

Control Number: 46662



Item Number: 207

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**SOAH DOCKET NO. 473-17-4964.WS
PUC DOCKET NO. 46662**

PETITION OF THE CITIES OF GARLAND, MESQUITE, PLANO AND RICHARDSON APPEALING THE DECISION BY NORTH TEXAS MUNICIPAL WATER DISTRICT AFFECTING WHOLESALE WATER RATES	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**NORTH TEXAS MUNICIPAL WATER DISTRICT'S
SECOND REQUESTS FOR INFORMATION TO PETITIONING CITIES**

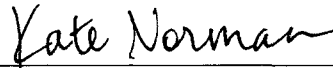
Pursuant to 16 Tex. Admin. Code ("TAC") § 22.144, comes now the North Texas Municipal Water District ("NTMWD" or the "District"), by and through its undersigned attorneys of records, and files its Second Requests for Information ("RFI") to the Cities of Garland, Mesquite, Plano and Richardson ("Petitioning Cities").

Due to the unexpected closure of the Public Utility Commission of Texas on December 8, 2017 due to inclement weather, the District is serving these discovery requests on December 8, 2017 and will file a copy of these discovery requests with the Commission on December 11, 2017. In addition, the District calculates that responses to these requests are due on January 2, 2018, pursuant to the requirements of P.U.C. Rule 22.144(c)(1) and the Procedural Schedule adopted in this case, which indicates that all filing deadlines are suspended during the period December 23, 2017 through January 1, 2018.

Respectfully submitted,

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**ATTORNEYS FOR NORTH TEXAS
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing document has been served on all parties of record on December 8, 2017 in accordance with 16 Tex. Admin. Code § 22.74.



Kate Norman

INSTRUCTIONS

The following paragraphs include instructions and definitions that apply to the requests for information that are contained in this request. Unless otherwise clearly indicated within the context of a specific interrogatory herein, the definition of each term provided below applies whether the term is used or defined in the singular or plural.

You are directed to answer the following written questions fully and in writing, based on all information reasonably available to you or your attorney at the time your response is made. It is further requested that the requests be answered in the order in which they are presented and in as much detail as needed to fully present all relevant facts. You are requested to copy the request immediately above the response to each request. For each response, please identify the preparer or person under whose direct supervision the response was prepared, and the testifying witness able to testify regarding the response. All responses must be filed under oath, unless the responding party stipulates in writing that responses to requests for information and requests for admissions can be treated by all parties as if the answers were filed under oath.

In those instances when you choose to answer an RFI propounded herein by referring to a specific document or record, you are instructed to specify the same in sufficient detail to permit the District to locate and identify the records or documents from which the answer is to be ascertained as readily as could you.

You are under a continuing duty to supplement your answers to these requests if you discover that they were incomplete or incorrect when made, or if you discover that they are no longer complete and correct. Pursuant to P.U.C. Proc. R. 22.144(i), supplementation must be made within five working days of acquiring the information.

If any document is withheld under any claim of privilege, please furnish a list identifying each document for which a privilege is claimed, together with the following information: date, sender, recipients or copies, subject matter of the document, and the basis upon which such privilege is claimed.

Pursuant to P.U.C. Proc. R. 22.144(h)(4), if the response to any request is voluminous, please provide a detailed index of the voluminous material.

DEFINITIONS

1. **“North Texas Municipal Water District”** or **“NTMWD”** refers to its officers, employees, agents, representatives, attorneys, and all other natural persons, businesses or legal entities, presently or formerly, acting in concert with, under the direct or indirect control of, or on behalf of NTMWD.
2. The term **“Commission”** or **“PUC”** refers to the Public Utility Commission of Texas, an administrative agency of the State of Texas, and its Staff and Commissioners, natural persons employed by and working for the agency.

