



Control Number: 49189



Item Number: 82

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APPLICATION OF THE CITY OF §
AUSTIN DBA AUSTIN WATER FOR §
AUTHORITY TO CHANGE WATER §
AND WASTEWATER RATES FOR §
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 IN WILLIAMSON AND §
TRAVIS COUNTIES §

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**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'
REPLY TO CITY OF AUSTIN D/B/A AUSTIN WATER'S RESPONSE TO
DISTRICTS' MOTION TO COMPEL RESPONSES TO CORRECTED
3RD, 4TH AND 5TH REQUESTS FOR INFORMATION**

COME NOW, 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 file this Reply to City of Austin d/b/a Austin Water's Response to Districts' Motion to Compel Responses to Districts' Corrected Third, Fourth and Fifth Requests for Information to the City of Austin ("City"). Districts' Motion to Compel was filed September 19th, and City filed its Response on September 23rd. This, Districts' Reply to City's Response to Districts' Motion to Compel, is filed within five working days from September 23rd, the date City's Response was filed and received. Therefore, Districts' Reply is timely filed. In support of this Reply, Districts respectfully show the following:

I. BACKGROUND

Districts filed their Corrected Third, Fourth and Fifth Requests for Information on the City on August 30, 2019 ("Corrected Requests"). The Corrected Requests generally sought information

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related to the City's Statement of Intent, direct testimony, exhibits, supporting schedules and workpapers filed on April 15, 2019 ("Application"), including the following, among other things:

1. Explanations of the bases for the capital and operating costs related to Water Treatment Plant 4 (now known as the Handcox Water Treatment facility), which was previously excluded from the City's revenue requirement by the Commission;
2. Reconciliation of costs from the test year to the prior year and reconciliation from the test year costs to audited costs;
3. Justification for not annualizing and normalizing the data used in the Application;
4. Supporting documentation for data that is "hard-coded" within the Excel spreadsheets produced by the City as part of the Application;
5. Justification and explanation of the impact resulting from the City's change in classification of either transmission or distribution lines from the classifications used in Docket No. 42857; and
6. Explanation of the impact of the City's treatment of depreciation life for utility system assets.

A party may 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 that is reasonably calculated to lead to the discovery of admissible evidence.¹ Districts' Corrected Requests were intended to be comprehensive and allow Districts to obtain responses to those requests in time to ask clarifying questions before the discovery cutoff (September 27, 2019) and receive responses in advance of Districts' deadline to file testimony in this case (October 18, 2019).

The City objected to Districts' Corrected Requests and the Districts timely filed a Motion to Compel because the Districts are entitled to responses to their requests.

II. ARGUMENT

A. Definition Nos. 5 and 10

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,

¹ Tex. R. Civ. Proc. 192.3; 16 TAC § 22.141(a).

places, and other particulars, including all relevant documents and observations which make the answers to these written discovery requests fair and meaningful.

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 addressees, 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.

In its Response to the Districts’ Motion to Compel, City argues that “the blanket directives established by this definition are unnecessary to adequately describe the responsive documents.” But in a single index of the files provided via the City’s Response to District’s Corrected Third Request, there are seven different documents that are entitled “AW Districts 3-38, Attachment [No.]-Lobbying.pdf” and five different documents entitled “AW Districts 3-38, Attachment [No.]-Membership Questions from Austin Water.pdf.” The City’s responses are evasive and incomplete. The City has not complied with the Districts’ Corrected Request or the Commission’s rule as the individual documents are impossible to distinguish from one another and 12 of them share the same title as another. The effect of this type of evasive and incomplete response, as stated by the Districts in their Motion to Compel, is to force the Districts’ to spend hours and hours searching generically named documents for information to respond to the City’s case. It is exactly as the Districts’ had feared. They are now searching for the proverbial “needle in a haystack.” The City’s tactics and abuse of the discovery process are unfair put the Districts’ at a significant disadvantage. The City’s responses do not allow the Districts’ to discover the basis for the City’s Application or even learn the details of the thousands of pages of documents filed or produced by the City.

B. 16 Tex. Admin. Code §22.144(h)

In its Response to the Districts’ Motion to Compel, City argues that “[b]elieving that procedure [under 22.1449h)] to be cumbersome and outdated given current technology, Austin Water sent a link to the voluminous material via our large file transfer system, in a format that is

capable of being searched.”² As a matter of background, the parties have no agreement regarding production in any method other than the Commission’s rules, nor has the City ever consulted with the Districts’ about alternative methods of production. Furthermore, SOAH Order No. 1 does not address discovery and states that “any matters not addressed by this Order shall be governed by the procedural rules of the Commission...”³ However, the City appears to threaten Districts’ and attempt to coerce them into accepting the City’s responses as they are or else it will “make this material available for inspection and copying in a voluminous room in Austin.” The City’s behavior should not be tolerated, and the City should be ordered to comply with the Commission’s rules.

C. Districts’ Corrected Third RFI

1. Districts’ Corrected RFI No. 3-1

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.

