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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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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

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**AUSTIN WATER'S OBJECTIONS TO
DISTRICTS' SIXTH 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) Sixth Request for Information (RFI) to Austin Water, and would respectfully show as follows:

I. PROCEDURAL HISTORY

Districts served its Sixth RFI to Austin Water on September 11, 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 reached out to Counsel for Districts in order to discuss Austin Water's objections but ultimately the parties could not connect to discuss 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

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. 192.4.

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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 Texas Rules of Civil Procedure (TRCP) provide protection to parties from discovery requests that are unduly burdensome, unnecessarily expensive, or 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, this 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’ 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. 7: To “identify” an individual means to state the following about that individual: (i) the person's full name; (ii) the person's job title or former job title; (iii) the person's job (or former job) duties and responsibilities; (iv) the individual's superior(s); (v) current or last known telephone number(s); and (vi) current or last known business and home addresses.

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

Objections:

Austin Water objects to this definition to the extent that it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Specifically, an individual's home address is not relevant to any aspect of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable. Notwithstanding Austin Water's objection, Austin Water will provide the other information included in Districts' definition of "identify" an individual.

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 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' expansive definition burdens Austin Water with providing unnecessary information. Notwithstanding this objection,

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

Austin Water will provide a response to each request using the commonly understood meaning of the term.

IV. SPECIFIC OBJECTIONS

Austin Water specifically objects to the following RFIs:

DISTRICTS 6-4: Please identify all documents provided in *Application of AW for Authority to Change Water and Wastewater Rates* (April 15, 2019) that would permit a prudence evaluation to be conducted on WTP4 debt service and capital costs.

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, Districts' RFI No. 6-4 relates to the prudence of the Handcox Water Treatment Plant (formerly known as Water Treatment Plant No. 4). Although there are portions in the *Application of the City of Austin DBA Austin Water for Authority to Change Water and Wastewater Rates* (Application) that support the reasonableness of Austin Water's investment in the Handcox Water Treatment Plant, Austin Water is not seeking a prudence review of the Handcox Water Treatment Plant debt service or capital costs. The prudence of Austin Water's debt service and capital costs are not relevant issues 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 wastewater facilities, some of which have been in service for over 60 years. For example, the Davis Water Treatment Plant was built in 1954 and 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 the 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 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 these reasons, Districts’ RFI No. 6-4 is irrelevant to this proceeding.

DISTRICTS 6-5: Please provide AW’s original economic analysis supporting the construction of WTP4, along with any updated analyses that were performed to assess the impact of changing conditions on the original decision to construct the facility. If no such analyses were performed, please so state.

⁴ Application at 10.

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, Districts' RFI No. 6-5 relates to the prudence of the Handcox Water Treatment Plant. The prudence of Austin Water's invested capital is not a relevant issue in this proceeding, as Austin Water detailed in its objection to Districts' RFI No. 6-4.

DISTRICTS 6-6: Please describe in detail and identify and produce all documents concerning all alternatives to constructing WTP4 that were considered, including the costs of those alternatives.

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, Districts' RFI No. 6-6 relates to the prudence of the Handcox Water Treatment Plant. The prudence of Austin Water's invested capital is not a relevant issue in this proceeding, as Austin Water detailed in its objection to Districts' RFI No. 6-4.

DISTRICTS 6-7: Provide the results of any sensitivity analyses that evaluated the construction of WTP4 versus other alternatives.

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, Districts' RFI No. 6-7 relates to the prudence of the Handcox Water Treatment Plant. The prudence of Austin Water's invested capital is not a relevant issue in this proceeding, as Austin Water detailed in its objection to Districts' RFI No. 6-4.