3. The term “**Staff**” as used herein refers to the natural persons employed by and working for the Public Utility Commission in any capacity.
4. The term “**Petition**” as used herein refers to the Petition of the Cities of Garland, Mesquite, Plano and Richardson Appealing the Decision by North Texas Municipal Water District Affecting Wholesale Water Rates filed with the Commission on December 14, 2016.
5. The term “**Petitioning Cities**” as used herein refers to the Cities of Garland, Mesquite, Plano, and Richardson who joined in filing the Petition.
6. The term “**Member Cities**” as used herein refers to the cities of Allen, Farmersville, Forney, Frisco, Garland, McKinney, Mesquite, Plano, Princeton, Richardson, Rockwall, Royse City, and Wylie, including, without limitation, any employee, consultant, attorney, or other representative thereof.
7. The term “**Amendatory Contract**” as used herein refers to the North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract and all of its terms and conditions.
8. The term “**Contract Period**” as used herein refers to the period of time between the execution of the Amendatory Contract and present.
9. The term “**Protested Rate**” as used herein refers to the wholesale rate for the provision of water service from NTMWD to the Member Cities that is the subject of the Petition and refers to the \$2.53 per 1,000 gallons NTMWD charges each of the 13 Member Cities for wholesale water service as identified and explained in letters from Thomas W. Kula to all city managers of each Member City dated September 23, 2016.
10. “**Document**” and “**Documents**” are used herein in their broadest sense as set forth in Tex. R. Civ. P. 192.3(b), and specifically include electronic information or magnetic data as described in Rule 196.4. These words mean and include all written, printed, typed, recorded, or graphic matter of every kind and description, both original and copies, and all attachments and appendices. Without limiting the foregoing, the terms “Document” and “Documents” shall include all agreements, contracts, Communications, correspondence, letters, opinion letters, telegrams, telexes, telefaxes, messages, memoranda, records, reports, books, summaries or other records of telephone conversations or interviews, summaries or other records of personal conversations or interviews, minutes, summaries, or other records of meetings and conferences, statements obtained from witnesses, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, forecasts, progress reports, statistical data, statistical statements, financial statements, work sheets, work papers, drafts, graphs, charts, tables, accounts, analytical records, consultants’ and experts’ reports, appraisals, bulletins, notes, notices, marginal notations, notebooks, telephone records, bills, statements, records of obligation and expenditure, invoices, lists, journals, printouts, compilations, tabulations, analyses, studies, surveys, expense reports, microfilm, microfiche, tape or disc recordings, sound recordings, video recordings, film, tape, photographs, programs and data compilations

from which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer stored, magnetically-stored, optically-stored, or electronically stored matter and Electronic Information, however produced, prepared, reproduced, disseminated, made or stored in any data source. The words “Document” and “Documents” also include all copies of documents by whatever means made, except that where a document is produced, identical copies of it that do not contain any markings, additions, or deletions that are different from the original do not have to be separately produced.

11. The term “**communication**” includes, without limitation of its generality, statements, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia, whether written or oral. The term includes, without limitation of its generality, both communications and statements which are face-to-face and those which are transmitted by any media such as intercoms, telephones, television, radio, or computer including electronic information.
12. The term “**electronic information**” includes, without limitation, the following: databases, data files, program files (e.g. .DOC, .DOCX, .TXT, .XLS, .WPD files), image files (e.g. .JPEG, .TIFF, .PDF files), email messages and files, voice mail messages and files, instant messaging messages, text messages, temporary files, system-history files, deleted files or emails, back up files and archival files, website files, website information stored in textual, graphical or audio format, cache files, and cookies.
13. The term “**data sources**” includes, without limitation, mainframe computers, network servers, internet (“web”) servers, computers (including desktop, laptop and handheld computers), hard drives (including portable or temporary hard drives), flash drives (including thumb drives, secure digital cards or other flash memory devices), email servers, handheld devices like personal digital assistants and cell phones or smart phones (e.g. iPhones, BlackBerrys).
14. The terms “**relate**” or “**relating**” or “**regarding**” to any given subject, when used to specify a document, communication, statement, or correspondence mean any document, communication, statement or correspondence that constitutes, contains, evidences, embodies, reflects, identifies, states, discusses, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
15. The term “**identify, when used in reference to a natural person**” means to provide his or her (1) full name and (2) present or last known position or business affiliation, job title, employment address, and telephone number (designating which).
16. The term “**identify**” and “**describe, when used in reference to facts, an event, or an allegation**,” means to include: (a) a detailed description of the facts, events, or allegation at issue; (b) the date or dates on which the facts or event occurred, or the time period involved in the events giving rise or relating to the allegation; (c) the name, address, telephone number, and affiliation of all persons involved in the facts, event, or allegation; and (d) the date, author, addressee or recipient, and type of document of any document relating to or concerning the event or allegation.

