



Control Number: 49189



Item Number: 83

Addendum StartPage: 0

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APPLICATION OF THE CITY OF	§	BEFORE THE STATE OFFICE
AUSTIN FOR AUTHORITY TO	§	
CHANGE THE WATER AND	§	
WASTEWATER RATES FOR NORTH	§	
AUSTIN MUNICIPAL UTILITY	§	
DISTRICT NO. 1, NORTHTOWN	§	
MUNICIPAL UTILITY DISTRICT,	§	OF
TRAVIS COUNTY WATER CONTROL	§	
AND IMPROVEMENT DISTRICT NO.	§	
10, AND WELLS BRANCH	§	
MUNICIPAL UTILITY DISTRICT IN	§	
WILLIAMSON AND TRAVIS	§	
COUNTIES	§	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' MOTION TO COMPEL CITY OF AUSTIN TO RESPOND TO
DISTRICTS' 6TH REQUEST 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 Motion to Compel Responses to Districts' Sixth Request for Information to the City of Austin ("City"), which were served on the City on September 11, 2019. This Motion to Compel is filed within five days of and in response to City's Objections to Districts' Sixth Request for Information to the City, all of which the City filed on Monday, September 23, 2019. Therefore, this Motion to Compel is timely. In support of this Motion, Districts respectfully show the following:

I. BACKGROUND

Districts filed their Sixth Request for Information on the City on September 11, 2019 ("Requests"). The Requests generally sought information related to the City's construction of Water Treatment Plant 4 ("WTP No. 4" or "Handcox WTP"), removal, sale, and transfer of assets, budgets for recent fiscal years, and wages for employees.

83

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' Requests were intended to be comprehensive and provide meaningful 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. RESPONSE TO CITY'S OBJECTIONS

A. City repeated the following objections for Districts' Sixth Request for Information.²

1. **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. ... Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

City cites 16 TAC § 22.142(a)(1)(D) and Tex. R. Civ. Proc. 192.4 as the bases for its objections. As the Districts have previously argued, City bears the burden of proof in this matter as the applicant for approval of an increase in its wholesale rates to Districts. As the ALJs are aware, City pressed for an extremely compressed schedule in this matter. City's rate filing package and direct case in this matter consists of 3,731 pages of materials. Districts' discovery properly seeks to discover the bases for City's rate request, which Districts' expect to require City to produce thousands of pages of additional documents and thoroughly detailed responses. Districts Sixth Request for Information include a definition of "Describe" or "describe in detail" to make clear what Districts are requesting.

If the ALJs were to sustain City's objection to this definition, City could simply respond with non-specific and evasive answers that effectively serve to shift the burden of proof to Districts to scour

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

² See Districts' Motion to Compel City of Austin to Respond to Districts' 3RD, 4TH, and 5TH Requests for Information, Docket No. 49189, Item 57.

City's own admittedly voluminous documentation in order to locate "a needle in a haystack" and understand City's Application in order to prepare the Districts' direct case.

In the prior wholesale rate appeal, the Commission found that:

Based on Disk 1 and the city's direct case, Districts' expert witness attempted to evaluate the city's rates by starting from the assumption that the data entries in the city's inactive Excel spreadsheets were valid. After spending 500 hours and at a cost of nearly \$100,000, Districts' expert and his team reverse-engineered the inactive Excel spreadsheets to create active spreadsheets that they used to guess the formulas and bases for the underlying data. The reverse-engineered Excel spreadsheets still contained the city's data entries and assumed their validity.³

City's objections in this matter, follow the same pattern as the prior Docket. Districts should not be forced to reconstruct City's case in order to be able to evaluate City's assertions regarding the calculations of Districts' wholesale rate. The burden of that proof, and the cost, rests squarely on City.

City's statement that "[n]otwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term" violates the requirements of Tex. R. Civ. Proc. 193.2(a), which requires that "[t]he party must state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request."⁴ Merely stating that the City will comply with the request using the "using the commonly understood meaning of the term"⁵ fails to specifically state the basis for the objection to which City is refusing to comply. Instead, the objection would leave the determination of what is actually responsive to City's biased interpretation.

Further, Districts' only requests from their Sixth Request for Information that use the terms "describe" or "describe in detail" are:

DISTRICTS' REQUEST TO CITY 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.

DISTRICTS' REQUEST TO CITY 6-18. Please describe in detail the process that the City of Austin follows in order to adopt or

³ Order on Rehearing, Docket No. 42857, Item 344, p. 22, Finding of Fact 45.

⁴ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 22.141(a).

⁵ Objections of Austin Water to Districts' Corrected Third Request for Information, Docket No. 49189, Item 50, p. 2; Objections of Austin Water to Districts' Corrected Fourth Request for Information, Docket No. 49189, Item 49, p. 2; and Objections of Austin Water to Districts' Corrected Fifth Request for Information, Docket No. 49189, Item 48, p. 2.

amend AW's financial policies. Describe in detail which department initiates the policies or amendments.

