Judges (ALJs) are aware, this case impacts just four customers and involves a \$3.18 million requested rate increase. The issues were extensively litigated for nearly three years just three years ago. The current procedural schedule is already almost a year long. As discussed below, the Districts’ Motion is an unnecessary attempt to delay this proceeding further. Therefore, Districts’ Motion should be denied.

I. RESPONSE

At its core, the Districts’ Motion is premised, in large part, upon the incorrect assumption they are entitled to information the ALJs have determined is not discoverable in this case. It is

¹ North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility Districts’ Amended Motion for Sanctions and Abatement of Proceedings and Request for Preliminary Hearing (Oct. 11, 2019) (Motion).

² Texas Water Code § 13.044(b) (TWC).

divided into three sections. The first two sections, A and B, simply re-urge discovery disputes that have been thoroughly argued and ruled upon. Indeed, Sections A., Voluminous Production, and B., Pending Discovery Disputes, are restatements of the Districts' arguments and violate State Office of Administrative Hearings (SOAH) Order No. 4 which prohibits further filings on these issues. These disputes have been largely resolved by SOAH Order Nos. 5 and 7. While not belaboring the points, Austin Water offers a brief response given the District's allegations that Austin Water has abused the discovery process.

Austin Water agrees that there have been an inordinate number of discovery disputes in this case. This is due, in part, to the fact that neither the legislature, nor the Commission, have established rules related to the scope of this proceeding. As noted, Districts benefit from the lack of rules and slow regulatory process. Notwithstanding this fact, most of the discovery disputes are attributable to three causes: (1) the Districts modified the definitions included in the introduction to their discovery questions; (2) the Districts complained that Austin Water did not provide them with an index to voluminous responses; and (3) the Districts asked questions that are outside the scope of this proceeding and are, otherwise, not relevant. In order to preserve its rights, Austin Water was forced to continue to object repeatedly to discovery sets or individual questions that suffer from these infirmities while awaiting direction from the ALJs.

A. Section A. Voluminous Production

Almost all of the voluminous material in this proceeding are Excel files. The Commission's rule, 16 Tex. Admin. Code § 22.161(h)(1), defines voluminous material as responses 100 pages or greater. The rules make no reference to whether this applies to Excel files that are provided in native format. In the category of "no good deed goes unpunished," AW deliberately chose to provide electronic searchable copies of all of the voluminous information rather than making paper copies, placing them in boxes at an off-site storage room, and requiring parties to schedule an appointment to review it as is customary in Commission proceedings. Additionally, Austin Water provided each document as a separate file in order to further facilitate parties' review of the documents. This same approach was utilized without objection in AEP

Texas Inc.'s pending rate case and is preferable to putting documents in a voluminous room.³ AW did so as a courtesy to the parties in this case, and to save paper. By doing so, Austin Water rendered the need for an index moot. Although technically speaking, the rules require an index, it also assumes that the voluminous material would be not be provided. As noted previously, by providing the parties with searchable electronic versions of all voluminous materials, the only element an index adds is a meaningless burden on Austin Water. Districts complain about the volume of documents in this case, but that is the nature of a rate case. Moreover, Districts have asked eleven sets of discovery and 431 questions in a small rate case. Providing electronic copies of documents was intended to assist parties in managing the responses to these questions.

B. Section B. Pending Discovery Disputes

In Section B of their Motion, Districts list the discovery disputes in this case. As noted above, these issues have been thoroughly argued and, except for Districts' 10th RFI, been ruled upon.

Although this case is unique in many respects, Austin Water has endeavored to follow the Commission's long-standing practices to the extent possible. Under the Commission's rules, parties are entitled to object to questions that are inappropriate based on a number of legal grounds. Parties are required to object each time they receive such a question in order to preserve their rights. Austin Water has done so in this case. Regarding the disputes over the definitions contained in some of Districts' sets of Requests for Information (RFIs), Austin Water could have simply objected to the unique and excessive definitions that were changed during the discovery process. Instead, Austin Water chose to answer the questions applying commonly understood definitions. That is not the behavior of a utility trying to stonewall the process.⁴ SOAH Order No. 5 confirms that these objections were appropriate.

³ *Application of AEP Texas Inc. for Authority to Change Rates*, Docket No. 49494. Almost no other utility provides voluminous material, instead forcing intervenors and Commission Staff to go to a voluminous room to review the documents.

⁴ Significantly, although Austin Water does not retain any employees devoted exclusively to this rate case, thus far they have voluntarily provided responses to five sets of discovery prior to the deadlines as a courtesy to the parties.

With regard to relevance objections, the Districts asked numerous questions regarding the prudence of the Handcox Water Treatment Plant. Such a review is beyond the scope of this case and would require significant time and effort to review. There are literally hundreds of thousands of pages related to the Handcox plant. Austin Water is under no obligation to retain those documents or otherwise defend the construction of this facility. Again, SOAH Order No. 7 confirms that Austin Water's objections were appropriate. As such, rather than signifying "abuse" in some manner, Austin Water's position in this case reflects standard Commission ratemaking practices and precedent.

