

Control Number: 49367



Item Number: 79

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PETITION BY OUT OF DISTRICT § BEFORE THE
RATEPAYERS APPEALING THE §
WATER RATES ESTABLISHED BY § PUBLIC UTILITY COMMISSION
THE EL PASO WATER CONTROL §
AND IMPROVEMENT DISTRICT NO. 4 § OF TEXAS

STATUS REPORT PURSUANT TO SOAH ORDER NO. 12

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW Respondent El Paso County Water Control & Improvement District No. 4 (“District”) and files this status report pursuant to SOAH Order No. 12 and would respectfully show as follows:

On November 4, 2019, the Administrative Law Judge (“ALJ”) issued *SOAH Order No. 12 Memorializing Prehearing Conference on Motions to Compel*.¹ Order No. 12 in part concerns Commission Staff’s Motion to Compel the production of the electronic workpapers and native digital files used by Willdan Financial Services/Economists.com (“Willdan”) in creating its 2015 rate analysis for the District. The District had previously stated that it is not in the possession, custody or control of this information and has not been able to obtain it from Willdan.²

In SOAH Order No. 12, the ALJ noted that it had ordered Commission Staff to enter a standard protective order into the record and that Staff has complied with that order. The ALJ stated that the protective order is automatically adopted in this matter unless the ALJ receives valid objections or modifications to the protective order by no later than November 5, 2019. No objections or modifications were filed by November 5, 2019.


¹ Docket Item 78 (“SOAH Order No. 12”).

² See Docket Items 68 and 71.

SOAH Order No. 12 also ordered the District 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 by no later than November 7, 2019.

The District has complied with SOAH Order No. 12. On November 5, 2019, undersigned counsel conferred with Mr. Dan Jackson (Vice President of Willdan), notified him of the entry of the protective order, and reiterated the request for the information in question. Willdan declined to provide the District with the requested information. Included with this Status Report as Exhibit A is a copy of an email sent by Mr. Jackson to undersigned counsel which states and explains Willdan's position.

Respectfully submitted,

By: 
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**ATTORNEYS FOR EL PASO
COUNTY WATER CONTROL
AND IMPROVEMENT DISTRICT
NO. 4**

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document (including all attachments) via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail/Return-Receipt Requested to counsel for all parties on this 7th day of November, 2019, including:

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Andrew S. "Drew" Miller

EXHIBIT A

From: Dan Jackson <DJackson@willdan.com>
Sent: Tuesday, November 5, 2019 4:23 PM
To: Drew Miller
Subject: RE: In re: Petition by Out of District Ratepayers Appealing the Water Rates Established by the El Paso Water Control and Improvement District No. 4 – PUC Docket No. 49367

**** EXTERNAL EMAIL ****

Mr. Miller:

On the advice of Willdan's legal counsel, I am instructed to inform you that we decline to release our highly proprietary rate model. Given that, among other reasons, this model contains proprietary architecture that is used in all of our client rate study engagements, that it represents over 20 years of Willdan and Economists.com intellectual property, and that the opposition in this case has engaged NewGen Strategies, a principal competitor of Willdan, it would be inappropriate for us to release this model.

Dan V. Jackson
Vice President

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Comprehensive. Innovative. Trusted.

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From: Drew Miller
Sent: Tuesday, November 5, 2019 9:53 AM
To: Dan Jackson
Subject: In re: Petition by Out of District Ratepayers Appealing the Water Rates Established by the El Paso Water Control and Improvement District No. 4 – PUC Docket No. 49367

Dear Mr. Jackson –

As you know, counsel for Commission Staff in the above-referenced proceeding has requested via formal discovery that the District provide to Staff the electronic workpapers and native digital files used

by Willdan in creating its 2015 rate analysis for the El Paso County Water Control and Improvement District No. 4 ("District"). In the past you have declined to provide this information to the District.

There have been some recent developments in this matter as follows:

- On 11/1/2019, at the direction of the Administrative Law Judge (ALJ) from the State Office of Administrative Hearings (SOAH) assigned to this case, Commission Staff has filed a Motion for Entry of Protective Order which includes a proposed Protective Order (copy attached); and
- On 11/4/2019, the ALJ issued SOAH Order No. 12 (copy attached).

Order No. 12 states that the protective order is automatically adopted in this matter unless the ALJ receives valid objections or modifications to the protective order by no later than 11/5/2019. Order No. 12 also states that the purpose of the protective order is to alleviate concerns stated by you/Willdan regarding proprietary models.

Order No. 12 also orders the District to confer with you/Willdan to determine whether you will provide the model in native format to the District once the protective order is in place (and for the District to file a status report regarding this matter no later than 11/7/2019).

Please let me know by close of business tomorrow (11/6/2019) whether you are willing, in light of the protective order, to provide the electronic workpapers and native digital files used by Willdan in creating its 2015 rate analysis for the District (*i.e.*, a copy of your model in native format).

Thank you in advance for your attention to this matter.

Regards, Drew Miller

Andrew S. "Drew" Miller

Partner

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