DISTRICTS' REQUEST TO CITY 6-19. Please describe in detail how debt service coverage is calculated for budget purposes, for financial statement purposes, and for rate setting purposes.

DISTRICTS' REQUEST TO CITY 6-32. Please describe in detail and identify and produce all documents concerning all changes that have been implemented in accounting policy since Docket No. 42857, that have resulted in AW currently expensing costs that were capitalized at the time of Docket 42857, or that have resulted in AW currently capitalizing costs that were expensed at the time of Docket 42857.

a. Please identify and produce all internal documents concerning the accounting changes, including communications regarding the changes in accounting policy, and documents that provide the explanation for the accounting policy changes

b. For each accounting change, describe in detail and identify and produce documents demonstrating the total number of dollars allocated to water that were affected by each specific accounting change during each specific year, and the total number of dollars allocated to wastewater that were affected by each specific accounting change during each specific year.

DISTRICTS' REQUEST TO CITY 6-38: Please describe in detail any wage/salary increase that any AW employee 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.

DISTRICTS' REQUEST TO CITY 6-39: Please describe in detail and identify and produce all documents concerning the average annual base wage/salary increases that have been given to water employees of AW for each of the last five fiscal years.

DISTRICT'S REQUEST TO CITY 6-40: Please describe in detail and identify and produce all documents concerning the average annual base wage/salary increases that have been given to wastewater employees of AW for each of the last five fiscal years.

DISTRICT'S REQUEST TO CITY 6-41: Please describe in detail and identify and produce all documents concerning the average annual base wage/salary increases that have been given to reclaimed water employees of AW for each of the last five fiscal years.

DISTRICT'S REQUEST TO CITY 6-43: For each of the last five fiscal years, including the historical test year, please describe in detail and identify and produce documents concerning any incentive compensation plan that was in effect during that year and that was available to the employees of AW. Please provide the total number of

AW employees eligible for each incentive compensation plan, including a list of performance metrics that would render an AW employee eligible for an award under each incentive compensation plan, and the method of evaluation that was used to determine if an AW employee would receive an award under each incentive compensation plan.

DISTRICT'S REQUEST TO CITY 6-44: Please describe any changes that have been made to any short-term or long-term incentive compensation plan that has been available to any employee of AW since the time when the incentive compensation plan was effective in Docket No. 42857.

DISTRICT'S REQUEST TO CITY 6-47: Austin Water witness David Anders testified as follows:

The rates in this case are stated in the direct testimony of Joseph Gonzalez beginning at page 50. For a comparison of currently approved operating expenses and operating income as previously authorized and as proposed in this application, please see Schedules II-A-2-1, II-A-2-2, II-A-2-2(w), and II-A-2-2(ww).

Application of AW to Change Water and Wastewater Rates, Direct Testimony of David Anders, at 8 lines 13-16 (April 15, 2019). Please described in detail and identify and produce documents that demonstrate Mr. Ander's meaning of the words "currently approved operating expenses," as used in the context of his testimony. *Id.*

All these requests are relevant to the issues in this matter, and City is obligated to provide a meaningful response.

It is unclear from City's objections, but to the extent that City is objecting to having to "describe" documents as part of the definition of "identify," Counsel for Districts offered to agree to modify the definition of "identify," as discussed in detail below, to track the Commission's requirements for indices of voluminous materials found in 16 Tex. Admin. Code 22.144(h)(4). The City did not agree, and now files objections to Districts' definitions of "describe" and "Identify". Furthermore, Districts anticipate that the City will not file an index of voluminous materials in response to Districts' Sixth Request as required by the Commission's rules, because the City has failed to do so in its responses to Districts' First, Second, Third, Fourth, and Fifth

Requests, despite the City's responses admitting that the City's responsive documents are voluminous.⁶ Commission Procedural Rules 22.144(h)(4) requires:

(4) The party providing the voluminous material shall file with its response a detailed index of the voluminous material responsive to a particular question and shall organize the responses and material to enable parties to efficiently review the material, including labeling of material by request for information number and subparts and sequentially numbering the material responsive to a particular question. The index shall include:

- (A) information sufficient to locate each individual document by page number, file number, and box number;
- (B) the date of each document;
- (C) the title of the document, or, if none exists, a description of the document;
- (D) the name of the preparer of each document; and
- (E) the length of each document.⁷

City's responses to Districts' First, Second, Third, Fourth, and Fifth Requests merely contains of copy of the image of the DVD with a list of the file names for the files included on the DVD, which City has asserted in negotiations is sufficient. Copies of the relevant pages from City's responses to Districts' First, Second, Third, Fourth, and Fifth Requests for Information are attached to this Motion as Exhibits "A," "B," "C," "D," and "E."⁸

Furthermore, in City's Response to Intervenor's Motion to Compel Responses to Intervenor's First and Second Requests for Information, the City claims that the title of the documents provided on the discs "is readily apparent, and each document is completely distinguishable from all others."⁹ 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"

⁶ See City of Austin D/B/A Austin Water's Response to Districts' First Request for Information, Docket No. 49189, Item 39, p. 14, and City of Austin D/B/A Austin Water's Response to Districts' Second Request for Information, Docket No. 49189, Item 47, p. 8.

