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**SOAH DOCKET NO. 473-19-5831.WS
PUC DOCKET NO. 49367**

2019 OCT 23 11:10:18

PETITION BY OUT OF DISTRICT § BEFORE THE STATE OFFICE
RATEPAYERS APPEALING THE §
WATER RATES ESTABLISHED BY § OF
EL PASO COUNTY WATER CONTROL §
AND IMPROVEMENT DISTRICT NO. 4 § ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 11
SETTING PREHEARING CONFERENCE**

On October 17, 2019, Staff (Staff) of the Public Utility Commission of Texas (Commission) filed a Motion to Compel Responses to Staff's September 10, 2019 Third Request for Information¹. The request is for an Order compelling the El Paso County Water Control and Improvement District No. 4 (District) to provide responses to Staff's Third RFI 3-2 relating to electronic workpapers and digital native files used by Wildan Financial Services/Economists in creating its 2015 rate analysis for the District. The motion did not include a required certificate of conference. The motion relates to the District's October 14, 2019 Response to the RFIs, in which the District responded to the request that the information was not in its custody and control. Staff argues in its Motion that the information is within the District's constructive possession or that the District has a right to obtain from a third party.

The District filed a response to the Motion on October 24, 2019 stating that: the Motion did not include the required certificate of conference; that the information is not relevant to the proceeding; and the District cannot be compelled to produce items that are not in its possession, custody, or control. The ALJ notes that the relevance objection was not raised in the District's October 14 Response to RFIs. The District's Response also included a September 22, 2019, email from Wildan Financial Services declining to provide the information on the basis that: the model is proprietary and there are no nondisclosure agreements in place in this matter and that the information is not relevant to this proceeding. The ALJ notes that the District had this email in its possession before it filed an extension of the original September discovery deadline and well before it provided its response on October 14, 2019.

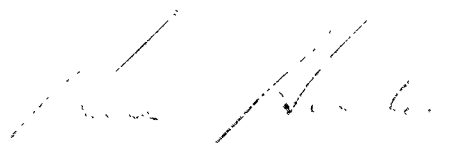
¹ Relating to Staff's Third Request for Information Nos 3-1 through 2-4.

The District's out-of-district ratepayers (Ratepayers) filed a Reply to District's Response to Staff's Motion on October 29, 2019. This was also filed without a certificate of conference. The Ratepayers acknowledge that responses to replies to motions are not generally allowed by PUC rules but asks for a good cause exception because the District has raised new objections in its Response relating to relevance of the information.

Separately, on October 17, 2019, Ratepayer filed a Motion to Compel Discovery from [the District].² The Ratepayers' Motion requests an order requiring the District to produce responses to Ratepayers' second request for information to the District which requested all models produced, used, or relied upon by Mr. Evan Loy for the expert testimony he provided in support of the District's response to the Ratepayers' motions for summary decision and interim rates. The motion to compel did not include the required certificate of conference. The requests for information were submitted to the District on September 24, 2019 and the District responded on October 14, 2019 that the information was not in the possession, custody and control of the District. The District did not timely file a response to the Ratepayers' motion.

The parties are hereby **ORDERED** to participate in a telephonic hearing on **Friday, November 1, 2019 at 10:00 a.m.** to address these motions and responses and ongoing discovery related issues. At the designated time, call Toll-Free Dial-in Number: **1 (855) 999-5357** and enter the following ID number to join the conference: **118-4801**.

SIGNED October 30, 2019.



ROSS HENDERSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

² Relating to Ratepayers' Second Request for Information to El Paso Water Control and Improvement District No. 4, No. 1 (Sept. 24, 2019).