



Control Number: 46662



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

2018 MAR -1 PM 2:22

PETITION OF THE CITIES OF
GARLAND, MESQUITE, PLANO
AND RICHARDSON APPEALING
WHOLESALE WATER RATES
IMPLEMENTED BY NORTH
TEXAS MUNICIPAL WATER
DISTRICT

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BEFORE THE STATE OFFICE
PUBLIC UTILITY DIVISION
FILING CLERK
OF
ADMINISTRATIVE HEARINGS

**CITY OF FRISCO'S SECOND REQUEST FOR INFORMATION
TO CITY OF MESQUITE**

To: City of Mesquite by and through its attorney of record, Michael J. Tomsu, Vinson & Elkins, L.L.P., 2801 Via Fortuna, Suite 100, Austin, Texas, 78746

Pursuant to 16 Tex. Admin. Code Ann. § 22.144 (TAC), the City of Frisco ("Frisco") requests that the City of Mesquite ("Mesquite") provide the following information and answer the following question(s) under oath within twenty days of receipt. The question(s) shall be answered in sufficient detail to fully present all of the relevant facts. Please copy the question immediately above the answer to each question. These question(s) are continuing in nature, and if there is a relevant change in circumstances, submit an amended answer, under oath, as a supplement to your original answer.

Responses should be provided to: Jim Mathews, Mathews & Freeland, LLP, 8140 N. MoPac Expy, Suite 2-260, Austin, Texas 78759.

Filed: March 1, 2018

Respectfully submitted,



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ATTORNEYS FOR THE CITY OF FRISCO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all parties of record in this proceeding on March 1, 2018 in accordance with 16 Tex. Admin. Code § 22.74.


Benjamin Mathews

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FRISCO'S SECOND RFI TO CITY OF MESQUITE

DEFINITIONS

- A. The term "Amendatory Contract" means the North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract.
- B. The term "Communication" means any document, oral statement, meeting or conference, formal or informal, at any time or place and under any circumstance whatsoever, whereby information of any nature was stated, written, recorded, or in any manner transmitted or transferred, including by e-mail or any other electronic means, personal delivery, or otherwise.
- C. The term "District" means the North Texas Municipal Water District.
- D. The terms "document" or "documents" are used in their broadest sense to include, by way of illustration and not limitation, all written or graphic matter of every kind and description; whether printed, stored, produced, or reproduced by any process, whether visually, magnetically, mechanically, electronically, or by hand, whether final or draft or deleted, original or reproduction, whether or not claimed to be privileged or otherwise excludable from discovery, and whether or not in your actual or constructive possession, custody, or control. The terms include, but are not limited to, writings, correspondence, telegrams, memoranda, studies, reports, surveys, statistical compilations, diagrams, schematic and other drawings, engineering plans and drawings, maps, studies, notes, calendars, tapes, computer disks, data on computer drives, existing and deleted e-mail, electronic recordings, tape recordings, cards, records, contracts, agreements, easements, invoices, licenses, diaries, journals, accounts, ledgers, pamphlets, books, publications, microfilm, microfiche, photographs, video recordings, and any other data compilations from which information can be obtained and translated, by you if necessary, into reasonably usable form. "Document" or "documents" shall also include every copy of a document where the copy contains any commentary or notation of any kind that does not appear on the original or any other copy.
- E. To "identify" an act, event, or occurrence means to state its date, identify each person or entity that was a party or witness to the act, event, or occurrence, describe where and how it took place, and identify any communication that constitutes or refers to such act, event, or occurrence.
- F. The term "Petitioning Cities" means the Cities of Garland, Mesquite, Plano, and Richardson, either individually or collectively, depending on context.
- G. The term "RFI" shall include a request for information, or a request for admission.

- H. The terms “you” or “your” mean the City of Mesquite as well as any agents, employees, officers, directors, representatives, attorneys, and any person or entity authorized to act at your direction or on your behalf.

INSTRUCTIONS

- A. Pursuant to 16 TAC § 22.144(c)(2), Frisco requests that answers to the requests for information be made under oath. Each answer should identify the person responsible for preparing that answer (other than the purely clerical aspects of its preparation) and the name of the witness in this proceeding who will sponsor the answer and who can vouch for its accuracy.
- B. In producing documents pursuant to this request for information, please indicate the specific request(s) to which the document is being produced.
- C. These requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer supplied by you, such changed answer shall be submitted as a supplement to your original answer within five working days of acquiring the information, pursuant to 16 TAC § 22.144(i).
- D. Please answer each request and sub-request in the order in which they are listed and in sufficient detail to provide a complete and accurate answer to the request.
- E. Frisco requests that each item of information be made available as it is completed, rather than upon compilation of all information requested.
- F. Pursuant to Tex. R. Civ. P. 196.4, Frisco specifically requests that any electronic or magnetic data (which is included in the definition of “document”) that is responsive to a request herein be produced in a format that is compatible with Microsoft and be produced with your response to these requests.
- G. The terms “and” and “or” shall be construed both disjunctively and conjunctively as necessary to make the request inclusive rather than exclusive.
- H. “Each” shall be construed to include the word “every” and “every” shall be construed to include the word “each.”
- I. “Any” shall be construed to include “all” and “all” shall be construed to include “any.”
- J. The term “concerning,” or one of its inflections, includes the following meanings: relating to; referring to; pertaining to; regarding; discussing; mentioning; containing; reflecting; evidencing; describing; showing; identifying; providing; disproving; consisting of; supporting; contradicting; in any way legally, logically or factually connected with the matter to which the term refers; or having a tendency to prove or disprove the matter to which the term refers.