⁷ 16 Tex. Admin. Code 22.144(h)(4).

⁸ See City of Austin D/B/A Austin Water's Response to Districts' First Request for Information, Docket No. 49189, Item 39, p. 14; City of Austin D/B/A Austin Water's Response to Districts' Second Request for Information, Docket No. 49189, Item 47, p. 8; City of Austin D/B/A/ Austin Water's Response to District's Corrected Third Request for Information, Docket No. 49189, Item 59, p. 48; City of Austin D/B/A/ Austin Water's Response to District's Corrected Fourth Request for Information, Docket No. 49189, Item 60, p. 11; City of Austin D/B/A/ Austin Water's Response to District's Corrected Fifth Request for Information, Docket No. 49189, Item 61, p. 8. also attached as Exhibits "A," "B," "C," "D," and "E."

⁹ City of Austin D/B/A Austin Water's Response to Districts' Motion to Compel Responses to Districts' First and Second Requests for Information, Docket No. 49189, Item 73, p. 3.

and five different documents entitled “AW Districts 3-38, Attachment [No.]-Membership Questions from Austin Water.pdf.”¹⁰ The City has not complied with the rule as the individual documents are impossible to distinguish from one another and 12 of them share the same title as another.

Districts’ urge the ALJs to overrule City’s objections to Districts’ instructions related to describing its responses in detail and compel the City to fully respond to Districts’ requests.

2. **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. ... Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

City cites 16 TAC § 22.142(a)(1)(D) and Tex. R. Civ. Proc. 192.4 as the bases for its objections. However, City bears the burden of proof in this matter as the applicant for approval of an increase in its wholesale rates to Districts.

Districts filed and served City their Sixth Request for Information on September 11, 2019. Counsel for Districts offered to agree to modify the definition of “Identify” to track the Commission’s requirements for indices of voluminous materials found in 16 Tex. Admin. Code 22.144(h)(4). The City did not agree, and now files objections to Districts’ definition of “Identify”. Furthermore, Districts anticipate that the City will not file an index of voluminous materials in response to Districts’ Corrected Third, Fourth and Fifth Requests as required by the Commission’s rules, because the City has failed to do so in its responses to Districts’ First Second, Third, Fourth, and Fifth Requests, despite the City’s responses admitting that the City’s responsive documents are voluminous.¹¹ Commission Procedural Rules 22.144(h)(4) requires:

- (4) The party providing the voluminous material shall file with its response a detailed index of the voluminous material responsive to a particular question and shall organize the responses and material

¹⁰ See City of Austin D/B/A/ Austin Water’s Response to District’s Corrected Third Request for Information, Docket No. 49189, Item 59, p. 48.

¹¹ See City of Austin D/B/A Austin Water’s Response to Districts’ First Request for Information, Docket No. 49189, Item 39, p. 14, and City of Austin D/B/A Austin Water’s Response to Districts’ Second Request for Information, Docket No. 49189, Item 47, p. 8.

to enable parties to efficiently review the material, including labeling of material by request for information number and subparts and sequentially numbering the material responsive to a particular question. The index shall include:

- (A) information sufficient to locate each individual document by page number, file number, and box number;
- (B) the date of each document;
- (C) the title of the document, or, if none exists, a description of the document;
- (D) the name of the preparer of each document; and
- (E) the length of each document.¹²

City's responses to Districts' First, Second, Third, Fourth, and Fifth Requests merely contains of copy of the image of the DVD with a list of the file names for the files included on the DVD, which City has asserted in negotiations is sufficient. Copies of the relevant pages from City's responses to Districts' First, Second, Third, Fourth, and Fifth Requests for Information are attached to this Motion as Exhibits "A," "B," "C," "D," and "E."¹³

Furthermore, in City's Response to Intervenor's Motion to Compel Responses to Intervenor's First and Second Requests for Information, the City claims that the title of the documents provided on the discs "is readily apparent, and each document is completely distinguishable from all others."¹⁴ 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."¹⁵ The City has not complied with the rule as the individual documents are impossible to distinguish from one another and 12 of them share the same title as another.

¹² 16 Tex. Admin. Code 22.144(h)(4); 16 TAC § 22.141(a).

¹³ See City of Austin D/B/A Austin Water's Response to Districts' First Request for Information, Docket No. 49189, Item 39, p. 14; City of Austin D/B/A Austin Water's Response to Districts' Second Request for Information, Docket No. 49189, Item 47, p. 8; City of Austin D/B/A/ Austin Water's Response to District's Corrected Third Request for Information, Docket No. 49189, Item 59, p. 48; City of Austin D/B/A/ Austin Water's Response to District's Corrected Fourth Request for Information, Docket No. 49189, Item 60, p. 11; City of Austin D/B/A/ Austin Water's Response to District's Corrected Fifth Request for Information, Docket No. 49189, Item 61, p. 8. also attached as Exhibits "A," "B," "C," "D," and "E."