DISTRICTS 6-8: Regarding AW's rate case expenses in the current docket: Please separately quantify the rate case expenses related to AW's request to include each of the following expenses in the test year revenue requirements that were previously denied by the Commission (reference Schedule II-E-4.6):

- a. Reclaimed System Operating and Capital Costs
- b. SWAP and Commercial Paper Administration Costs

- c. Drainage Fees
- d. Revenue Stability Reserve Fund Surcharge
- e. Training and Non-Plant Expenses at Govalle Site
- f. Handcox (WTP4) Operating and Capital Costs

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, Districts' RFI No. 6-8 requests Austin Water separately quantify the rate case expenses related to AW's Application to include specific categories of expenses down to a level of specificity that is not required by the Commission's rules. The Commission's rules concerning water rate case expenses do not currently require Austin Water to break each expense out separately.⁵ Even electric rate case expenses, where the rules require specific information, are not required to be categorized to the specificity which Districts request in RFI No. 6-8.⁶ Additionally, Austin Water does not have the ability to retroactively break its rate case expenses down to the specificity requested by Districts. Therefore, this request is irrelevant, because Austin Water is not required to provide the information requested by Districts.

Austin Water also objects to this request because it would require Austin Water to create a document not in existence, and therefore, not within Austin Water's possession. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control."⁷ Austin Water has provided rate case expenses related to Austin Water's Application in compliance with the Commission's rules. Austin Water does not have the ability to conduct an analysis of its rate case expenses down to the specificity requested by Districts, and even if it could, Districts cannot require Austin Water to create a summary of such analysis

⁵ See 16 TAC § 24.44.

⁶ See 16 TAC § 25.245.

⁷ *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998); *see also In re Guzman*, 19 S.W.3d 522, 525 (Tex. App.—Corpus Christi 2000, no pet.); *see also* Tex. R. Civ. Proc. 192.3(b); *see also* 16 TAC § 22.141(a).

because it does not currently exist. Because this document does not exist, it is not within Austin Water's possession, and Austin Water should not be required to respond to Districts' request.

DISTRICTS 6-10: Please refer to the water asset listing used in Docket No. 42857 (AW Resp to Pet. 2-113).

- a. Please identify each water asset that has been removed from this listing compared to the water asset listing used in *Application of AW to Change Water and Wastewater Rates*. See *Application of AW to Change Water and Wastewater Rates, WP II-A-3.2 (W) Other Physical Property* (April 15, 2019);
- b. For each water asset identified in Part (a) of this request, please indicate whether the water asset was transferred out of AW, sold, or retired.

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, Districts' RFI No. 6-10 requests Austin Water to identify water assets that have been transferred out of AW, sold, or retired since Docket No. 42857. Any water assets that have been transferred out of AW, sold, or retired, would have no book value, and therefore, would not affect the book service or allocation of debt service, and would not affect the rates set in Austin Water's current Application. Therefore, this request is not relevant to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS 6-11: For each water asset reported in Request 6-10(b) as being listed in Docket No. 42857 but subsequently transferred out of AW, please provide the following information at the time the asset was transferred:

- a. FA No.
- b. Transfer date
- c. Acq Dt
- d. Description
- e. Acq value
- f. Accum Depreciation
- g. Useful Life
- h. Acq Year

- i. Annual Depr.
- j. Code Desc
- k. Book Value
- l. Amount of associated debt service transferred out of AW in conjunction with the transfer of the asset
- m. Journal entry used to record the transfer

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, Districts' RFI No. 6-11 requests Austin Water to identify water assets that have been transferred out of AW since Docket No. 42857. Any water assets that have been transferred out of AW would have no book value, and therefore, would not affect the book service or allocation of debt service, and would not affect the rates set in Austin Water's current Application. Therefore, this request is not relevant to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS 6-12: For each water asset reported in Request 6-10(b) as being listed in Docket No. 42857 but subsequently sold, please provide the following information at the time the asset was transferred:

- a. FA No.
- b. Transfer date
- c. Acq Dt
- d. Description
- e. Acq value
- f. Accum Depreciation
- g. Useful Life
- h. Acq Year
- i. Annual Depr.
- j. Code Desc
- k. Book Value
- l. Amount of associated debt service transferred out of AW in conjunction with the transfer of the asset

- m. Journal entry used to record the transfer

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, Districts' RFI No. 6-12 requests Austin Water to identify water assets that have been sold since Docket No. 42857. Any water assets that have been sold would have no book value, and therefore, would not affect the book service or allocation of debt service, and would not affect the rates set in Austin Water's current Application. Therefore, this request is not relevant to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS 6-13: Please refer to the wastewater asset listing used in Docket No. 42857 (AW Resp. to Pet. 3-94).

