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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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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**OBJECTIONS OF AUSTIN WATER TO DISTRICTS'
CORRECTED THIRD REQUEST FOR INFORMATION**

The City of Austin (City) doing business as Austin Water (Austin Water or AW), by and through its attorneys of record, files these Objections to 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's (collectively Districts) Corrected Third Request for Information (RFI) to Austin Water, and would respectfully show as follows:

I. PROCEDURAL HISTORY

Districts served their Corrected Third RFI to Austin Water on August 30, 2019. Pursuant to 16 Tex. Admin. Code (TAC) §§ 22.144(d) and 22.4(a), these objections are timely filed within 10 calendar days of Austin Water's receipt of the RFI. Counsel for Austin Water and Districts conducted good faith negotiations that failed to resolve the issues. While AW will continue to negotiate with Districts regarding these and any future objections, AW files these objections for preservation of its legal rights under the established procedures. To the extent any agreement is subsequently reached, AW will withdraw such objection.

II. GENERAL OBJECTIONS

Districts' Corrected Third RFI contains material changes to the Definitions and Instructions. Austin Water generally objects to these RFIs, including the Definitions and Instructions contained therein, to the extent they are overly broad and unduly burdensome.¹

III. SPECIFIC OBJECTIONS TO DEFINITIONS

Austin Water objects to Districts' definitions of the following terms:

¹ See Tex. R. Civ. Proc. (TRCP) 192.4.

DEFINITION NO. 5: "Describe" or "describe in detail" means to give a complete and full description concerning the matter about which the inquiry is made, including the full name, address, and telephone number(s) of the person(s) involved, dates, times, places, and other particulars, including all relevant documents and observations which make the answers to these written discovery requests fair and meaningful.

Objections:

Austin Water objects to this definition because it is unduly burdensome, unreasonable, and meant for the purpose of harassing Austin Water. Commission rules and the TRCP provide protection to parties from discovery requests that are unduly burdensome, unnecessarily expensive, or are for the purpose of harassment.² Districts use the terms “describe” or “describe in detail” in several of their RFIs that already call for an enormous amount of information. In addition to producing all of the responsive documents that are within Austin Water’s possession, the “corrected” definition of “describe” and “describe in detail” calls for Austin Water to provide a list of details for each individual document that are ultimately unnecessary to adequately describe the responsive document. Using this definition would require Austin Water to expend unnecessary time and expense to respond. Districts’ filing of its corrected RFIs with the inclusion of this expansive definition burdens Austin Water with providing unnecessary information. Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

DEFINITION NO. 10: To “identify” a document means the following: (i) to identify all files in which it and all copies of it are found; (ii) to identify its author; (iii) to identify its addresses, if any; (iv) to identify those persons who received a copy thereof; (v) to identify its current custodian or the person that had last known possession, custody, or control thereof; (vi) to state

² See 16 TAC § 22.142(a)(1)(D); *see also* Tex. R. Civ. Proc. 192.4.

the date of its preparation; and (vii) to state its general subject matter giving a reasonably detailed description thereof.

Objections:

Austin Water objects to this definition because it is unduly burdensome, unreasonable, and meant for the purpose of harassing Austin Water. Commission rules and the TRCP provide protection to parties from discovery requests that are unduly burdensome, unnecessarily expensive, or are for the purpose of harassment.³ Districts use the term “identify” in several of their RFIs that already call for an enormous amount of information. In addition to producing all of the responsive documents that are within Austin Water’s possession, this definition of “identify” calls for Austin Water to provide seven categories of detailed information for each individual document. Using this definition would require Austin Water to expend unnecessary time and expense to respond. Even simply stating each document’s “general subject matter giving reasonably detailed description thereof,” as category vii requires, could take countless hours for a response that calls for hundreds of documents. Districts’ filing of its corrected RFIs with the inclusion of this expansive definition burdens Austin Water with providing unnecessary information. Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

IV. SPECIFIC OBJECTIONS TO RFIS

Austin Water specifically objects to the following RFIs:

DISTRICTS CORRECTED 3-1: Please identify and produce all documents that demonstrate, justify, provide the basis for, explain, or in any way document the cost of planning, developing, and constructing Water Treatment Plant No. 4 to completion.

³ See 16 TAC § 22.142(a)(1)(D); *see also* Tex. R. Civ. Proc. 192.4.

Objections:

Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Specifically, District' RFI No. 3-1 relates to the prudence of the Handcox Water Treatment Plant (formerly known as Water Treatment Plant No. 4). The prudence of Austin Water's invested capital is not a relevant issue in this proceeding.