17. The terms “**and**”, “**or**” and “**and/or**” shall be construed as either disjunctive or conjunctive as necessary to make the request inclusive rather than exclusive.
18. “**Any**” shall be construed to include “**all**” and “**all**” shall be construed to include “**any**”.
19. “**Each**” shall be construed to include the word “**every**”, and “**every**” shall be construed to include the word “**each**”.
20. The term “**including**” shall mean and refer to “including but not limited to”.

NTMWD'S SECOND REQUESTS FOR INFORMATION TO PETITIONING CITIES

- NTMWD RFI 2-1 To the extent not already provided, provide native-format copies of all exhibits, workpapers and other documents relied upon by each witness in preparing his or her direct testimony. Pursuant to Texas Rule of Civil Procedure 196.4, you are specifically requested to produce data or information that exists in electronic or magnetic form. All responsive data must be produced in its original native format with all associated metadata.
- NTMWD RFI 2-2 To the extent not already provided, provide all calculations presented in each witness' direct testimony in native format or other fully executable form, and identify sources for all data underlying these calculations.
- NTMWD RFI 2-3 Please provide the following information regarding all consulting experts whose mental impressions or opinions have been reviewed by a testifying expert in this proceeding:
- a. the expert's name, address, and telephone number;
 - b. the facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with the case in which the discovery is sought, regardless of when and how the factual information was acquired;
 - c. the expert's mental impressions and opinions formed or made in connection with the case in which discovery is sought, and any methods used to derive them; and
 - d. the expert's current resume and bibliography.
- NTMWD RFI 2-4 Regarding each consulting or testifying expert, to the extent not already provided, provide a list of all civil or regulatory proceedings in which the expert has testified and the location where copies of testimony may be retrieved. To the extent copies of such testimony are not publicly available or easily accessible, provide a copy of that testimony.
- NTMWD RFI 2-5 Regarding each consulting or testifying expert, provide all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of a testifying expert's testimony.
- NTMWD RFI 2-6 Regarding each consulting or testifying expert, provide a copy of any testimony, speech, publication, or presentation in which the expert takes a position contrary to the positions taken in this proceeding.

- NTMWD RFI 2-7 To the extent not explicitly identified in its direct case, please identify all Commission precedent upon which each witness relies as precedent to support the positions taken in his or her direct testimony. To the extent such information is not publicly available or easily accessible, please produce copies of such precedent.
- NTMWD RFI 2-8 To the extent not explicitly identified in its direct case or prior discovery responses, please identify all analysis performed by any one of the Petitioning Cities that supports its assertions that seeking alternative water supply is impractical or too expensive. Include any calculations performed of the costs of alternative water supplies.
- NTMWD RFI 2-9 To the extent not explicitly identified in its direct case, please identify and provide a reasonable level of detail as to any other actions taken by the District that the Petitioning Cities believe violated the terms of the Contract and identify the terms it asserts were violated.
- NTMWD RFI 2-10 To the extent not explicitly identified in its direct case, please identify all instances in which one of the Petitioning Cities has attempted to remove one of the members of the District Board of Directors.
- NTMWD RFI 2-11 Produce copies of all complaints received by the Petitioning Cities regarding the water rates charged by the Petitioning Cities.
- NTMWD RFI 2-12 Please identify all instances in which the Petitioning Cities have requested, recommended or otherwise addressed to or with the District a desire for the District to take more aggressive conservation efforts or otherwise change its water conservation programs. Produce all communications or documents supporting your response.
- NTMWD RFI 2-13 Regarding your assertions that the District's rates do not adequately incentivize conservation, do you contend that:
- i. the District has an obligation to incentivize water conservation through its contractual rates and, if so, identify each law or rule;
 - ii. the District's current rates violate any law or rule related to an obligation to incentivize conservation and, if so, identify each law or rule;
 - iii. the District has violated any law or rule related to its conservation programs or efforts and, if so, identify each law or rule;
 - iv. the District has failed to adequately implement or invest in its water conservation programs or efforts;

- v. the District has failed to take any other actions related to its water conservation programs or efforts that the Petitioning Cities believe is necessary;
- vi. the District has failed to take any other actions related to its water conservation programs or efforts that the Petitioning Cities have requested previously; or
- vii. the District has taken any actions that have prohibited the Petitioning Cities from enacting any conservation program or activity and, if so, please identify the action taken the specific activity prohibited.

