



Control Number: 49189



Item Number: 73

Addendum StartPage: 0

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

2019 SEP 23 4:10:59

APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
AUSTIN DBA AUSTIN WATER FOR §
AUTHORITY TO CHANGE WATER § OF
AND WASTEWATER RATES § ADMINISTRATIVE HEARINGS

**CITY OF AUSTIN D/B/A AUSTIN WATER’S RESPONSE
TO DISTRICTS’ MOTION TO COMPEL
RESPONSES TO DISTRICTS’ FIRST AND SECOND
REQUESTS FOR INFORMATION**

COMES NOW, the City of Austin (City) d/b/a Austin Water (AW or Austin Water) 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 Districts’ Motion to Compel City of Austin to Respond to Intervenors’ 1st and 2nd Request for Information as Required by Commission Rules (Districts’ Motion to Compel) filed on September 19, 2019. For the reasons contained in Austin Water’s initial objections and in the response, the Administrative Law Judge should deny the Districts’ Motion to Compel.

I. ARGUMENT

A. Districts’ First and Second Requests for Information

Pursuant to 16 Tex. Admin Code (TAC) § 22.78(a) a responsive pleading “shall be filed by a party within five working days after receipt of the pleading to which the response is made.” Similarly, 16 TAC § 22.144(e), states that a motion to compel is generally due no later than five working days after the objectionable information is received. On August 28 and September 3, 2019 the City of Austin (City) d/b/a Austin Water (AW or Austin Water) provided responses 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 (Districts) First and Second Requests for Information (RFI), respectively.¹ Approximately three

¹ Austin Water’s Response to Districts’ First Request for Information (Aug. 28, 2019); Austin Water’s Response to Districts’ Second Request for Information (Sept. 3, 2019).

73

weeks later, the Districts filed a motion to compel. Under the Public Utility Commission's (Commission) rules, the motion to compel is not timely filed.

In Districts' Motion to Compel they argue that Austin Water did not fully respond and complains about the procedure used to make voluminous discovery responses available to them.² The Districts argue that Austin Water did not file an index of voluminous material as described in 16 TAC § 22.144(h)(4).³ They include an image of the relevant CDs that clearly list the voluminous material that Austin Water provided.⁴

In accordance with 16 TAC § 22.144(h)(3), Austin Water retains the discretion to make voluminous material available for inspection and copying in a voluminous room in Austin. Instead, Austin Water has provided all of the requested information in digital format, in an effort to make the information more accessible than the Commission rules require.⁵ Additionally, Austin Water sent a link to the voluminous material via our large file transfer system, in a format that is capable of being searched. All documents were also provided via the Commission's Interchange. Each document is designated with a date and title. This link to the files was sent to counsel for the Districts. As a result, counsel for the Districts was afforded the responsive material without having to inspect hard copies, and through a link given to counsel and reviewable at their convenience. By providing the actual documents themselves in a searchable format the need for an index is eliminated. In fact, it not clear why the Districts even want an index at this point other than for the sake of harassment.

Austin Water is amenable to making any subsequent, qualifying production available for review by Districts pursuant solely to the terms set forth in 16 TAC § 22.144(h), including

² 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' Motion to Compel City of Austin to Respond to Intervenor's 1st and 2nd Request for Information as Required by Commission Rules at 3 (Sept. 19, 2019) (Districts' Motion to Compel).

³ *Id.*

⁴ *Id.* at 6-7.

⁵ This same procedure was used by AEP Texas in their current rate proceeding, *Application of AEP Texas, Inc. for Authority to Change Rates*, Docket No. 49494. This case involved thousands of discovery questions.

placement of such material in a physical voluminous room and accompanied by a filed index. Under the procedure used in this case to date, however, the Districts' Motion to Compel should be denied.

Specifically, the Districts have argued that under 16 TAC § 22.144(h)(4), Austin Water should have included in its response: (1) information sufficient to locate each individual document by page number, file number, and box number; (2) the date of each document; (3) the title of the document or description of the document; (4) the name of the preparer of each document; and (5) the length of each document.⁶

As alluded to above, the responsive information provided already contains the relevant information requested by the Districts: (1) each responsive attachment is specifically named with the RFI request to which it corresponds, making it as specifically identifiable and locatable as possible; there is no page number or box number to provide and each document is distinguishable from all others; (2) the date of each document is contained within the document's properties; (3) the title of the document is readily apparent, and each document is completely distinguishable from all others; (4) the preparer of each document is contained within the each document's properties, and the preparer of the response is listed for each RFI response; and (5) the length of each document is apparent by opening each document. Additionally, many of the documents provided are spreadsheets which may not be defined by "length" unless printed out and placed in a box. These factors show that Austin Water has not failed to provide the information requested by the Districts, but that the Districts are failing to acknowledge that Austin Water has made concessions to provide the information in a more accessible format. As Austin Water emphasized above, the Districts' Motion to Compel should be denied.

II. CONCLUSION

Austin Water respectfully requests that Districts' Motion to Compel be denied, that its objections be sustained, and that it be granted any other relief to which it may be entitled.

⁶ Districts' Motion to Compel at 3.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



THOMAS L. BROCATO
tbrocato@lglawfirm.com
State Bar No. 03039030

CHRISTOPHER L. BREWSTER
cbrewster@lglawfirm.com
State Bar No. 24043570

W. PATRICK DINNIN
pdinnin@lglawfirm.com
State Bar No. 24097603

ATTORNEYS FOR AUSTIN WATER

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2019, a true and correct copy of the foregoing document has been served on all parties of record via electronic mail.



THOMAS L. BROCATO