



Control Number: 49189



Item Number: 86

Addendum StartPage: 0

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

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' SECOND MOTION TO COMPEL  
RESPONSES TO DISTRICTS' CORRECTED THIRD, FOURTH  
AND FIFTH 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' 3rd, 4th, and 5th Corrected Request for Information as Required by Commission Rules (Districts' Second Motion to Compel) filed on September 25, 2019. For the reasons discussed below, the Administrative Law Judge should deny the Districts' Second Motion to Compel.

I. ARGUMENT

A. Districts' Corrected Third, Fourth, and Fifth Requests for Information

In Districts' Second Motion to Compel they argue that Austin Water did not fully respond and complain about the procedure used to make voluminous discovery responses available to them.<sup>1</sup> The Districts argue that Austin Water did not file an index of voluminous material as described in 16 Tex. Admin. Code (TAC) § 22.144(h)(4).<sup>2</sup> They include images of the relevant CDs that clearly list the voluminous material that Austin Water provided.<sup>3</sup>

---

<sup>1</sup> 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' 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Corrected Request for Information as Required by Commission Rules at 5-6 (Sept. 25, 2019) (Districts' Second Motion to Compel).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 9-11.

She

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.<sup>4</sup> Additionally, Austin Water sent a link to the voluminous material, 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. The link to the files was sent to counsel for the Districts. As a result, the Districts were afforded the responsive material without having to inspect hard copies and in a format that allows for searching within the documents. 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.

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.<sup>5</sup>

As stated 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

---

<sup>4</sup> 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.

<sup>5</sup> Districts' Second Motion to Compel at 5-6.

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 required information.

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 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' Second Motion to Compel should be denied.

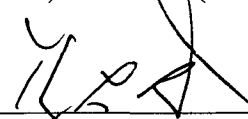
## **II. CONCLUSION**

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

Respectfully submitted,

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

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0332 (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 October 2, 2019, a true and correct copy of the foregoing document has been served on all parties of record via electronic mail.

  
\_\_\_\_\_  
THOMAS L. BROCATO