



Control Number: 49189



Item Number: 170

Addendum StartPage: 0

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OF

## ADMINISTRATIVE HEARINGS

## I. BACKGROUND

<sup>2</sup> See Districts' Motion to Intervene (May 14, 2019); Order No. 3 – Granting Intervention (May 22, 2019).

referred this matter to the State Office of Administrative Hearings (“SOAH”) on July 22, 2019,<sup>3</sup> and SOAH conducted an initial prehearing conference on August 7, 2019.<sup>4</sup> After the prehearing conference, SOAH set the initial procedural schedule.<sup>5</sup> City and Districts subsequently engaged in numerous discovery battles, which resulted in the issuance of SOAH Order No. 5, Ruling on Districts’ Motions to Compel Austin Water to Respond to Districts’ First, Second, Third, Fourth, and Fifth RFIs... on October 9, 2019.<sup>6</sup> On October 14, 2019, the ALJs issued SOAH Order No. 7 – Ruling on Districts’ Motions to Compel Austin Water to Respond to Districts’ Sixth, Seventh, and Eighth RFIs....<sup>7</sup> SOAH Order No. 7 sustained the City’s objections to Districts’ Requests for Information (“RFIs”) 6-4 through 6-7, which the ALJs determined to be irrelevant and described as relating to “the prudence of Austin Water’s investment in Water Treatment Plant (WTP) No. 4.”<sup>8</sup> Districts and Staff filed a Joint Appeal of Interim Order No. 7 with regard to the ALJs relevance determination on October 24, 2019 (the “Appeal”). Pursuant to the notice / memorandum issued by the Commission on November 4, 2019, the Commission will consider the Appeal at the open meeting on November 14, 2019.<sup>9</sup>

## **II. REQUEST FOR ABATEMENT**

The Districts understand the ALJs concerns as expressed at the Second Prehearing Conference on October 27, 2019 and in Order No. 3 regarding the tightness of the schedule and the ALJs attempt to maintain the existing schedule. However, at this point, with the City’s continued efforts to not provide the Districts with the information regarding Water Treatment Plant

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<sup>3</sup> See Order of Referral (July 22, 2019).

<sup>4</sup> See SOAH Order No. 1 – Case Description, Requiring Dates for Prehearing Conference, and Filing Requirements (July 23, 2019).

<sup>5</sup> See SOAH Order No. 2 – Adopting Agreed Procedural Schedule; Setting Hearing on the Merits (July 23, 2019).

<sup>6</sup> See SOAH Order No. 5 – Ruling on Districts’ Motions to Compel Austin Water to Respond to Districts’ First, Second, Third, Fourth, and Fifth RFIs; and Setting Deadline for Objections to the City of Austin’s Direct Testimony (October 9, 2019).

<sup>7</sup> See SOAH Order No. 7 – Ruling on Districts’ Motions to Compel Austin Water to Respond to Districts’ Sixth, Seventh, and Eighth RFIs; and Setting Deadline for Objections to the City of Austin’s Direct Testimony (October 14, 2019).

<sup>8</sup> *Id.* at 2.

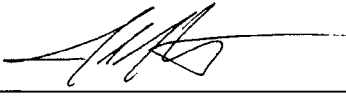
<sup>9</sup> See Memo from Commission Advising to All Parties of Record (November 4, 2019), Docket No. 49189, Item 166.

No. 4 substantially and materially prejudice and impair the Districts' ability to prepare the Districts' direct testimony and exhibits. As discussed by the Parties at the prehearing conference and in the Appeal, Districts and Staff assert that they are entitled to discovery about and to present testimony on the prudence and impact of the City's decisions related to the construction of Water Treatment Plant No. 4 on the Districts' rates. Districts have a deadline of noon, Thursday, November 7, 2019, to file direct testimony in this proceeding, and Staff has a deadline of November 15, 2019, to file direct testimony. Given that the Commission has agreed to hear the Appeal of the ALJs' decision on the relevance of the construction of Water Treatment Plant No. 4 on November 14<sup>th</sup>, which is after the Districts' deadline to file direct testimony and the day before the Staff's deadline, the Districts and Staff will be harmed and prejudiced in having to prepare and file their direct testimony without the benefit of the Commissioners' ruling on the Appeal and discovery responses from the City on this issue. The Commissioners' decision directly affects the Districts' ability to analyze and provide testimony regarding the reasonableness of the City's proposed wholesale rates, which are driven in significant part by the costs associated with Water Treatment Plant No. 4. Those Water Treatment Plant No. 4 costs were excluded in the prior case and directly impact the portion of Austin Water's utility system costs used to allocate debt service and other components of the City's revenue requirement to the Districts.

### **III. PRAYER**

WHEREFORE, 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 pray that the Administrative Law Judges issue an Order abating the procedural schedule pending the Commissioners' rendering a decision on the Joint Appeal of Interim Order No. 7, and grant Districts other such relief to which they may be entitled.. Time is of the essence.

Respectfully submitted,

By:   
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**ATTORNEYS FOR DISTRICTS**

**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 4<sup>th</sup> day of November 2019.

  
John Carlton