As a municipally-owned utility, Austin Water is not normally subject to the Commission's requirements for Class A Water Utilities. Indeed, the Commission's jurisdiction over Austin Water is limited to appeals by outside city customers and wholesale customers. As such, Austin Water is not typically obligated to seek Commission approval of its rates except in limited circumstances. Significantly, unlike investor owned utilities, Austin Water is under no obligation to seek Commission approval of its invested capital (i.e. rate base).

Under the Districts' view, Austin Water would theoretically have to provide prudence analysis for the entirety of its invested capital. That would include not only the Handcox Water Treatment Plant but all of Austin Water's water and waste water facilities, some of which have been in service for over 60 years. For example, the Davis Water Treatment Plant was built in 1954. The Ulrich Water Treatment plant was built in 1969. It would be impossible and wasteful to require Austin Water to provide prudence evidence on such facilities. Furthermore, because the Commission does not have ongoing jurisdiction over Austin Water, other invested capital whose entire service life was prior to this case would never be subject to the same scrutiny. For example, the Green Treatment plant went into service in 1924. It was decommissioned in 2008 without any prudence review because no such review is required. The Districts are attempting to use this appeal as an opportunity to conduct a full prudence review of Austin Water's plant in service. This would include meters, pipes, mains, office supplies, and all other types of invested capital. Not only are such efforts irrelevant, they would also be overly burdensome and harassing.

Moreover, Austin Water uses the “cash flow” method to establish its return dollar requirement; therefore, rate base is not relevant in the same manner that it is for an investor-owned utility. For municipally-owned utilities, the rate of return is often said to be a “fall-out” value because the amount of return dollars is typically determined on the basis of some coverage method, and the resulting amount is divided by the utility’s rate base. For these types of entities, the rate of return is simply a mathematical consequence (rather than a driver) of the process. In contrast, return dollars for an investor-owned utility are computed by determining a market-based rate of return and then multiplying this figure by the rate base. Because Austin Water uses the “cash flow” method, it does not depend as much on the precise amounts of invested capital as a market based rate of return method used by utilities; therefore, the cost of planning, developing, and constructing is not relevant to whether the rates established by Austin Water are just and reasonable.

As noted in the Statement of Intent that accompanied Austin Water’s Application, this is a unique case. The Commission’s jurisdiction over Austin Water is limited to appellate review of rates and service charged to customers residing outside the City and certain special districts. It is also the first instance where a utility has filed for approval of rates following the filing of a challenge to its rates. Furthermore, this case addresses wholesale water rates to just four customers. Finally, the law provides no procedural requirements directing the processing of this case.

After the Commission establishes rates in an appeal by a special district, 16 TAC § 24.45(c) states that “a municipality desiring to increase rates must provide the commission with updated information in a format specified in the current rate data package developed by the Rates Section.” However, the Commission has not developed a rate data package for this proceeding. Accordingly, pursuant to direction from the Commission’s Rates Section, Austin Water used the Class A Investor-Owned Utilities Water and/or Sewer Rate Filing Package for Cost-of-Service Determination (Class A RFP) in the preparation of this Application.

The Class A RFP requires substantial amounts of information that is not applicable to a municipally owned utility. In this regard, Austin Water stated in its Statement of Intent that “[s]pecifically, those portions of the Class A RFP requesting data relating to return, capital structure, federal income taxation, *rate base*, depreciation, rate design for retail customers, and other items have been left blank.”⁴ An index identifying those schedules that are not applicable as well as explanations why they are not applicable was also included in the Application. Austin Water specifically indicated that rate base is not an issue in this case based upon conversations with the Commission Staff prior to preparing this filing. Moreover, parties have had the filing since April 15, 2019 and no party has suggested that the filing is insufficient with respect to this issue. In particular, on May 16, 2019, Commission Staff provided a list of fifteen items it found insufficient and administratively incomplete. Significantly, however, Commission Staff made no mention of rate base issues. For all of the reasons, Districts’ RFI No. 3-1 is irrelevant to this proceeding.

DISTRICTS CORRECTED 3-3: Please identify and produce all documents that relate to, evidence, memorialize, or concern any communications, meetings, or reports, or relays of data or information, whether written, video, or telephonic, informal or formal, regarding the City's existing water or wastewater service contracts with the Districts, that occurred within the City, or between the City and any other party, including Districts, at any time from January 1, 2016, to the present.

Objections:

Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). In particular, correspondence between the City and the Districts regarding existing water or wastewater service contracts between the City and the Districts have no relevance to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

⁴ Application at 10. Emphasis added.