Please identify all supporting documents, facts or circumstances that support any of these contentions, including any communications between any of the Petitioning Cities and the District related to these concerns.

- NTMWD RFI 2-14 Please identify all substantive changes to the Petitioning Cities' conservation plans over the last ten years. To the extent these changes are captured in different versions of the water plans, please identify which provisions have changed. Produce all communications or documents supporting your response.
- NTMWD RFI 2-15 Please identify all substantive changes to the Petitioning Cities' conservation plans over the last ten years that were taken in response to any action taken by the District the Petitioning Cities believe constitute an abuse of monopoly power. Produce all communications or documents supporting your response.
- NTMWD RFI 2-16 To the extent not explicitly identified in its direct case, please identify any efforts over the last ten years by any one of the Petitioning Cities to seek changes to any section of the Texas Water Code, the Commission's Rules, or the rules of the Texas Commission on Environmental Quality applicable to the facts and circumstances of its complaint. Produce all communications or documents supporting your response.
- NTMWD RFI 2-17 Identify each retail water system maintenance project you have deferred or decided not to perform in order to offset any financial impacts of the Protested Rate on you or to avoid passing through those impacts to retail water customers. Produce all documents supporting your response.
- NTMWD RFI 2-18 For each project identified in your response to NTMWD RFI 2-17, explain how much of the retail rate increase was avoided as a result of deferring or deciding not to perform the identified maintenance project.

- NTMWD RFI 2-19 Produce all data, documents, and communications reflecting your participation in the development, negotiation, and agreement of the Amendatory Contract.
- NTMWD RFI 2-20 To the extent not already provided, produce all feasibility and/or water supply studies, reports, surveys, or other documents evaluating alternative wholesale water supplies that you could utilize.
- NTMWD RFI 2-21 Identify and explain each instance in which you have requested approval from the District of an alternative wholesale water supply. Produce all communications and documents supporting your response.
- NTMWD RFI 2-22 Identify and explain each instance in which NTMWD has refused to allow a Member City to use an alternative wholesale water supply. Produce all communications and documents supporting your response.
- NTMWD RFI 2-23 Explain your understanding of which entity's bond rating is used to issue NTMWD bonds.
- NTMWD RFI 2-24 Produce all analyses performed to assess how the District's revenues impact the District's bond rating.
- NTMWD RFI 2-25 Produce all analyses performed to assess how the rates or any other terms in the Amendatory Contract impact the District's bond rating.
- NTMWD RFI 2-26 Produce all communications between the Petitioning Cities and any bond or credit ratings agency related to the District, the Protested Rate or the Amendatory Contract.
- NTMWD RFI 2-27 Produce all retail rate studies you have performed or had performed on your behalf during the Contract Period.
- NTMWD RFI 2-28 Produce all reports, studies, data, documents, and correspondence underlying and forming the basis of the graphs depicted on pages 1-12 of your response to NTMWD RFI 1-50.
- NTMWD RFI 2-29 Explain how the City of Plano's retail water rate structure has changed over the last 5 years and the reasons for those changes. Produce all communications and documents that support your answer.
- NTMWD RFI 2-30 Do you contend that the District has violated or breached any provision of the Amendatory Contract? Please explain the basis for your contention and produce all facts, documents and authorities you rely on to support your answer.