- K. The term “including,” or one of its inflections, means and refers to “including but not limited to.”
- L. “Relating to,” “regarding,” “concerning” and similar terms mean addressing, analyzing, referring, discussing, mentioning in any way, explaining, supporting, describing, forming the basis for, or being logically or causally connected in any way with the subject of these discovery requests.
- M. “Explain the basis” means provide all information on or describe every fact, statistic, inference, estimate, consideration, conclusion, study, and analysis known to any of the Petitioning Cities that was relied upon in support of the expressed contention, proposition, conclusion or statement.
- N. Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural.
- O. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.
- P. Pursuant to 16 TAC § 22.144(g)(4), if the response to any request is voluminous, please provide a detailed index of the voluminous material.
- Q. If the information requested is included in previously furnished exhibits, workpapers, responses to other discovery inquiries or otherwise, in hard copy or electronic format, please furnish specific references thereto, including Bates Stamp page citations and detailed cross-references.
- R. If a data response is available in Excel format, provide the Excel version of the data response.
- S. If any document is withheld under any claim of privilege, please furnish a privilege log identifying each document for which a privilege is claimed, together with the following information: date and title of the document, the preparer or custodian of the information, to whom the document was sent and from whom it was received, subject matter of the document, and an explanation of the basis upon which the privilege is claimed.
- T. Words and phrases used in this request that also are used in the PUC Chapter 24 Rules or in the Amendatory Contract shall have the same meaning as given to those words and phrases in those rules or the Amendatory Contract, as appropriate.

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FRISCO'S SECOND RFI TO CITY OF MESQUITE

- FRISCO 2-1** Admit or deny the truth of the following statement: Authorization for issuance of Bonds to acquire, construct, or otherwise expand or improve the North Texas Municipal Water District's water System requires approval by its Board of Directors.
- FRISCO 2-2** Admit or deny the truth of the following statement: The North Texas Municipal Water District's Board of Directors is comprised of appointees from the Member Cities.
- FRISCO 2-3** Admit or deny the truth of the following statement: The Mesquite City Council has never voted to oppose authorization for issuance of water System Bonds by the North Texas Municipal Water District during the period from August 1, 1988 to the date of this request.
- FRISCO 2-4** If your response to RFI 2-3 is anything other than an admission, provide copies of all minutes, resolutions or other records of votes by the Mesquite City Council to oppose authorization for issuance of water System Bonds by the North Texas Municipal Water District during the period from August 1, 1988 to the date of this request.
- FRISCO 2-5** Admit or deny the truth of the following statement: None of Mesquite's appointed representatives to the Board of the North Texas Municipal Water District have ever voted on an authorization for issuance of water System Bonds by North Texas Municipal Water District in a manner that was inconsistent with a position on such bond authorization adopted by vote of the Mesquite City Council.
- FRISCO 2-6** If your response to RFI 2-5 is anything other than an admission, provide copies of all communications between Mesquite and its appointed representative to the Board of the North Texas Municipal Water District related to such vote in a manner that was inconsistent with a position adopted by vote of the Mesquite City Council on such bond authorization.
- FRISCO 2-7** Provide the minutes of any Mesquite City Council meeting during which the City Council voted to terminate the appointment of any of its appointees to the District's Board and replace him or her with another appointee.
- FRISCO 2-8** Provide all written briefing materials made available to the Mesquite City Council for any meeting during which the City Council voted to terminate the appointment of any of its appointees to the District's Board and replace him or her with another appointee.

- FRISCO 2-9** Provide all tapes, recordings, or transcriptions of any Mesquite City Council meeting at which the City Council voted to terminate the appointment of any of its appointees to the District's Board and replace him or her with another appointee.
- FRISCO 2-10** Explain the basis for any Mesquite City Council vote to terminate the appointment of any of its appointees to the District's Board and replace him or her with another appointee.
- FRISCO 2-11** Provide all Communications related to the basis of the City Council's decision to vote to terminate the appointment of any of its appointees to the District's Board and replace him or her with another appointee.
- FRISCO 2-12** Admit or deny the truth of the following statement: Mesquite has never proposed an amendment to the 1988 Amendatory Contract provisions that was agreeable to all Contracting Parties regarding allocation of the District's Annual Requirement among the Contracting Parties based on Minimum Annual Demand as described at page 4 of the Original Petition Appealing Wholesale Water Rates.
- FRISCO 2-13** Provide copies of all proposals made by Mesquite to amend the 1988 Amendatory Contract provisions regarding allocation of the District's Annual Requirement among the Contracting Parties.
- FRISCO 2-14** Admit or deny the truth of the following statement: Mesquite has never proposed an amendment to the 1988 Amendatory Contract provisions that was agreeable to all Contracting Parties regarding Mesquite's claims that the rates or contract terms are adverse to the public interest.
- FRISCO 2-15** Admit or deny the truth of the following statement: From August 1, 1988 to the present, Mesquite has operated as a home rule city pursuant to Article 11, Section 5 of the Texas constitution.
- FRISCO 2-16** Provide Mesquite's City Charter in effect on August 1, 1988.
- FRISCO 2-17** Provide any amendments to Mesquite's City Charter adopted after August 1, 1988 affecting the ability of the City to regulate rates for or use of water provided by its water utility.
- FRISCO 2-18** Provide Mesquite's estimated population each Water Year from 1988 through 2000.
- FRISCO 2-19** Provide the specific language from Attorney General Opinion JM-1239 that is the basis for Jerome Dittman's contention that Mesquite's appointees to the Board of the North Texas Municipal Water District may not be "otherwise controlled" by Mesquite.

FRISCO 2-20 Identify each Mesquite city department that took water from the City in Water Years 1999 through 2007 and provide records of the quantity of water taken by each such department.