- a. Please identify each wastewater asset that has been removed from this listing compared to the wastewater asset listing used in *Application of AW to Change Water and Wastewater Rates*. See *Application of AW to Change Water and Wastewater Rates, WP II-A-3.2 (WW) Other Physical Property* (April 15, 2019);
- b. For each wastewater asset identified in Part (a) of this request, please indicate whether the wastewater asset was transferred out of AW, sold, or retired.

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, Districts' RFI No. 6-13 requests Austin Water to identify wastewater assets that have been transferred out of AW, sold, or retired since Docket No. 42857. Any wastewater assets that have been transferred out of AW, sold, or retired, would have no book value, and therefore, would not affect the book service or allocation of debt service, and would not affect the rates set in Austin Water's current Application. Therefore, this request is not relevant to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS 6-14: For each wastewater asset reported in Request 6-13(b) as being listed in Docket No. 42857 but subsequently transferred out of AW, please provide the following information at the time the asset was transferred:

- a. FA No.

- b. Transfer date
- c. Acq Dt
- d. Description
- e. Acq value
- f. Accum Depreciation
- g. Useful Life
- h. Acq Year
- i. Annual Depr.
- j. Code Desc
- k. Book Value
- l. Amount of associated debt service transferred out of AW in conjunction with the transfer of the asset
- m. Journal entry used to record the transfer

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, Districts' RFI No. 6-14 requests Austin Water to identify wastewater assets that have been transferred out of AW since Docket No. 42857. Any wastewater assets that have been transferred out of AW would have no book value, and therefore, would not affect the book service or allocation of debt service, and would not affect the rates set in Austin Water's current Application. Therefore, this request is not relevant to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS 6-15: For each wastewater asset reported in Request 6-13(b) as being listed in Docket No. 42857 but subsequently sold, please provide the following information at the time the asset was transferred:

- a. FA No.
- b. Transfer date
- c. Acq Dt
- d. Description
- e. Acq value
- f. Accum Depreciation

- g. Useful Life
- h. Acq Year
- i. Annual Depr.
- j. Code Desc
- k. Book Value
- l. Amount of associated debt service transferred out of AW in conjunction with the transfer of the asset
- m. Journal entry used to record the transfer

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, Districts' RFI No. 6-15 requests Austin Water to identify wastewater assets that have been sold since Docket No. 42857. Any wastewater assets that have been sold would have no book value, and therefore, would not affect the book service or allocation of debt service, and would not affect the rates set in Austin Water's current Application. Therefore, this request is not relevant to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS 6-26: Please produce the FY 2018 water system budget in Excel with the same detail and with the same headings as AW's document production Bates # RPD Resp-4423 to # RPD Resp-4520, in Docket No. 42857.

Objections:

Austin Water objects to this request because it would require Austin Water to create a document not in existence, and therefore, not within Austin Water's possession. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control."⁸ Austin Water has not created the FY 2018 water system budget in the same manner, with the same detail, and with the same headings as Districts requested in its RFI No. 6-26, and

⁸ *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998); *see also In re Guzman*, 19 S.W.3d 522, 525 (Tex. App.—Corpus Christi 2000, no pet.); *see also* Tex. R. Civ. Proc. 192.3(b); *see also* 16 TAC § 22.141(a).

Austin Water is not required to do so. In its Application, Austin Water used actual figures and known and measurable changes instead of relying upon a budget. Because this document does not exist, it is not within Austin Water's possession, and Austin Water should not be required to respond to Districts' request.