- NTMWD RFI 2-31 Identify each specific decision of the District or its Board members, through formal board action or otherwise, that you are appealing through the petition, including the date, or range of dates, on which the decision was made.
- NTMWD RFI 2-32 Do you contend that section 9(a) of the Amendatory Contract, which begins on page 21 of Exhibit JD-2 offered by the Petitioning Cities in their prefiled direct case, is not an essential term of the Amendatory Contract? Please explain the basis for your contention and produce all facts, documents and authorities you rely on to support your answer.
- NTMWD RFI 2-33 Do you contend that section 9(b) of the Amendatory Contract, which begins on page 23 of Exhibit JD-2 offered by the Petitioning Cities in their prefiled direct case, is not an essential term of the Amendatory Contract? Produce all documents and authorities that you rely on to support your answer.
- NTMWD RFI 2-34 Do you contend that section 9(c) of the Amendatory Contract, which begins on page 24 of Exhibit JD-2 offered by the Petitioning Cities in their prefiled direct case, is not an essential term of the Amendatory Contract? Produce all documents and authorities that you rely on to support your answer.
- NTMWD RFI 2-35 Do the Petitioning Cities contend that the Commission has authority or jurisdiction to order the District to deviate from the rate calculation and annual minimum requirements in section 9 of the Amendatory Contract, which begins on page 21 of Exhibit JD-2 offered by the Petitioning Cities in their direct case? Please explain the basis for your contention and produce all facts, documents and authorities you rely on to support your answer.
- NTMWD RFI 2-36 Produce all documents and communications relating to water line leaks, lost water, or unaccounted for water in each Petitioning City's retail water service system during the Contract Period.
- NTMWD RFI 2-37 Produce all documents and communications relating to your policy for addressing water line leaks, lost water, or water that is unaccounted for during the Contract Period, including all city council considerations for amending or changing such policies. To the extent such considerations are evidenced in notes, memoranda or other documentation, please provide such information.
- NTMWD RFI 2-38 Explain your efforts to repair and maintain water lines and other infrastructure related to your retail water system during the Contract Period. Produce all communications or documents that support your answer.
- NTMWD RFI 2-39 Produce all documents and communications reflecting each Petitioning City's concerns about their need or ability to conserve water from three (3)

years prior to the year in which the respective Petitioning City set its current annual minimum.

- NTMWD RFI 2-40 Explain your efforts to encourage water conservation by and among your retail water customers for each year during the Contract Period. List or identify all efforts by year in which those efforts took place. Produce all communications or documents that support your answer.
- NTMWD RFI 2-41 Explain how each Petitioning City's policies concerning conservation of retail water use has changed or developed during the Contract Period. Produce all communications or documents that support your answer.
- NTMWD RFI 2-42 Produce all documents, communications, city ordinances, or policies reflecting your efforts to encourage or implement water conservation by retail customers throughout the Contract Period.
- NTMWD RFI 2-43 Produce all documents and communications in your possession relating to, discussing, or identifying water system regionalization for any Member City or how each respective Petitioning City has benefited from the District's efforts to encourage regional water system projects.
- NTMWD RFI 2-44 Do you contend that the District has incurred costs associated with developing water conservation plans or policies required under Chapter 16 of the Texas Water Code or Chapter 288 of Texas Commission on Environmental Quality rules that constitute an abuse of monopoly power by the District? Produce all documents and communications you rely on to support your answer.
- NTMWD RFI 2-45 Refer to your response to Staff RFI 1-3. Explain, in specific dollar amounts, how much revenue each Petitioning City has contributed from its retail water service system to its general revenue fund in each year during the Contract Period. Produce all documents and communications that support your answer.
- NTMWD RFI 2-46 Referring to the testimony of John Baker at page 9, line. 7 – page 12, line 2, and the testimony of Jess Totten at page 21, line 8 – page 22, line 5, identify each member appointed to the District Board of Directors by the City of Garland from 1988 until the present. Identify the term of each board member appointed by the City of Garland.
- NTMWD RFI 2-47 Referring to the testimony of John Baker at page 9, line. 7 – page 12, line 2, and the testimony of Jess Totten at page 21, line 8 – page 22, line 5, identify each vote taken by a member appointed to the District Board of Directors by the City of Garland that the City of Garland contends was contrary to the interest of the City of Garland. Identify the Board of Director that cast the vote that was contrary to the interest of the City of Garland.