¹⁴ City of Austin D/B/A Austin Water's Response to Districts' Motion to Compel Responses to Districts' First and Second Requests for Information, Docket No. 49189, Item 73, p. 3.

¹⁵ See City of Austin D/B/A/ Austin Water's Response to District's Corrected Third Request for Information, Docket No. 49189, Item 59, p. 48.

Districts' urge the ALJs to overrule City's objections to Districts' instructions related to identifying responsive documents and compel the City to fully respond to Districts' requests. Alternatively, Districts' request that the ALJs order City to provide an index to the voluminous documents that are produced for Districts' Corrected Third, Fourth and Fifth Requests as required by 16 Tex. Admin. Code 22.144(h)(4).

B. City made the following specific objections for Districts' Sixth Request for Information.

1. **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). ... The prudence of Austin Water's debt service and capital costs are not a relevant issue in this proceeding.

Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."¹⁶ The cost of planning, developing, and constructing Water Treatment Plant No. 4 is entirely relevant to this proceeding. City claims that "Austin Water is under no obligation to seek Commission approval of its invested capital (i.e. rate base)." However, City's own testimony reveals the importance of the costs incurred by City for Water Treatment Plant No. 4 (now known as the Handcox WTP). Mr. Anders testifies that

The Handcox WTP is a critical component of providing water service to all of AW's customers. During the previous proceedings in Docket No. 42857, the Handcox WTP was still under construction and was not yet used and useful. Since November 2014, the Handcox plant has continuously been used and useful to AW's water system.... The Handcox WTP costs benefit all customer classes including wholesale customers, and therefore a portion of the O&M

¹⁶ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

and capital costs associated with the plant have been properly allocated to wholesale customers.¹⁷

Information related to the prudence of WTP No. 4 is very relevant and critical to this rate matter. 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 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. Districts are entitled to discovery on this issue and to know what documents in the Application could support the costs for WTP No. 4.

2. **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.

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 prudence of Austin Water’s invested capital is not a relevant issue in this proceeding.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”¹⁸ The “cost of planning, developing, and constructing Water Treatment Plant No. 4” is entirely relevant to this proceeding. City claims that “Austin Water is under no obligation to seek Commission approval of its invested capital (i.e. rate base).” However, City’s own testimony reveals the importance of the costs incurred by City for Water Treatment Plant No. 4 (now known as the Handcox WTP). Mr. Anders testifies that

The Handcox WTP is a critical component of providing water service to all of AW’s customers. During the previous proceedings

¹⁷ See City’s Statement of Intent to Change Rates for Wholesale Water and Wastewater Service, Direct Testimony of David A. Anders, at 39-40 (52-53 of 3,731) (Apr. 15, 2019).

¹⁸ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

in Docket No. 42857, the Handcox WTP was still under construction and was not yet used and useful. Since November 2014, the Handcox plant has continuously been used and useful to AW's water system.... The Handcox WTP costs benefit all customer classes including wholesale customers, and therefore a portion of the O&M and capital costs associated with the plant have been properly allocated to wholesale customers.¹⁹

Information related to the prudence of WTP No. 4 is very relevant and critical to this rate matter. 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 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. Districts are entitled to discovery on this issue and to know what documents in the Application could support the costs for WTP No. 4.

3. **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). The prudence of Austin Water's invested capital is not a relevant issue in this proceeding.

Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."²⁰ The "cost of planning, developing, and constructing Water Treatment Plant No. 4" is entirely relevant to this proceeding. City claims that "Austin Water is under no obligation to seek Commission approval of its invested capital (i.e. rate base)." However, City's own testimony reveals the importance of the costs

¹⁹ See City's Statement of Intent to Change Rates for Wholesale Water and Wastewater Service, Direct Testimony of David A. Anders, at 39-40 (52-53 of 3,731) (Apr. 15, 2019).

²⁰ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

incurred by City for Water Treatment Plant No. 4 (now known as the Handcox WTP). Mr. Anders testifies that

The Handcox WTP is a critical component of providing water service to all of AW's customers. During the previous proceedings in Docket No. 42857, the Handcox WTP was still under construction and was not yet used and useful. Since November 2014, the Handcox plant has continuously been used and useful to AW's water system.... The Handcox WTP costs benefit all customer classes including wholesale customers, and therefore a portion of the O&M and capital costs associated with the plant have been properly allocated to wholesale customers.²¹

Information related to the prudence of WTP No. 4 is very relevant and critical to this rate matter. 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 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. The City's investigation, or lack thereof, into other options besides the construction of WTP No. 4 is integral to the base rate it charges; therefore, Districts are entitled to discovery on this issue and to know what documents in the Application could support the costs for WTP No. 4.

