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

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

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

FILED CLERK

ORDER ON INTERIM APPEAL

This Order addresses 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 (the Districts) and Commission Staff's joint appeal of to the State Office of Administrative Hearings (SOAH) Order No. 7. For the reasons discussed in this Order, the Commission grants the joint appeal.

On April 15, 2019, the City of Austin filed an application under Texas Water Code (TWC) § 13.044(b) and in compliance with the Commission's order on rehearing in Docket No. 42857¹ for authority to change its water and wastewater rates. The docket was referred SOAH on July 22, 2019. Subsequently, the Districts were granted intervention. On September 11, 2019, the Districts filed their sixth request for information (RFI) to the City. The City objected to RFIs 6-4 through 6-7 based on relevance.²

On September 30, 2019, the District's filed a motion to compel the City's response to RFIs 6-4 through 6-7.³ The Districts stated that they are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action," and may obtain discovery of information reasonably calculated to lead to the discovery of admissible evidence."⁴ On October 14, 2019, the SOAH administrative law judges (ALJs) filed Order No. 7,

¹ *Petition of the 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).

² SOAH Order No. 7 at 2 (Oct. 14, 2019).

³ Districts' Motion to Compel Austin to Respond to Districts' 6th Request for Information (Sep. 30, 2019).

⁴ *Id.* at 2 (citing to Tex. R. Civ. Proc. 192.3 and 16 TAC § 22.141(a)).

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denying the Districts' motion to compel regarding RFIs 6-4 through 6-7.⁵ In that order, the SOAH ALJs agreed with the City and concluded that a prudence review is beyond the scope of this proceeding and denied the joint appeal.⁶

The District and Commission Staff filed a joint appeal of Order No. 7 on October 24, 2019.⁷ The Districts and Commission Staff contended RFIs 6-4 through 6-7 are relevant because whether a utility uses the cash-needs basis or the utility basis for determining its revenue requirement is unrelated to the determination of whether the costs included in the revenue requirement were reasonable and necessary in the establishment of just and reasonable rates.⁸

On October 31, 2019, the City filed its response to joint appeal.⁹ The City maintained that, as a retail public utility using the cash-flow methodology for setting wholesale water or sewer rates under the Commission's alternate-rate-methods rule,¹⁰ the Handcox Water Treatment Plant (formerly known as Water Treatment Plant No. 4) and the prudence of its invested capital are not relevant issues in this case.¹¹

After consideration of the parties' motions and responses, the Commission concludes that the requested information is discoverable and grants the joint appeal of SOAH Order No. 7.

⁵ SOAH Order No. 7 at 2-7.

⁶ *Id.* at 4.

⁷ Joint Appeal of Interim Order No. 7 (Oct. 24, 2019).

⁸ *Id.* at 7.

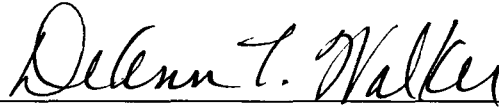
⁹ Austin's Response to Joint Appeal of Interim Order No. 7 (Oct. 31, 2019).

¹⁰ 16 TAC § 24.75(c).

¹¹ Austin's Response to Joint Appeal of Interim Order No. 7 at 6-7.

Signed at Austin, Texas the 21st day of November 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER

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