- NTMWD RFI 2-48 Referring to the testimony of Jerome J. Dittman at page 23, line. 3 – page 24, line 11, and the testimony of Jess Totten at page 21, line 8 – page 22, line 5, identify each member appointed to the District Board of Directors by the City of Mesquite from 1988 until the present. Identify the term of each board member appointed by the City of Mesquite.
- NTMWD RFI 2-49 Referring to the testimony of Jerome J. Dittman at page 23, line. 3 – page 24, line 11, and the testimony of Jess Totten at page 21, line 8 – page 22, line 5, identify each vote taken by a member appointed to the District Board of Directors by the City of Mesquite that the City of Garland contends was contrary to the interest of the City of Mesquite. Identify the Board of Director that cast the vote that was contrary to the interest of the City of Mesquite.
- NTMWD RFI 2-50 Referring to the testimony of Bruce Glasscock at page 11, line 1 – page 7, line 13, and the testimony of Jess Totten at page 21, line 8 – page 22, line 5, identify each member appointed to the District Board of Directors by the City of Plano from 1988 until the present. Identify the term of each board member appointed by the City of Plano.
- NTMWD RFI 2-51 Referring to the testimony of Bruce Glasscock at page 11, line 1 – page 7, line 13, and the testimony of Jess Totten at page 21, line 8 – page 22, line 5, identify each vote taken by a member appointed to the District Board of Directors by the City of Plano that the City of Garland contends was contrary to the interest of the City of Plano. Identify the Board of Director that cast the vote that was contrary to the interest of the City of Plano.
- NTMWD RFI 2-52 Referring to the testimony of Dan Johnson at page 12, line 16 – page 14, line 5 and the testimony of Jess Totten at page 21, line 8 – page 22, line 5, identify each member appointed to the District Board of Directors by the City of Garland from 1988 until the present. Identify the term of each board member appointed by the City of Richardson.
- NTMWD RFI 2-53 Referring to the testimony of Dan Johnson at page 12, line 16 – page 14, line 5 and the testimony of Jess Totten at page 21, line 8 – page 22, line 5, identify each vote taken by a member appointed to the District Board of Directors by the City of Richardson that the City of Garland contends was contrary to the interest of the City of Richardson. Identify the Board of Director that cast the vote that was contrary to the interest of the City of Plano.
- NTMWD RFI 2-54 Referring to testimony of John Baker at page 20, lines 5-6; Jerome Dittman at page 27, lines 3-4; Bruce Glasscock at page 16, lines 13-14; and Dan Johnson at page 12, lines 2-3: explain in detail how each Petitioning City has benefited financially from its respective participation in the District's regional water system projects by avoiding the costs of developing its own

water supply system. Produce all documents you rely on to support your answer, including any calculations performed.

- NTMWD RFI 2-55 Regarding the Direct Testimony of Jerome J. Dittman at page 26, lines 8-12, explain how the Petitioning Cities are subsidizing NTMWD operations and reducing the cost of water to the other nine Member Cities. Produce all documents supporting your response, including any calculations performed.
- NTMWD RFI 2-56 Regarding the Direct Testimony of Jerome J. Dittman at page 26, lines 8-12, explain how the other nine non-petitioning Member Cities are not subsidizing NTMWD operations. Produce all documents supporting your response, including any calculations performed.
- NTMWD RFI 2-57 Regarding the Direct Testimony of Jerome J. Dittman at page 26, lines 8-12, explain which Member Cities you believe subsidized NTMWD operations in each year during the Contract Period. Produce all documents supporting your response, including any calculations performed.
- NTMWD RFI 2-58 Regarding the Direct Testimony of Dr. Bente Villadsen at page 25, lines 2-4, produce all documents supporting the contention that rebates have typically been identical to the excess water charge.
- NTMWD RFI 2-59 Referring to the testimony of Jess Totten at page 20, lines 11–14, identify each instance in which one of the Petitioning Cities has made a request to the District to re-sell water pursuant to the provisions of Section 3(a) of the Amendatory Contract and explain the District's response.
- NTMWD RFI 2-60 Refer to the Direct Testimony of John Baker at pages 21-22. Please identify the City of Garland's annual credit ratings as it relates to the water and sewer system for the period 2013 through 2017 and provide copies of all documents related to the city's credit ratings for that same period.