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

APPLICATION OF THE CITY OF
AUSTIN DBA AUSTIN WATER FOR
AUTHORITY TO CHANGE WATER
AND WASTEWATER RATES

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BEFORE THE STATE OFFICE
OF PUBLIC UTILITY COMMISSION
ADMINISTRATIVE HEARINGS

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**OBJECTIONS OF AUSTIN WATER TO
DISTRICTS' NINTH REQUEST FOR INFORMATION**

The City of Austin (City) doing business as Austin Water (Austin Water or AW), by and through its attorneys of record, files these Objections to North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District's (collectively Districts) Ninth Request for Information (RFI) to Austin Water, and would respectfully show as follows:

I. PROCEDURAL HISTORY

Districts served its Ninth RFI to Austin Water on September 23, 2019. Pursuant to 16 Tex. Admin. Code (TAC) §§ 22.144(d) and 22.4(a), these objections are timely filed within 10 calendar days of Austin Water's receipt of the RFI. Counsel for Austin Water and Districts conducted good faith negotiations that failed to resolve the issues. While AW will continue to negotiate with Districts regarding these and any future objections, AW files these objections for preservation of its legal rights under the established procedures. To the extent any agreement is subsequently reached, AW will withdraw such objection.

II. GENERAL OBJECTIONS

Austin Water generally objects to these RFIs, including the Definitions and Instructions contained therein, to the extent they are overly broad and unduly burdensome.¹

III. SPECIFIC OBJECTIONS TO DEFINITIONS

Austin Water objects to Districts' definitions of the following terms:

¹ See Tex. R. Civ. Proc. 192.4.

DEFINITION NO. 6: “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. Public Utility Commission (Commission) rules and the Texas Rules of Civil Procedure (TRCP) provide protection to parties from discovery requests that are unduly burdensome, unnecessarily expensive, or for the purpose of harassment.² Districts use the terms “describe” or “describe in detail” in several of their RFIs, calling for Austin Water to provide a list of details for each individual response that are ultimately unnecessary to adequately “describe” the information. Where there may be *some* instances when information regarding the persons involved, dates, times and places may be helpful to “describe” the information requested, all of this information is not necessary in *every* instance to adequately “describe” the response. Using this definition would burden Austin Water with expending unnecessary time and expense to respond, when the information required in the definition is not even applicable. Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

DEFINITION NO. 8: To “identify” an individual means to state the following about that individual: (i) the person’s full name; (ii) the person’s job title or former job title; (iii) the person’s job (or former job) duties and responsibilities; (iv) the individual’s superior(s); (v) current or last known telephone number(s); and (vi) current or last known business and home addresses.

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

Objections:

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

DEFINITION NO. 10: To "identify" an act, event, occurrence, or communication means the following: (i) to state its date; (ii) to identify the persons that were parties to and/or witnesses of the act, event, occurrence, or communication; (iii) to describe where and how it took place; and (iv) to identify any document that constitutes or refers to such act, event, occurrence, or communication.

Objections:

Austin Water objects to this definition because it is unduly burdensome, unreasonable, and meant for the purpose of harassing Austin Water. Commission rules and the TRCP provide protection to parties from discovery requests that are unduly burdensome, unnecessarily expensive, or are for the purpose of harassment.³ Districts use the term "identify" in several of their RFIs. This definition of "identify" calls for Austin Water to provide four categories of detailed information for each individual act, event, occurrence, or communication. While, in some circumstances, some of these categories of information may fall within the normally understood meaning of "identify," the requirement to "identify any document that constitutes or refers to such act, event, occurrence or communication" creates a substantial burden on Austin Water. Austin Water would be required to expend unnecessary time and expense to respond, when this information is not necessary to simply "identify" (under the commonly understood meaning of the word) such act, event, occurrence, or communication. Therefore, Districts'

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

expansive definition burdens Austin Water with providing unnecessary information. Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

DEFINITION NO. 11: To “identify” a document means the following: (i) to identify all files in which it and all copies of it are found; (ii) to identify its author; (iii) to identify its addresses, if any; (iv) to identify those persons who received a copy thereof; (v) to identify its current custodian or the person that had last known possession, custody, or control thereof; (vi) to state the date of its preparation; and (vii) to state its general subject matter giving a reasonably detailed description thereof.

