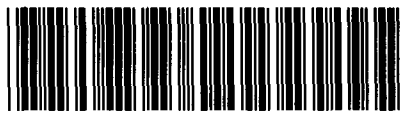

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SOAH DOCKET NO. 473-19-6297.WS
PUC DOCKET NO. 49189

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

OBJECTIONS OF AUSTIN WATER TO DISTRICTS' TENTH REQUEST FOR INFORMATION

COMES NOW, 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) Tenth Request for Information (RFI) to Austin Water, and would respectfully show as follows:

I. PROCEDURAL HISTORY

Districts served their Tenth RFI to Austin Water on September 25, 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:

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,

[1] *See* Tex. R. Civ. Proc. 192.4.

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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.[2]

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 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.[3] In addition to requiring Austin Water to produce all of the responsive documents that are within its possession, this definition of "describe" and "describe in detail" calls for Austin Water to provide a list of details for each individual document that is ultimately unnecessary to adequately describe the responsive document. Applying this definition would require Austin Water to expend unnecessary time and expense to respond. Districts' 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.[4]

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

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[2] North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility District's Tenth Request for Information to City of Austin dba Austin Water at 3 (Sept. 25, 2019) (Districts' Tenth RFI).

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

[4] Districts' Tenth RFI at 4.

expensive, or for the purpose of harassment.[5] In addition to requiring Austin Water to produce all of the responsive documents that are within its possession, this definition of "identify" calls for Austin Water to provide seven categories of detailed information for each individual document. Applying this definition would require Austin Water to expend 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 large response. Districts' 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.

IV. OBJECTIONS TO SPECIFIC RFIS

DISTRICTS' 10-1. To what customer class does AWU assign service provided to the State of Texas?

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). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-1 requests information regarding the customer class which Austin Water assigns service to the State of Texas. The customer class assigned to the State of Texas is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS' 10-2. How much debt service coverage does AWU collect in its charges to the State of Texas?

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). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed

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

wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-2 requests information regarding the amount of debt service coverage which Austin Water collects from its charges to the State of Texas. The amount of debt service coverage which Austin Water collects from the State of Texas is not a relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS' 10-3. How much water did AWU sell to the State of Texas during the test year?

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). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-3 requests information regarding the amount of water which Austin Water sold to the State of Texas during the test year. The amount of water which Austin Water sold to the State of Texas in the test year is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS' 10-4. What were the rates charged to the State of Texas for water and wastewater service during the test year? And for FY2020?

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). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-4 requests information regarding the rates which Austin Water charged the State of Texas during the test year and FY2020. The rates which Austin Water charged the State of Texas during the test year and FY2020 are not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates in its are just and reasonable. The FY2020 rates are especially irrelevant, as future rates are not included in the Application of the City of Austin DBA Austin Water for Authority to Change Water and Wastewater Rates (Application).

DISTRICTS' 10-5. What are the rate case expenses charged to AWU customers other than the Petitioners for the Raftelis Cost of Service Models for water and wastewater identified in Mr. Giardina's letter to AWU dated November 13, 2017?

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. 10-5 requests information regarding rate case expenses which Austin Water charged customers other than the petitioners for the Raftelis Cost of Service Models identified in Mr. Giardina's letter to Austin Water dated November 13, 2017. Austin Water is not seeking recovery of expenses related to the Cost of Service Models identified in Mr. Giardina's 2017 letter, which Districts reference. Austin Water has prepared a Cost of Service study for its Application, but has not included any expenses related to this study in its proposed rates. Additionally, Austin Water is not required to obtain Commission approval of rate case expenses in this proceeding before charging them to Districts. Therefore, the requested information is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS' 10-7. Admit or deny that Greg Mezaros told representatives of Travis County WCID No. 10 that AWU intends to include those costs that the PUC disallows in its future water service contract renewal.

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. 10-7 requests information regarding future water service contract renewal intentions. Austin Water's decision whether to serve Travis County Water Control and Improvement District No. 10 following the expiration of its current contract or the terms of any future contract are not relevant to the determination of whether Austin Water's current proposed wholesale water and wastewater rates are just and reasonable. Moreover, the Commission does not have jurisdiction in this proceeding over the terms of a speculative contract that does not exist and may never exist.

DISTRICTS' 10-8. Did AWU decrease rates for the other districts that are wholesale customers of the City consistent with the reductions that the PUC ordered in Docket No. 42857?

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. 10-8 requests information regarding Austin Water's rates for wholesale customers other than Districts. The rates which Austin Water charges wholesale customers other than Districts are not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates in its Application are just and reasonable. The Commission's jurisdiction extends only to the four Districts, being that they were Petitioners in Docket No. 42857. As such, the Commission's order in Docket No. 42857 only applies to the four Districts. Therefore, this request is irrelevant to this proceeding.

DISTRICTS' 10-20. Is the electricity that Austin Energy provides to the State of Texas Green Choice (as referenced on page 22, line 18 of Mr. Gonzales' direct testimony) electricity?

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). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-20 requests information regarding whether the electricity that Austin Energy provides to the State of Texas is "Green Choice" electricity. Austin Energy's classification of Green Choice electricity is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS' 10-21. Is the electricity that Austin Energy provides to Travis County Green Choice electricity?

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. 10-21 requests information regarding whether the electricity that Austin

Energy provides to Travis County is "Green Choice" electricity. Austin Energy's classification of Green Choice electricity is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS' 10-25. How much additional debt will AWU incur during FY2020 for the water system?

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. 10-25 requests information regarding the amount of additional debt Austin Water will incur in the future for its water system. Austin Water's future water system debt is not relevant to the determination of whether Austin Water's current proposed wholesale water and wastewater rates in its Application are just and reasonable. Additionally, any estimate of future indebtedness would be entirely speculative.

DISTRICTS' 10-26. How much additional debt will AWU incur during FY 2020 for the wastewater system?

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. 10-26 requests information regarding the amount of additional debt Austin Water will incur in the future for its wastewater system. Austin Water's future wastewater system debt is not relevant to the determination of whether Austin Water's current proposed wholesale water and wastewater rates in its Application are just and reasonable. Additionally, any estimate of future indebtedness would be entirely speculative.

DISTRICTS' 10-27. Please provide a copy of the written notice provided to each water and sewer retail customer that notified those customers of any service or capital expenditure not water or sewer related that was funded in whole or in part by the customer's water or sewer bills.

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. 10-27 requests information regarding Austin Water's notices to customers

regarding service and capital expenditures that are funded by the customer's bills.[6] Austin Water's notices to retail customers are not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

DISTRICTS' 10-37. What is the annual subsidy for the AWU Residential CAP program?

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. 10-37 requests information regarding the Austin Water's annual subsidy for its Residential Customer Assistance Program (CAP). Austin Water's Residential CAP, including the amount of any subsidy, is not relevant to the determination of whether Austin Water's current proposed wholesale water and wastewater rates are just and reasonable. Austin Water's Application does not include any expenses to Districts related to Austin Water's Residential CAP.

DISTRICTS' 10-40. How much does the City charge the State of Texas for drainage fees?

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). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-40 requests information regarding the amount of drainage fees which Austin Water charges to the State of Texas. The drainage fees Austin Water charges to the State of Texas are not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

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.

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[6] Districts' RFI No. 10-27 implies that there is a Commission requirement to provide notice to customers. This is not the case.

Respectfully submitted,

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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 October 3, 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 on October 7, 2019 via electronic mail.

THOMAS L. BROCATO