Additionally, Austin Water objects to this request because the information requested is not identified with reasonable particularity, as is required by 16 TAC § 22.144(b)(1). While the Bates page number is helpful to identify pages within a document, Districts have not identified which document encompasses the Bates page range to which its request refers. Austin Water has conducted a search of the filings and documents from Docket No. 42857, and has been unable to find the Bates page range cited by Districts. Because Districts has a particular document in mind, Districts should provide the name and description of the document to which it refers, instead of requiring Austin Water to continue searching through thousands of pages of documents, searching for information referred to only by the Bates number. Because Districts have a particular document and page range in mind, but have not identified the corresponding document, Austin water objects to this request for not being described with reasonable particularity.

DISTRICTS 6-27: Please produce the FY 2018 wastewater system budget in Excel with the same detail and with the same headings as AW's document production Bates # RPD Resp-4423 to # RPD Resp-4520, in Docket No. 42857.

Objections:

Austin Water objects to this request because it would require Austin Water to create a document not in existence, and therefore, not within Austin Water's possession. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control."⁹ Austin Water has not created the FY 2018 wastewater system budget in the same

⁹ *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998); *see also In re Guzman*, 19 S.W.3d 522, 525 (Tex. App.—Corpus Christi 2000, no pet.); *see also* Tex. R. Civ. Proc. 192.3(b); *see also* 16 TAC § 22.141(a).

manner, with the same detail, and with the same headings as Districts requested in its RFI No. 6-27, and Austin Water is not required to do so. In its Application, Austin Water used actual figures and known and measurable changes instead of relying upon a budget. Because this document does not exist, it is not within Austin Water's possession, and Austin Water should not be required to respond to Districts' request.

Additionally, Austin Water objects to this request because the information requested is not identified with reasonable particularity, as is required by 16 TAC § 22.144(b)(1). While the Bates page number is helpful to identify pages within a document, Districts have not identified which document encompasses the Bates page range to which its request refers. Austin Water has conducted a search of the filings and documents from Docket No. 42857, and has been unable to find the Bates page range cited by Districts. Because Districts has a particular document in mind, Districts should provide the name and description of the document to which it refers, instead of requiring Austin Water to continue searching through thousands of pages of documents, searching for information referred to only by the Bates number. Because Districts have a particular document and page range in mind, but have not identified the corresponding document, Austin water objects to this request for not being described with reasonable particularity.

DISTRICTS 6-28: Please produce the FY 2018 reclaimed water system budget in Excel with the same detail and with the same headings as AW's document production Bates # RPD Resp-4423 to # RPD Resp-4520, in Docket No. 42857.

Objections:

Austin Water objects to this request because it would require Austin Water to create a document not in existence, and therefore, not within Austin Water's possession. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control. A document that does not exist is not within a party's "possession, custody,

or control.”¹⁰ Austin Water has not created the FY 2018 reclaimed water system budget in the same manner, with the same detail, and with the same headings as Districts requested in its RFI No. 6-28, and Austin Water is not required to do so. In its Application, Austin Water used actual figures and known and measurable changes instead of relying upon a budget. Because this document does not exist, it is not within Austin Water’s possession, and Austin Water should not be required to respond to Districts’ request.

Additionally, Austin Water objects to this request because the information requested is not identified with reasonable particularity, as is required by 16 TAC § 22.144(b)(1). While the Bates page number is helpful to identify pages within a document, Districts have not identified which document encompasses the Bates page range to which its request refers. Austin Water has conducted a search of the filings and documents from Docket No. 42857, and has been unable to find the Bates page range cited by Districts. Because Districts has a particular document in mind, Districts should provide the name and description of the document to which it refers, instead of requiring Austin Water to continue searching through thousands of pages of documents, searching for information referred to only by the Bates number. Because Districts have a particular document and page range in mind, but have not identified the corresponding document, Austin water objects to this request for not being described with reasonable particularity.

DISTRICTS 6-29: Please produce the FY 2019 water system budget in Excel with the same detail and with the same headings as AW’s document production Bates # RPD Resp-4423 to # RPD Resp-4520, in Docket No. 42857.