Objections:

Austin Water objects to this definition because it is unduly burdensome, unreasonable, and meant for the purpose of harassing Austin Water. Commission rules and the TRCP provide protection to parties from discovery requests that are unduly burdensome, unnecessarily expensive, or are for the purpose of harassment.⁴ Districts use the term “identify” in several of their RFIs. In addition to producing all of the responsive documents that are within Austin Water’s possession, this definition of “identify” calls for Austin Water to provide seven categories of detailed information for each individual document. Using this definition would burden Austin Water with expending unnecessary time and expense to respond. Even simply stating each document’s “general subject matter giving reasonably detailed description thereof,” as category (vii) requires, could take countless hours for a response that calls for a large number of documents. Notwithstanding this objection, Austin Water will provide a response to each request using the commonly understood meaning of the term.

IV. SPECIFIC OBJECTIONS TO RFIS

Austin Water specifically objects to Districts RFI No. 9-9 through Districts RFI No. 9-20. Below, Austin Water submits a single objection narrative to these RFIs.

⁴ See 16 TAC § 22.142(a)(1)(D); *see also* Tex. R. Civ. Proc. 192.4.

DISTRICTS 9-9: Produce the Raftelis Cost of Service Models for water and wastewater identified in Mr. Giardina's letter to AWU dated November 13, 2017 attached as Attachment 1.

DISTRICTS 9-10: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that water usage is annualized and describe the annualization process.

DISTRICTS 9-11: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that water customer numbers are annualized and describe the annualization process.

DISTRICTS 9-12: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that water usage is normalized and describe the normalization process.

DISTRICTS 9-13: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that water revenue requirements are annualized and describe the annualization process.

DISTRICTS 9-14: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that water revenue requirements are normalized and describe the normalization process.

DISTRICTS 9-15: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that wastewater usage is annualized and describe the annualization process.

DISTRICTS 9-16: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that wastewater customer numbers are annualized and describe the annualization process.

DISTRICTS 9-17: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that wastewater usage is normalized and describe the normalization process.

DISTRICTS 9-18: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that wastewater revenue requirements are annualized and describe the annualization process.

DISTRICTS 9-19: This request is for Mr. Giardina: Please identify where in the Raftelis Cost of Service Model referenced in Request 9-6 used in the Rate Application that wastewater revenue requirements are normalized and describe the normalization process.

DISTRICTS 9-20: Please describe in detail the differences between the Raftelis Cost of Service Models referenced in Request 9-6 and the AW Water COS Model Docket 49189.xlsx or AW Wastewater COS Model Docket 49189.xlsm.

Objections:

Austin Water objects to Districts RFI No. 9-9 through Districts RFI No. 9-20 because they seek information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a).⁵ In particular, the Raftelis Cost of Service Model, referenced in Districts RFI No. 9-9 contains FY2017 information and was not used in this case to calculate rates. In contrast, the model used in Austin Water's Application for Authority to Change Water and Wastewater Rates (Application) contains FY2018 information. As such, the cost of service model referenced in Districts RFI No. 9-9 has no relevance to whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable in Docket No. 49189. While Austin Water used the same Cost of Service study in both the 2017 and 2018 models, only the 2018 model is used in this docket. The 2018 model takes into account updated information in order to provide a more representative revenue requirement. Notwithstanding these facts, the only changes between the 2017 and 2018 models are: (1) the model was updated to reflect 2018 actuals; (2) tab 94, related to debt service coverage, was updated; (3) some coverage related

⁵ Districts RFI Nos. 9-10 through 9-20 refer to the "Raftelis Cost of Service Model referenced in Request 9-6." It appears, however, this reference should instead be to Districts RFI No. 9-9. Austin Water's objections are based upon the assumption that Districts intended to refer to Districts RFI No. 9-9.

transfers were zeroed out; (4) miscellaneous formula adjustments were made; and (5) a fund summary was added in tab 1. All other aspects of the models are the same.

Because the 2017 model, referenced in Districts RFI Nos. 9-9 through 9-20, is not used in Austin Water's Application in this docket, it is irrelevant to this proceeding.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Austin Water requests these objections be sustained and Austin Water be relieved of responding to these RFIs. Austin Water also requests any other relief to which it may show itself justly entitled

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
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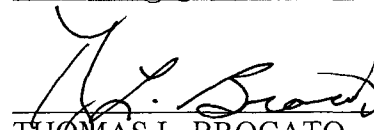
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ATTORNEYS FOR CITY OF AUSTIN

CERTIFICATE OF CONFERENCE


I hereby certify that I conferred with Mr. Andrew Snyder of The Carlton Law Firm, counsel for Districts, on September 26, 2019 concerning Austin Water's objections to Districts' Requests for Information. Mr. Snyder indicated that he believed Districts' requests were valid and that he understood that this motion may be filed.



W. PATRICK DINNIN

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record in this proceeding October 3, 2019, by electronic mail.



THOMAS L. BROCATO