Additionally, Austin Water objects to this request to the extent that it seeks information that is readily available to the requesting party. Similar to Districts' RFI Nos. 2-6 and 2-7, the Districts have again requested documents which they already have in their possession. Specifically, Districts' RFI No. 3-3 requests all documents "between the City and any other party, including Districts." By definition, the Districts are requesting information they either received from the City or provided to the City. Pursuant to 16 TAC § 22.142(a)(1)(B), the presiding officer may limit discovery to protect a party from a request to provide information which is readily available to the requesting party. Under Tex. R. Civ. Proc. 192.4, discovery should be limited if it is determined that the discovery sought is unreasonably duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. Any correspondence between Districts and the City clearly involves Districts, and such information and correspondence should have been kept by Districts. The information requested is readily available to the requesting party, and it is more convenient, less burdensome, and less expensive for Districts to obtain the information from their own records than having Austin Water respond. Austin Water should not have to undertake the cost and time of providing documents which Districts already have in their possession.

DISTRICTS CORRECTED 3-4: Please identify and produce all documents that evidence, memorialize, or concern any communications, meetings, reports, or relays of data or information, whether written, video, or telephonic, informal or formal, regarding the renewal of the City's water or wastewater service contracts with the Districts, that occurred within the City, or between the City and any other party, including Districts, at any time from January 1, 2016, to the present.

Objections:

Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). The City currently has contracts with each of the Districts in this proceeding. These contracts expire at various dates into the future pursuant to the terms of the contracts. Correspondence between Districts and the City regarding the possible renewal of water or wastewater service contracts has no

bearing on any issue in this matter. Specifically, such information is not relevant to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

Additionally, Austin Water objects to this request to the extent that it seeks information that is readily available to the requesting party. Similar to Districts' RFI Nos. 2-6, 2-7, and Corrected 3-3, the Districts have again requested documents which they already have in their possession. Specifically, Districts' RFI No. 3-4 requests all documents "between the City and any other party, including Districts." By definition, the Districts are requesting information they either received from the City or provided to the City. Pursuant to 16 TAC § 22.142(a)(1)(B), the presiding officer may limit discovery to protect a party from a request to provide information which is readily available to the requesting party. Under Tex. R. Civ. Proc. 192.4, discovery should be limited if it is determined that the discovery sought is unreasonably duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. Any correspondence between Districts and the City clearly involves Districts, and such information and correspondence should have been kept by Districts. The information requested is readily available to the requesting party, and it is more convenient, less burdensome, and less expensive for Districts to obtain the information from their own records than having Austin Water respond. Austin Water should not have to undertake the cost and time of providing documents which Districts already have in their possession.

DISTRICTS CORRECTED 3-34: Please provide the mapping of AW's chart of accounts into the NARUC chart of accounts.

Objections:

Austin Water objects to this request because it seeks information that is neither relevant to the issues presented in this matter nor is reasonably calculated to lead to the discovery of admissible evidence as is required by the Commission's rules at 16 TAC § 22.141(a). The Commission's Class A RFP requires substantial amounts of information that is not applicable to municipally owned utilities. As explained in Austin Water's Application for Authority to

Change Water and Wastewater Rates, Austin Water does not use the NARUC chart of accounts for its own accounting, and therefore did not provide NARUC chart of accounts.⁵ However, Austin Water does have a similar chart of accounts method that provides a level of detail which is consistent with the NARUC system.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Austin Water requests these objections be sustained and Austin Water be relieved of responding to these RFIs. Austin Water also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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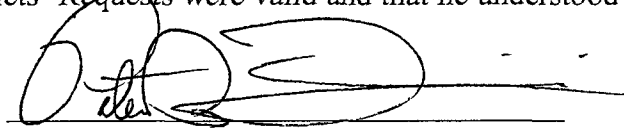
State Bar No. 24097603

ATTORNEYS FOR CITY OF AUSTIN

⁵ Application at 2; Direct Testimony of David A. Anders at 47; Direct Testimony of Joseph H. Gonzales at 12 (Apr. 15, 2019).

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with Mr. John Carlton, counsel for Districts, on September 6, 2019 concerning Austin Water's objections to Districts' Requests for Information. Mr. Carlton indicated that he believed Districts' Requests were valid and that he understood that this motion may be filed.



W. PATRICK DINNIN

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record in this proceeding on this 9th day of September, 2019, by hand delivery, via facsimile, and/or mailed by U.S. First Class Mail.



THOMAS L. BROCATO