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). The prudence of Austin Water's invested capital is not a relevant issue in this proceeding.

Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of

²¹ See City's Statement of Intent to Change Rates for Wholesale Water and Wastewater Service, Direct Testimony of David A. Anders, at 39-40 (52-53 of 3,731) (Apr. 15, 2019).

the party seeking discovery or the claim or defense of any other party.”²² The “cost of planning, developing, and constructing Water Treatment Plant No. 4” is entirely relevant to this proceeding. City claims that “Austin Water is under no obligation to seek Commission approval of its invested capital (i.e. rate base).” However, City’s own testimony reveals the importance of the costs incurred by City for Water Treatment Plant No. 4 (now known as the Handcox WTP). Mr. Anders testifies that

The Handcox WTP is a critical component of providing water service to all of AW’s customers. During the previous proceedings in Docket No. 42857, the Handcox WTP was still under construction and was not yet used and useful. Since November 2014, the Handcox plant has continuously been used and useful to AW’s water system.... The Handcox WTP costs benefit all customer classes including wholesale customers, and therefore a portion of the O&M and capital costs associated with the plant have been properly allocated to wholesale customers.²³

Information related to the prudence of WTP No. 4 is very relevant and critical to this rate matter. 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 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. Districts are entitled to discovery on this issue.

5. **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

²² Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

²³ See City’s Statement of Intent to Change Rates for Wholesale Water and Wastewater Service, Direct Testimony of David A. Anders, at 39-40 (52-53 of 3,731) (Apr. 15, 2019).

- 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. 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”²⁴ This information is related to the City’s rate case expenses incurred for each of these issues. The City attempts to allocate costs to Districts for each of those issues in this Application despite the fact that they were previously disallowed in Docket No. 42857. 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. The impact of the individual expenses for Reclaimed Operating and Capital Costs, Swap and Commercial Paper Administration Costs, Drainage Fees, Revenue Stability Reserve Fund Surcharge, Training and Non-Plant Expenses at Govalle Site, and Handcox WTP Operating and Capital Costs is relevant to the subject of the City’s Application.

- 6. **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 asset listing used in *Application of AW to Change Water*

²⁴ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

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). 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”²⁵ The removal of assets from the City’s Application is relevant because retired assets will no longer be accounted for in the net asset value of the City nor be included in its depreciation schedule. This removal directly impacts the allocation of costs, including debt service, to Districts. In addition, if the City received revenue from the removal, via sale or transfer of the assets, that revenue must be accounted for in the Application. By modifying the assets included in these lists, the cost basis for the City’s rate setting could be affected. These changes are relevant to the City’s Application.

- 7. **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

²⁵ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

- 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). 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”²⁶ The removal of assets from the City's Application is relevant because retired assets will no longer be accounted for in the net asset value of the City nor be included in its depreciation schedule. This removal directly impacts the allocation of costs, including debt service, to Districts. By modifying the assets included in these lists, the cost basis for the City's rate setting could be affected. Furthermore, it is necessary to account for the value lost on these transfers and if any of the value was recuperated by the City. These changes are relevant to the City's Application.

- 8. **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.

²⁶ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

- 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). 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”²⁷ The sale of assets from the City’s Application is relevant because sold assets will no longer be accounted for in the net asset value of the City nor be included in its depreciation schedule. This removal directly impacts the allocation of costs, including debt service, to Districts. In addition, if the City received revenue from the sale of the assets, that revenue must be accounted for in the Application. By modifying the assets included in these lists, the cost basis for the City’s rate setting could be affected. These changes are relevant to the City’s Application.

²⁷ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

9. **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 the 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). 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”²⁸ The removal of assets from the City’s Application is relevant because retired assets will no longer be accounted for in the net asset value of the City nor be included in its depreciation schedule. This removal directly impacts the allocation of costs, including debt service, to Districts. In addition, if the City received revenue from the removal, via sale or transfer of the assets, that revenue must be accounted for in the Application. By modifying the assets included in these lists, the cost basis for the City’s rate setting could be affected. These changes are relevant to the City’s Application.

10. **DISTRICTS 6-14:** For each waste water 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:

²⁸ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

- 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). Any water assets that have been transferred 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”²⁹ The removal of assets from the City’s Application is relevant because retired assets will no longer be accounted for in the net asset value of the City nor be included in its depreciation schedule. This removal directly impacts the allocation of costs, including debt service, to Districts. By modifying the assets included in these lists, the cost basis for the City’s rate setting could be affected. Furthermore, it is necessary to account for the value lost on these transfers and if any of the value was recuperated by the City. These changes are relevant to the City’s Application.