Objections:

Austin Water objects to this request because it would require Austin Water to create a document not in existence, and therefore, not within Austin Water’s possession. A party is not required to produce a document or tangible thing unless it is within the party’s possession,

¹⁰ *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998); *see also In re Guzman*, 19 S.W.3d 522, 525 (Tex. App.—Corpus Christi 2000, no pet.); *see also* Tex. R. Civ. Proc. 192.3(b); *see also* 16 TAC § 22.141(a).

custody, or control. A document that does not exist is not within a party's "possession, custody, or control."¹¹ Austin Water has not created the FY 2019 water system budget in the same manner, with the same detail, and with the same headings as Districts requested in its RFI No. 6-29, and Austin Water is not required to do so. In its Application, Austin Water used actual figures and known and measurable changes instead of relying upon a budget. Because this document does not exist, it is not within Austin Water's possession, and Austin Water should not be required to respond to Districts' request.

Additionally, Austin Water objects to this request because the information requested is not identified with reasonable particularity, as is required by 16 TAC § 22.144(b)(1). While the Bates page number is helpful to identify pages within a document, Districts have not identified which document encompasses the Bates page range to which its request refers. Austin Water has conducted a search of the filings and documents from Docket No. 42857, and has been unable to find the Bates page range cited by Districts. Because Districts has a particular document in mind, Districts should provide the name and description of the document to which it refers, instead of requiring Austin Water to continue searching through thousands of pages of documents, searching for information referred to only by the Bates number. Because Districts have a particular document and page range in mind, but have not identified the corresponding document, Austin water objects to this request for not being described with reasonable particularity.

DISTRICTS 6-30: Please produce the FY 2019 wastewater system budget in Excel with the same detail and with the same headings as AW's document production Bates # RPD Resp-4423 to # RPD Resp-4520, in Docket No. 42857.

Objections:

Austin Water objects to this request because it would require Austin Water to create a document not in existence, and therefore, not within Austin Water's possession. A party is not

¹¹ *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998); *see also In re Guzman*, 19 S.W.3d 522, 525 (Tex. App.—Corpus Christi 2000, no pet.); *see also* Tex. R. Civ. Proc. 192.3(b); *see also* 16 TAC § 22.141(a).

required to produce a document or tangible thing unless it is within the party's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control."¹² Austin Water has not created the FY 2019 wastewater system budget in the same manner, with the same detail, and with the same headings as Districts requested in its RFI No. 6-30, and Austin Water is not required to do so. In its Application, Austin Water used actual figures and known and measurable changes instead of relying upon a budget. Because this document does not exist, it is not within Austin Water's possession, and Austin Water should not be required to respond to Districts' request.

Additionally, Austin Water objects to this request because the information requested is not identified with reasonable particularity, as is required by 16 TAC § 22.144(b)(1). While the Bates page number is helpful to identify pages within a document, Districts have not identified which document encompasses the Bates page range to which its request refers. Austin Water has conducted a search of the filings and documents from Docket No. 42857, and has been unable to find the Bates page range cited by Districts. Because Districts has a particular document in mind, Districts should provide the name and description of the document to which it refers, instead of requiring Austin Water to continue searching through thousands of pages of documents, searching for information referred to only by the Bates number. Because Districts have a particular document and page range in mind, but have not identified the corresponding document, Austin water objects to this request for not being described with reasonable particularity.

DISTRICTS 6-31: Please produce the FY 2019 reclaimed water system budget in Excel with the same detail and with the same headings as AW's document production Bates # RPD Resp-4423 to # RPD Resp-4520, in Docket No. 42857.

¹² *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998); *see also In re Guzman*, 19 S.W.3d 522, 525 (Tex. App.—Corpus Christi 2000, no pet.); *see also* Tex. R. Civ. Proc. 192.3(b); *see also* 16 TAC § 22.141(a).

Objections:

Austin Water objects to this request because it would require Austin Water to create a document not in existence, and therefore, not within Austin Water's possession. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control. A document that does not exist is not within a party's "possession, custody, or control."¹³ Austin Water has not created the FY 2019 reclaimed water system budget in the same manner, with the same detail, and with the same headings as Districts requested in its RFI No. 6-31, and Austin Water is not required to do so. In its Application, Austin Water used actual figures and known and measurable changes instead of relying upon a budget. Because this document does not exist, it is not within Austin Water's possession, and Austin Water should not be required to respond to Districts' request.