In its Response to the Districts’ Motion to Compel, City argues falsely that the documents related to the cost, planning, development, and construction of Water Treatment Plant No. 4 (“WTP No. 4”) is not relevant. Information related to the prudence of WTP No. 4 is very relevant and critical to this rate matter. The City attempts to recast the issue as one related to “invested capital.”⁴ The City conveniently ignores the fact that the City uses the value of its assets to allocate debt service among customer classes and customers and that the operating costs of WTP No. 4 are included in this rate case. This issue, whether it was prudent for City to invest over ½ billion dollars (\$500,000,000.00) into a water treatment plant that City will never need nor will ever be useful to the ratepayers lies at the heart of this rate case.

The basis for the ALJs to allow the requested discovery is self-evident. In Docket No. 42857, City had five different witness provide testimony in its effort to support the reasonableness of including any costs for WTP No. 4 into the Petitioners’ revenue requirement. The Districts had

² City of Austin’s Response to Districts’ Motion to Compel Responses to Districts’ Corrected Third, Fourth and Fifth Requests for Information, Item No. 73, p. 4.

³ SOAH Order No. 1, Item No. 25, p. 2.

⁴ City’s Response to Districts’ Motion to Compel, Item No. 73, p. 4.

three witness that testified to the imprudence of including any costs associated with WTP No. 4 in City's revenue requirement. In that case, the ALJs postponed a decision on whether the plant was a prudent expenditure or whether the plant will ever be used and useful. Instead, the ALJs excluded the cost from the revenue requirement due to the inoperative nature of the plant during the rate year. The ALJs left the broader issue of prudence to another day. This hearing is that other day.

Whether City is normally subject to the Commission's jurisdiction and requirements is not relevant to this matter. If City believes that is the case, City could challenge the Commission's jurisdiction to hear this rate increase proposal. City has not.

City also presents a red herring regarding having to marshal all of the costs for all of City's facilities placed in service over the past sixty years. However, that is not the case. In this instance, the Districts are merely asking City to produce justification for its expenditures related to the planning, development, and construction of WTP No. 4.

City then argues that the cash method somehow negates any review into the costs for WTP No. 4. This argument is also not on point, as City also used the cash method in the prior rate case. The ALJs did not agree that the cash method somehow invalidated their review and exclusion of the costs for WTP No. 4. Furthermore, a prudence review of WTP No. 4 not only impacts City's debt service and debt service coverage, it also entails whether the Commission should include the cost for operations and maintenance of an unnecessary plant in the ratepayers cost of service. Moreover, City bases its allocation of debt service and debt service coverage upon total plant valuations and depreciation. If it was imprudent to construct WTP No. 4, then the inclusion of any costs, including operations and maintenance costs, in the Districts rates would also be improper.

Finally, City tries to shift the burden to the Commission for not developing a rate filing package specifically for those cases in which the Commission previously found a municipality's rates to be unjust and unreasonable. In the prior rate case, City also tried to place blame for City's inability to justify its rates on the Commission for not having a rate filing package geared specifically for TWC § 13.044 cases. The Commission did not agree then, and it will not agree with this argument now.

2. Districts' Corrected RFI Nos. 3-4 and 3-5

3-4 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.

And

3-5 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.

In its Response to the Districts' Motion to Compel, City argues "To the extent that the Districts are seeking other materials [not including correspondence between the City and the Districts] relating to the District's contracts with AW, that material is irrelevant." However, these materials are all relevant. How the City sees its relationship with the Districts, including its obligations to provide service to the Districts, as reflected in its internal communications and its communications with others bears directly to the determination of operating expenses and debt service that should be allocated to the Districts and to the City's needs for additional water treatment capacity.

3. Districts' Corrected RFI No. 3-34

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

In its Response to the Districts' Motion to Compel, City simply argues that a mapping of AWU's chart of accounts into the NARUC [National Association of Regulatory Utility

Commissioners] chart of accounts is irrelevant. The NARUC chart of accounts is the national industry standard. In order to begin to evaluate the City's operating expenses and debt service, the Districts' must be able to identify which City accounts include expenses that are of a type contained within a particular NARUC account type that is an acceptable cost.

D. Districts' Corrected Fourth and Fifth RFI

1. Districts' Corrected RFI No. 4-6, 5-4 and 5-5

4-6 Please provide the revenue requirements for each of the Petitioners based on re-running the AW Water COS Model Docket 49189.xlsx using the classifications of 24" and greater as Transmission Mains and less than 24" as Distribution Mains.

5-4 Please provide the revenue requirements for each of the Petitioners based on re-running the AW Water COS Model Docket 49189.xlsx changing the depreciable life of all treatment facilities to 5 years.

5-5 Please provide the revenue requirements for each of the Petitioners based on re-running the AW Water COS Model Docket 49189.xlsx changing the depreciable life of all distribution mains to 100 years.

In its Response to the Districts' Motion to Compel, City argues "the requested COS model re-runs did not exist and were therefore not in Austin Water's possession, custody or control..."⁵ The City's argument is misleadingly founded upon the rules for production of documents. The District's question is a request for information, which is related to errors in the City's Application filings. In essence, the Districts' have asked the City to run their own models to recalculate the output using correct input data.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Districts 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 Compelling the City of Austin d/b/a Austin Water to respond to Districts'

⁵ Id. at 10.

Corrected Third, Fourth and Fifth Requests for Information and grant Districts other such relief to which they may be entitled.

Respectfully submitted,



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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 30th day of September, 2019.



John J. Carlton