²⁹ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

11. **DISTRICTS 6-15:** For each waste water 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). 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”³⁰ The sale of assets from the City’s Application is relevant because sold assets will no longer be accounted for in the net asset value of the City nor be included in its depreciation schedule. This removal directly impacts the allocation of costs, including debt service, to Districts. In addition, if the City received revenue

³⁰ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

from the sale of the assets, that revenue must be accounted for in the Application. By modifying the assets included in these lists, the cost basis for the City's rate setting could be affected. These changes are relevant to the City's Application.

12. **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. 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.

Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."³¹ City has responded to District 6-26 – 6-31 in the exact same manner, and the objections are insufficient for the same reasons. City bears the burden of proof in this matter. That burden carries with it the obligation upon City to demonstrate how ALL the figures in its rate filing package were calculated. In the prior Application (Docket No. 42857), the City provided a justification column in its line item budget that explained the City's rationale for inclusion. This is extremely relevant to the Application because those expenses will be passed on to the ratepayer.

The City produced documents in Docket No. 42857 with Bates numbering throughout. The city has these documents in its possession, custody, and control. Districts' reference to the Bates page is very specific.

³¹ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

13. **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. 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.

Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."³² City has responded to District 6-26 – 6-31 in the exact same manner, and the objections are insufficient for the same reasons. City bears the burden of proof in this matter. That burden carries with it the obligation upon City to demonstrate how ALL the figures in its rate filing package were calculated. In the prior Application case (Docket No. 42857), the City provided a justification column in its line item budget that explained the City's rationale for inclusion. This is extremely relevant to the Application because those expenses will be passed on to the ratepayer.

The City produced documents in Docket No. 42857 with Bates numbering throughout. The city has these documents in its possession, custody, and control. Districts' reference to the Bates page is very specific.

14. **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.

³² Tex. R. Civ. Proc. 192.3(a); 16 TAC § 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. 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”³³ City has responded to District 6-26 – 6-31 in the exact same manner, and the objections are insufficient for the same reasons. City bears the burden of proof in this matter. That burden carries with it the obligation upon City to demonstrate how ALL the figures in its rate filing package were calculated. In the prior Application case (Docket No. 42857), the City provided a justification column in its line item budget that explained the City’s rationale for inclusion. This is extremely relevant to the Application because those expenses will be passed on to the ratepayer.

The City produced documents in Docket No. 42857 with Bates numbering throughout. The city has these documents in its possession, custody, and control. Districts’ reference to the Bates page is very specific.

15. **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

³³ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

the party's possession, custody, or control. 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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”³⁴ City has responded to District 6-26 – 6-31 in the exact same manner, and the objections are insufficient for the same reasons. City bears the burden of proof in this matter. That burden carries with it the obligation upon City to demonstrate how ALL the figures in its rate filing package were calculated. In the prior Application case (Docket No. 42857), the City provided a justification column in its line item budget that explained the City’s rationale for inclusion. This is extremely relevant to the Application because those expenses will be passed on to the ratepayer.

The City produced documents in Docket No. 42857 with Bates numbering throughout. The city has these documents in its possession, custody, and control. Districts’ reference to the Bates page is very specific.

16. **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 required to produce a document or tangible thing unless it is within the party's possession, custody, or control. 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

³⁴ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

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.

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”³⁵ City has responded to District 6-26 – 6-31 in the exact same manner, and the objections are insufficient for the same reasons. City bears the burden of proof in this matter. That burden carries with it the obligation upon City to demonstrate how ALL the figures in its rate filing package were calculated. In the prior Application case (Docket No. 42857), the City provided a justification column in its line item budget that explained the City’s rationale for inclusion. This is extremely relevant to the Application because those expenses will be passed on to the ratepayer.

The City produced documents in Docket No. 42857 with Bates numbering throughout. The city has these documents in its possession, custody, and control. Districts’ reference to the Bates page is very specific.

17. **DISTRICTS 6-31:** 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. 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.

³⁵ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”³⁶ City has responded to District 6-26 – 6-31 in the exact same manner, and the objections are insufficient for the same reasons. City bears the burden of proof in this matter. That burden carries with it the obligation upon City to demonstrate how ALL the figures in its rate filing package were calculated. In the prior Application case (Docket No. 42857), the City provided a justification column in its line item budget that explained the City’s rationale for inclusion. This is extremely relevant to the Application because those expenses will be passed on to the ratepayer.

The City produced documents in Docket No. 42857 with Bates numbering throughout. The city has these documents in its possession, custody, and control. Districts’ reference to the Bates page is very specific.

18. **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.

City cites 16 TAC § 22.142(a)(1)(D) and Tex. R. Civ. Proc. 192.4 as the bases for its objections to District 6-35 – 6-38. However, City bears the burden of proof in this matter as the applicant for approval of an increase in its wholesale rates to Districts. As the ALJs are aware, City pressed for an extremely compressed schedule in this matter. City’s rate filing package and direct case in this matter consists of 3,731 pages of materials. Districts’ discovery properly seeks to discover the bases for City’s

³⁶ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

rate request, which Districts' expect to require City to produce thousands of pages of additional documents and thoroughly detailed responses.