Additionally, Austin Water objects to this request because the information requested is not identified with reasonable particularity, as is required by 16 TAC § 22.144(b)(1). While the Bates page number is helpful to identify pages within a document, Districts have not identified which document encompasses the Bates page range to which its request refers. Austin Water has conducted a search of the filings and documents from Docket No. 42857, and has been unable to find the Bates page range cited by Districts. Because Districts has a particular document in mind, Districts should provide the name and description of the document to which it refers, instead of requiring Austin Water to continue searching through thousands of pages of documents, searching for information referred to only by the Bates number. Because Districts have a particular document and page range in mind, but have not identified the corresponding document, Austin water objects to this request for not being described with reasonable particularity.

¹³ *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998); *see also In re Guzman*, 19 S.W.3d 522, 525 (Tex. App.—Corpus Christi 2000, no pet.); *see also* Tex. R. Civ. Proc. 192.3(b); *see also* 16 TAC § 22.141(a).

DISTRICTS 6-35: Please provide the base salary/wage separately for each AW employee allocated to the water function, and the basis and amount of the allocation factor used to allocate each employee's costs to the water function, by month, for the period beginning January 2017 through the most recent month for which this information is available. Please include job titles for each employee.

Objections:

Austin Water objects to this request 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.¹⁴ Austin Water has over 1,200 employees. Districts' request would require Austin Water to provide three years of monthly information, which would result in 43,200 responses.¹⁵ Requiring Austin Water to provide this extent of information would require Austin Water to expend unnecessary time and expense to respond. Notwithstanding this objection, Austin Water will provide a response to Districts' RFI Nos. 6-35, 6-36, and 6-37 with a table that provides the following information, based on *yearly* wages:

- The Position Control Number (PCN) number, which is a unique identification number for each position, is assigned to each employee filling the position. Austin Water has provided this PCN number instead of providing each Austin Water employee's name;
- The water/wastewater/reclaimed water allocation factor amount, which adequately reflects the efforts of the employee being split between water, wastewater, and reclaimed water functions;
- The employee's job title;
- The employee's base salary/wage for FY 2017 and FY 2018; and
- The employee's base salary/wage at the end of the test year.

DISTRICTS 6-36: Please provide the base salary/wage separately for each AW employee allocated to the wastewater function, and the basis and amount of the allocation factor used to allocate each employee's costs to the wastewater function, by month, for the period beginning January 2017 through the most recent month for which this information is available. Please include job titles for each employee.

¹⁴ See 16 TAC § 22.142(a)(1)(D); *see also* Tex. R. Civ. Proc. 192.4.

¹⁵ 1,200 employees x 3 years x 12 months = 43,200.

Objections:

Austin Water objects to this request 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.¹⁶ Austin Water has over 1,200 employees. Districts' request would require Austin Water to provide three years of monthly information, which would result in 43,200 responses.¹⁷ Requiring Austin Water to provide this extent of information would require Austin Water to expend unnecessary time and expense to respond. Notwithstanding this objection, Austin Water will provide a response to Districts' RFI Nos. 6-35, 6-36, and 6-37 with a table that provides the following information, based on *yearly* wages:

- The Position Control Number (PCN) number, which is a unique identification number for each position, is assigned to each employee filling the position. Austin Water has provided this PCN number instead of providing each Austin Water employee's name;
- The water/wastewater/reclaimed water allocation factor amount, which adequately reflects the efforts of the employee being split between water, wastewater, and reclaimed water functions;
- The employee's job title;
- The employee's base salary/wage for FY 2017 and FY 2018; and
- The employee's base salary/wage at the end of the test year.

DISTRICTS 6-37: Please provide the base salary/wage separately for each AW employee allocated to the reclaimed water function, and the basis and amount of the allocation factor used to allocate each employee's costs to the reclaimed water function, by month, for the period beginning January 2017 through the most recent month for which this information is available. Please include job titles for each employee.

