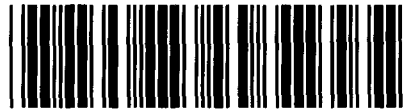


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PUC DOCKET NO. 49367

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. 12
MEMORIALIZING PREHEARING CONFERENCE ON MOTIONS TO COMPEL

A prehearing conference was held telephonically on November 1, 2019 to discuss motions to compel filed by Staff (Staff) of the Public Utility Commission of Texas (Commission) and by the ratepayers (Ratepayers) of El Paso County Water Control and Improvement District No. 4 (District). During the prehearing conference, the Motion to Compel filed by the Ratepayer's on October 17, 2019 was withdrawn by the Ratepayers due to mootness.

On October 17, 2019, Staff filed a Motion to Compel Responses to Staff's September 10, 2019 Third Request for Information.¹ The request is for an Order compelling the District to provide responses to Staff's Third RFI 3-2 relating to electronic workpapers and native digital native files used by Willdan Financial Services/Economists (Willdan) in creating its 2015 rate analysis for the District. The Administrative Law Judge (ALJ) notes that the rate analysis was performed for the District outside of any proceeding before the Commission. Although the analysis is relevant to this proceeding, it was not contracted for in response to this wholesale rate appeal.

Staff's motion relates to the District's October 14, 2019 Response to the RFIs, in which the District asserted that the information sought in the request 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 the information from a third party. Staff subsequently provided a contract between the District and Willdan which states that Willdan will provide the District with an "electronic copy of the District's rate model." At the prehearing conference, the District responded that the electronic files mentioned in the contract were for nonnative versions of the

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



model outputs – such as PDF and not the native versions of models requested by Staff. The District continues to insist that the models are not in its possession and control, that it does not possess a legal right to the models, and that Willdan has not agreed to provide the models in this proceeding.

District's counsel is an Officer of the Court who made an assertion on the record. At this time the ALJ does not have any evidence to dispute the District's assertion - other than the contract itself, and the contract does not clearly or plainly contradict the District's assertion. At this time, the ALJ is not inclined to grant the Motion to Compel.

The ALJ ordered Staff to enter a standard protective order into the record on November 1, 2019 and Staff has complied with that order. The protective order is automatically adopted in this matter unless the ALJ receives valid objections or modifications to the protective order no later than November 5, 2019. The purpose of the protective order is to alleviate concerns stated by Willdan in its communications with the District regarding its proprietary models. The District is **ORDERED** to confer with Willdan to determine whether Willdan will provide the model in native format to the District once the protective order is in place and to file a status report no later than November 7, 2019. If the District continues to insist that Willdan will not provide the District with the models, the ALJ will reassess all options.

Finally, it is incumbent upon all parties to confer with opposing counsels before filing requests of the ALJ. The parties are **ORDERED** to include a certificate of conference on any future motions. Discovery motions should also detail all attempts that have been made to resolve any discovery disputes or objections. The ALJ will not consider any motions that omit this.

SIGNED November 4, 2019.



ROSS HENDERSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS