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Item Number: 138

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SOAH DOCKET NO. 473-19-6297.WS
PUC DOCKET NO. 49189

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APPLICATION OF THE CITY OF
AUSTIN FOR AUTHORITY TO
CHANGE THE WATER AND
WASTEWATER RATES

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S 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 DISTRICTS' AMENDED MOTION FOR
SANCTIONS AND ABATEMENT OF PROCEEDINGS AND REQUEST FOR
PRELIMINARY HEARING

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, 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 (collectively, the Districts) Amended Motion for Sanctions and Abatement of Proceedings and Request for Preliminary Hearing. In support thereof, Staff would show the following:

I. BACKGROUND

On April 15, 2019, the City of Austin dba Austin Water (AW) filed an application for authority to change wholesale water and wastewater rates. The application was filed in accordance with Texas Water Code (TWC) § 13.044(b), which states that once the Commission fixes the rates to be charged by a municipality under TWC § 13.044, those rates may not increase without the approval of the Commission. In Docket No. 42857, the Commission fixed the rates AW charges to the Districts.¹

On June 13, 2019, the Commission Administrative Law Judge (ALJ) issued Order No. 4 finding AW's application sufficient. On July 22, 2019, this docket was referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits. Four days later, on July 26, 2019,

¹ *Petition of North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District from the Ratemaking Actions of the City of Austin and Request for Interim Rates in Williamson and Travis Counties*, Docket No. 42857, Order on Rehearing (Jan. 14, 2016).

AW filed its 45-day update to the application. After convening a prehearing conference on August 7, 2019, the SOAH ALJs issued SOAH Order No. 2 adopting a procedural schedule that included the following relevant deadlines:

September 27, 2019	Discovery Deadline on the City of Austin (including depositions) for Intervenors
October 18, 2019	Intervenor Testimony
October 25, 2019	Discovery Deadline on the City of Austin (including depositions) for Staff
November 6, 2019	Response to Objections to City of Austin Direct Testimony
November 15, 2019	Staff Testimony

Beginning on August 22, 2019, AW and the Districts engaged in a steady exchange of discovery-related motions two of which remain pending before the ALJs. On October 11, 2019, the Districts filed this Amended Motion for Sanctions and Abatement of Proceedings and Request for Preliminary Hearing requesting the ALJs to compel AW's response to all of the Districts' discovery and abate the deadline for Districts' testimony until 51 days after the City properly responds to Districts' Requests.

Pursuant to SOAH Order No. 1, a response is due within five working days from receipt of a motion unless otherwise specified in the applicable procedural rules. Motions for sanctions are governed by 16 Texas Administrative Code (TAC) § 22.161, which requires that a hearing be held on motion for sanctions but does not prescribe a deadline for filing a written response.² Under the Commission's general rule on responsive pleadings, a response is due within five working days after receipt of the pleading to which the response was made.³ Staff received the Districts' amended motion for sanctions on October 11, 2019. Five working days from October 11, 2019 is October 18, 2019. Therefore, this pleading is timely filed.

II. STAFF'S RESPONSE

Staff acknowledges the timing issues that have resulted from the combination of the ongoing discovery disputes and the October 18, 2019 deadline for the Districts' Direct Testimony and understands how these time constraints could hinder the Districts' ability to present a complete

² 16 TAC § 22.161(e).

³ 16 TAC § 22.78(a).

and robust direct case. Therefore, Staff is unopposed to the Districts' requested abatement as long as the abatement accommodates Staff's availability to participate. If the ALJs decide abatement of the case is warranted, Staff specifically requests that the abatement last until May 2020, and that the hearing on the merits and post hearing briefing conclude before the last week of July 2020. The two assigned attorneys have case conflicts from January through April 2020. Further, the lead attorney has an unavoidable conflict scheduled from July 28 – August 7, 2020.

Staff is aware that counsel for all of the parties in this case have multiple pending Commission dockets; however, Staff is in a unique position because Staff must participate in every docket filed, and therefore, lacks the ability to limit the case loads of its attorneys. Because this case does not have a statutory deadline by which the Commission is required to make a decision, it provides the parties greater flexibility to adjust the procedural schedule.⁴

The Districts have requested a 50-day abatement beginning on the date AW responds completely to all of its RFIs. Currently, the Districts' motion to compel responses to Districts' Tenth RFIs filed on October 14, 2019, and Districts' Ninth RFIs (filed on October 17, 2019) are the only motions still pending. Assuming the abatement is granted, AW responds to all outstanding discovery by October 31, 2019, and the spacing between deadlines used in the current procedural schedule is maintained, the major deadlines in this case would coincide with several other major deadlines and trials in other cases assigned to the Commission's attorneys. Therefore, if this proceeding is abated, Staff requests a procedural schedule with a deadline for the Districts' Direct Testimony that is no earlier than May 1, 2020 and a deadline for Staff's Direct Testimony this is at least 21 days after the Districts' deadline. If the ALJs cannot accommodate Staff's request, then Staff objects to the abatement for the same reasons set forth above.

III. CONCLUSION

Staff respectfully requests that any adjustments made to the procedural schedule in this proceeding take into account the staffing constraints under which the Commission's Legal Division is operating.

⁴ See TWC §§ 13.187(e), 13.1871(g) (allowing for a 150-day suspension of the effective date of a rate change requested by a Class A utility and a 265-day suspension of the effective date of a rate change requested by a Class B utility). AW's application was filed pursuant to TWC § 13.044(b), which does not contain a similar regulatory scheme regarding effective dates and the suspension of those dates.

Dated: October 18, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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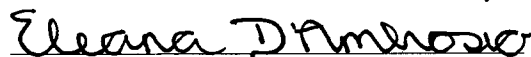


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**SOAH DOCKET NO. 473-19-6207.WS
PUC DOCKET NO. 49189**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 18, 2019 in accordance with 16 TAC § 22.74.



Eleanor D'Ambrosio