16 TAC § 24.41(b) provides that “only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses.” Wages are included in the definition of expenses as operations and maintenance costs. Furthermore, because the utility has the burden to establish that the rates being charged are just and reasonable, the wages paid to employees of the utility must be just and reasonable as they are directly passed along to the ratepayers as expenses calculated in the Application.³⁷

19. **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 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.

City cites 16 TAC § 22.142(a)(1)(D) and Tex. R. Civ. Proc. 192.4 as the bases for its objections to District 6-35 – 6-38. However, City bears the burden of proof in this matter as the applicant for approval of an increase in its wholesale rates to Districts. As the ALJs are aware, City pressed for an extremely compressed schedule in this matter. City's rate filing package and direct case in this matter consists of 3,731 pages of materials. Districts' discovery properly seeks to discover the bases for City's rate request, which Districts' expect to require City to produce thousands of pages of additional documents and thoroughly detailed responses.

16 TAC § 24.41(b) provides that “only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses.” Wages are included

³⁷ 16 TAC § 24.45(b).

in the definition of expenses as operations and maintenance costs. Furthermore, because the utility has the burden to establish that the rates being charged are just and reasonable, the wages paid to employees of the utility must be just and reasonable as they are directly passed along to the ratepayers as expenses calculated in the Application.³⁸

20. **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 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.

City cites 16 TAC § 22.142(a)(1)(D) and Tex. R. Civ. Proc. 192.4 as the bases for its objections to District 6-35 – 6-38. However, City bears the burden of proof in this matter as the applicant for approval of an increase in its wholesale rates to Districts. As the ALJs are aware, City pressed for an extremely compressed schedule in this matter. City's rate filing package and direct case in this matter consists of 3,731 pages of materials. Districts' discovery properly seeks to discover the bases for City's rate request, which Districts' expect to require City to produce thousands of pages of additional documents and thoroughly detailed responses.

16 TAC § 24.41(b) provides that "only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses." Wages are included in the definition of expenses as operations and maintenance costs. Furthermore, because the utility has the burden to establish that the rates being charged are just and reasonable, the wages paid to employees of the utility must be just and reasonable as they are directly passed along to the ratepayers as expenses calculated in the Application.³⁹

³⁸ 16 TAC § 24.45(b).

³⁹ 16 TAC § 24.45(b).

21. **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.

City cites 16 TAC § 22.142(a)(1)(D) and Tex. R. Civ. Proc. 192.4 as the bases for its objections to District 6-35 – 6-38. However, City bears the burden of proof in this matter as the applicant for approval of an increase in its wholesale rates to Districts. As the ALJs are aware, City pressed for an extremely compressed schedule in this matter. City’s rate filing package and direct case in this matter consists of 3,731 pages of materials. Districts’ discovery properly seeks to discover the bases for City’s rate request, which Districts’ expect to require City to produce thousands of pages of additional documents and thoroughly detailed responses.

16 TAC § 24.41(b) provides that “only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses.” Wages are included in the definition of expenses as operations and maintenance costs. Furthermore, because the utility has the burden to establish that the rates being charged are just and reasonable, the wages paid to employees of the utility must be just and reasonable as they are directly passed along to the ratepayers as expenses calculated in the Application.⁴⁰

22. **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.” ... Please describe in detail and identify and produce all

⁴⁰ 16 TAC § 24.45(b).

documents that concern the Commission's approval of the settlement of Shady Hollow MUD's challenge of AW's rates.

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 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.


Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."⁴¹ For the City to claim that that information is somehow irrelevant makes little sense. Given the similar nature of the appeal by the District and the appeal by Shady Hollow MUD, the details of the settlement between City and Shady Hollow MUD are of extreme relevance to the City's allocation of costs to Districts and City's other customers. Districts' understanding of the details of the settlement between City and Shady Hollow MUD are relevant because it would give further indication as to how the City sets its rates.

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 to respond to Districts' Sixth Request for Information and grant Districts other such relief to which they may be entitled.

⁴¹ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

Respectfully submitted,



John J. Carlton

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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

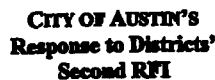
Exhibit A

VOLUMINOUS ATTACHMENTS
PROVIDED ON CD



 AW_1-2_Attachment_1.pdf
 AW_1-3(4)(A)_Attachment_1.pdf
 AW_1-3(4)(A)_Attachment_2.pdf
 AW_1-3(4)(A)_Attachment_3.pdf
 AW_1-3(4)(A)_Attachment_4.pdf
 AW_1-3(4)(A)_Attachment_5.pdf
 AW_1-3(4)(A)_Attachment_6.pdf
 AW_1-7_Attachment_1.PDF