Objections:

Austin Water objects to this request 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

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

¹⁷ 1,200 employees x 3 years x 12 months = 43,200.

expensive, or are for the purpose of harassment.¹⁸ Austin Water has over 1,200 employees. Districts' request would require Austin Water to provide three years of monthly information, which would result in 43,200 responses.¹⁹ Requiring Austin Water to provide this extent of information would require Austin Water to expend unnecessary time and expense to respond. Notwithstanding this objection, Austin Water will provide a response to Districts' RFI Nos. 6-35, 6-36, and 6-37 with a table that provides the following information, based on *yearly* wages:

- The Position Control Number (PCN) number, which is a unique identification number for each position, is assigned to each employee filling the position. Austin Water has provided this PCN number instead of providing each Austin Water employee's name;
- The water/wastewater/reclaimed water allocation factor amount, which adequately reflects the efforts of the employee being split between water, wastewater, and reclaimed water functions;
- The employee's job title;
- The employee's base salary/wage for FY 2017 and FY 2018; and
- The employee's base salary/wage at the end of the test year.

DISTRICTS 6-38: Please describe in detail any wage/salary increase that any AW received during the historical test year. Please identify the wage/salary increase percentage(s) given to each AW employee and the month in which the wage/salary increase for each AW employee became effective.

Objections:

Austin Water objects to this request 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.²⁰ Austin Water has over 1,200 employees. Districts' request would require Austin Water to provide information on a monthly basis and provide a percentage increase calculation for each increase, when the same information can be ascertained from yearly information. Requiring Austin Water to provide this extent of

¹⁸ See 16 TAC § 22.142(a)(1)(D); *see also* Tex. R. Civ. Proc. 192.4.

¹⁹ 1,200 employees x 3 years x 12 months = 43,200.

²⁰ See 16 TAC § 22.142(a)(1)(D); *see also* Tex. R. Civ. Proc. 192.4.

information would require Austin Water to expend unnecessary time and expense to respond. Notwithstanding this objection, Austin Water is providing year end wage/salary information for each PCN in response to Districts' RFI Nos. 6-35, 6-36, and 6-37.

DISTRICTS 6-48: David Anders further testified that “. . . Shady Hollow MUD challenged AW's rates, but that case was resolved through settlement, with the Commission's approval.” *Id.*, at 10, lines 15-17. Please describe in detail and identify and produce all documents that concern the Commission's approval of the settlement of Shady Hollow MUD's challenge of AW's rates. *See id.*

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, Districts' RFI No. 6-48 requests Austin Water describe and provide documents that concern the Commission's approval of Austin Water's settlement with Shady Hollow Municipal Utility District (MUD) concerning its challenge to Austin Water's rates in Docket No. 46483. Additionally, Shady Hollow MUD is now within AW's retail service, and would not impact rates in this case. The description and production of the requested documents, concerning the Commission's approval of a completely unrelated Commission matter, has absolutely no bearing on whether the rates established by Austin Water are just and reasonable, and therefore, this request is irrelevant.

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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ATTORNEYS FOR CITY OF AUSTIN

CERTIFICATE OF CONFERENCE

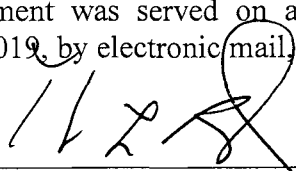
I hereby certify that I attempted to reach Mr. Randall Wilburn, and Mr. John Carlton, counsel for Districts, on September 17, 2019 concerning Austin Water's objections to Districts' Requests for Information. Neither Mr. Wilburn nor Mr. Carlton could ultimately be reached, but I left a voicemail message with Mr. Carlton, explaining Austin Water's intent to discuss its objections and its intent to file these objections in absence of a resolution.



W. PATRICK DINNIN /y/permission

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record in this proceeding on this 23rd day of September, 2019, by electronic mail, hand delivery, via facsimile, and/or mailed by U.S. First Class Mail.



THOMAS L. BROCATO