C. Section C. Austin Water Errata

Errata filings occur in virtually all rate cases. Most of these occur as a result of an intervenor identifying an error during the discovery process. It should not be surprising then, that on October 4, 2019, Austin Water filed an errata in this case. During the course of responding to an RFI from the Districts, Austin Water realized that it incorrectly classified transmission mains as 16" diameter pipes and greater, instead of 24" or greater. By decreasing the amount of transmission pipes relative to distribution pipes, fewer costs are allocated to the Districts. The Districts proposed the inch-feet methodology that was relied upon in Docket No. 42857. They boast that they identified the issue in their discovery. It is a simple mathematical error. Last week, Austin Water visited with Commission Staff and explained the error without difficulty. The two other changes are similarly isolated and do not "seriously flaw" the model the parties have been using. Specifically, Austin Water removed contributed capital assets by placing a \$0 in the line item. Finally, Austin Water incorrectly allocated IT Applications to Pipeline Operations instead of Support Services, so that allocation was adjusted. Although the discovery deadline has passed, Austin Water is willing to visit with the Districts about the errata just as it has done with Commission Staff if necessary.

II. RESPONSE TO MOTION FOR SANCTIONS AND REQUEST FOR ABATEMENT

In their Motion, the Districts continue to allege that they need more time to review this Application. They seek a 51 day abatement of this proceeding following the receipt of answers to all of their discovery questions.⁵ They do so under the incorrect assumption they are entitled to all of the information they desire and that the errata filing necessitates a delay in the case. Before addressing the specific allegations, Austin Water offer the following background information regarding the sufficiency of time to review the application:

1. The Districts litigated the same issues that are in dispute in this case for nearly three years in Docket No. 42857;
2. The Districts participated in an extensive public involvement process before the City where most of the issues were discussed at length;
3. The Districts were involved in settlement negotiations with Austin Water for almost five months prior to the filing of the Application;
4. The Application in this case was filed 186 days ago;
5. Districts waited until 115 days after discovery began to ask their first discovery question. They could have easily asked questions earlier if they were concerned about having sufficient time to review the Application;
6. Districts have asked 11 sets of discovery containing 431 questions;
7. Districts' testimony is due 186 days after the filing of the Application; and
8. It is common for discovery responses to continue to be filed following the filing of intervenor testimony. This is particularly true in circumstances where there is an extended discovery period and numerous discovery disputes such as in this case.

In response to the specific allegations, Austin Water offers the following facts:

1. Austin Water has made 21 discovery filings since the issuance of SOAH Order No. 5;

⁵ Motion at 8.

2. Except for Districts' RFI No. 3-1 related to Handcox Water Treatment Plant, Austin Water has responded to all questions required by SOAH Order Nos. 5 and 7.⁶ Austin Water expects to file the response to Districts' RFI No. 3-1 next week;

3. Austin Water provided the parties with electronic copies of voluminous Excel files even though the rules did not allow for it;

4. All eight voluminous indexes have been filed;

5. SOAH Order No. 5 was filed on October 10. SOAH Order No. 7 was filed on October 14. Austin Water could have waited 20 days (i.e. until October 30 and November 3) following the issuance of the orders to provide indexes and other required information. Instead, Austin Water has provided all information within eight days of the issuance of SOAH Order No. 5;

6. The ALJs have ruled upon all of the items listed in the Districts' October 14 letter, and all information has been provided;

7. On October 10, Austin Water voluntarily agreed to file responses to Districts' RFI Nos. 9-9 through 9-20 despite its objection to the questions as being irrelevant. Again, Austin Water could have waited 20 days to file responses but did so on October 14; and

8. Austin Water has voluntarily responded to Commission Staff's third through eighth sets of discovery prior to the due dates as a courtesy to the parties.

In summary, there is no evidence of Austin Water abusing the discovery process in this case. To the contrary, Austin Water has gone out of its way to accommodate the parties. Moreover, the Districts have had sufficient time to review this Application and there is no need to abate this proceeding.

⁶ Austin Water is filing supplemental responses to Districts' RFI Nos. 6-35 through 6-38 on October 18 but the response notes only that this information was already provided on October 1. The supplemental response also notes in response to Districts' RFI No. 6-8 that Austin Water has not identified rate case expenses in the manner described in Austin Water's objections filed on September 23.

III. CONCLUSION

Austin Water respectfully requests that Districts' Amended Motion for Sanctions and Abatement of Proceedings and Request for Preliminary Hearing be dismissed and that it be granted any other relief to which it may be entitled.

Respectfully submitted,

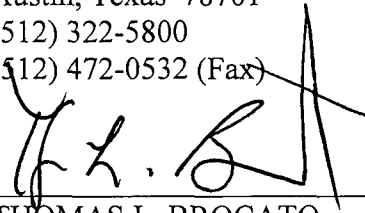
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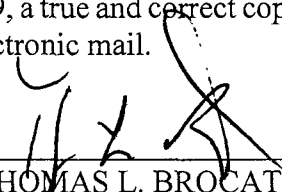
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ATTORNEYS FOR AUSTIN WATER

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2019, a true and correct copy of the foregoing document has been served on all parties of record via electronic mail.



THOMAS L. BROCATO