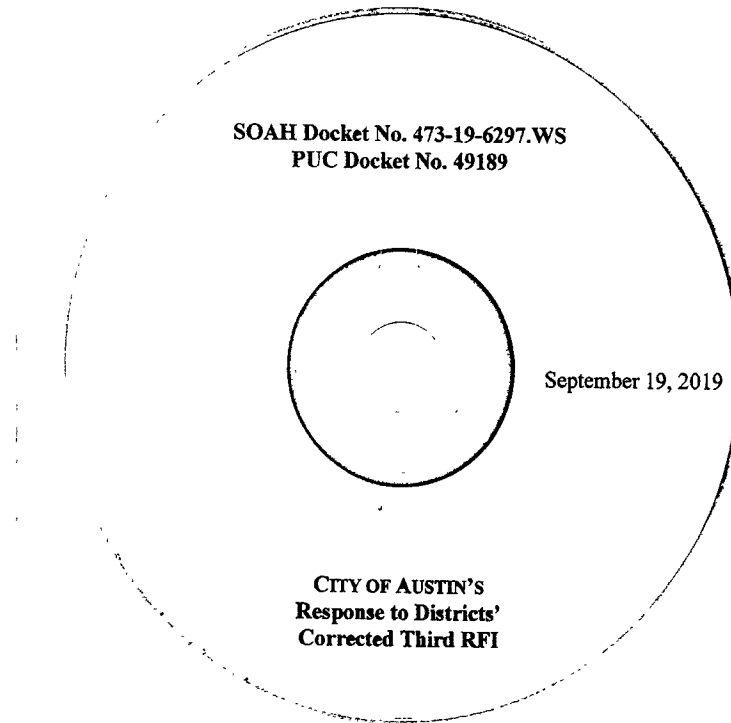
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Exhibit C

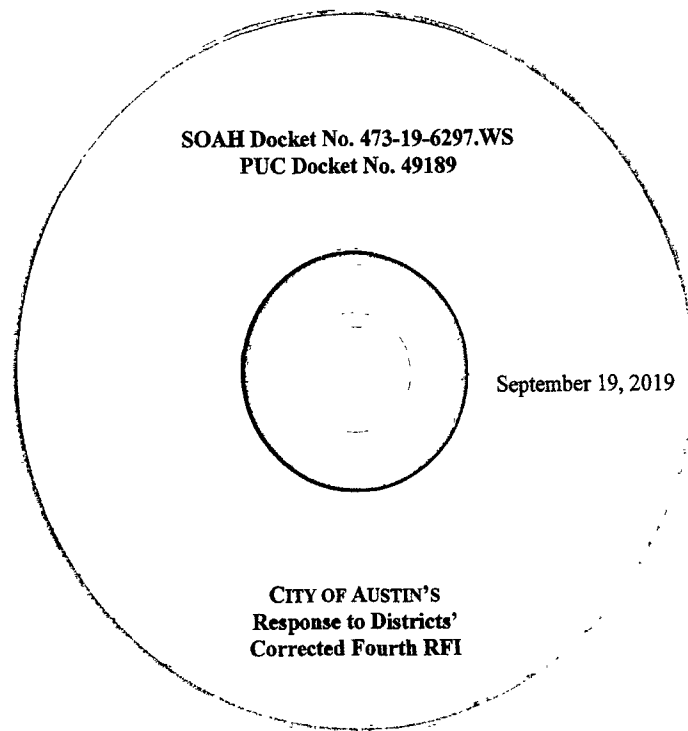
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Exhibit D

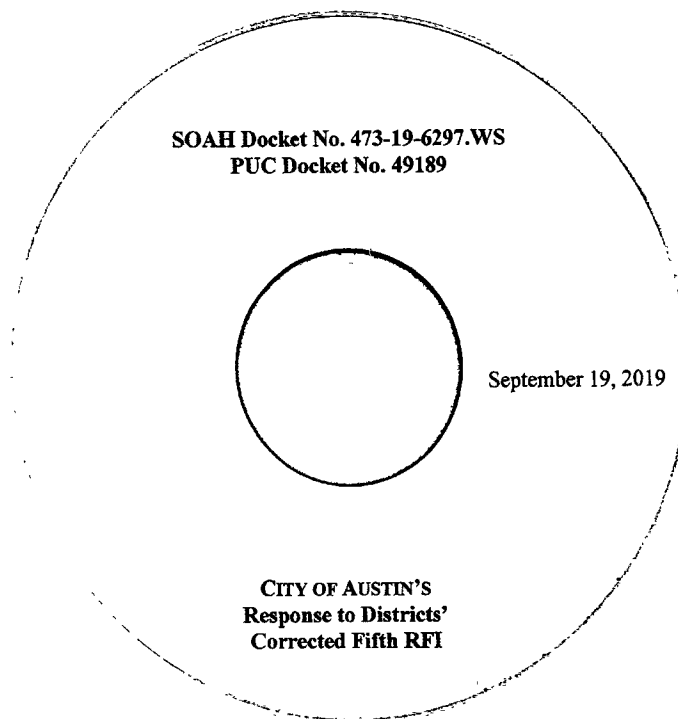
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