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APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
LAVON FOR A SEWER CERTIFICATE §
OF CONVENIENCE AND NECESSITY § OF
IN COLLING COUNTY §
§ ADMINISTRATIVE HEARINGS

**CITY OF LAVON’S MOTION TO COMPEL RESPONSES TO
FIRST SET OF REQUESTS FOR INFORMATION AND REQUESTS FOR ADMISSION
TO BEAR CREEK SPECIAL UTILITY DISTRICT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The City of Lavon (“Lavon”) files this Motion to Compel Bear Creek Special Utility District (“Bear Creek”) to respond to Lavon’s First Set of Requests for Information and Requests for Admission. Midlothian received Bear Creek’s Objections to Lavon’s First Request for Information and Request for Admission late on August 14, 2017. This motion is timely filed pursuant to 16 TAC § 22.144(e). The parties continue to confer on discovery matters, however, this motion to compel addresses pending objections to the requests identified below.

I. SUMMARY OF MATTER

In the instant proceeding, the City of Lavon seeks a Certificate of Convenience and Necessity to provide sewer service (“Sewer CCN”) to portions of Collin County, Texas (“Application Service Area”). In connection with this proceeding, the Public Utilities Commission of Texas (“PUC”) identified eleven issues associated with this case, among them: (1) Whether or not the Application Service Area overlaps with the certificated service area of another entity; (2) Whether the requested Sewer CCN is necessary for the service, accommodation, convenience, or safety of the public; (3) and whether or not the balance of factors identified in section 13.246(c) of the Texas Water Code and title 16, section 24.102(d) of the Texas Administrative Code weigh in favor of granting the Sewer CCN.¹ Included in this list of factors are: (i) whether the Application Service Area is currently receiving adequate sewer service; (ii) whether the Application Service Area needs additional sewer service; and (iii) the

¹ Preliminary Order at 2–4 (June 29, 2017).

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effect of granting the request on other retail public utilities providing the same service within two miles of the boundary of the Application Service Area.

Bear Creek and Nevada Special Utility District (“Nevada SUD”), each of which provides retail water service within its respective certificated service area for water, moved to intervene in this proceeding, claiming that each would be adversely affected by the granting of Lavon’s sewer CCN to the Application Service Area.²

II. ARGUMENTS & AUTHORITIES

The rules of discovery permit a party to obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action.³ It is not a valid ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.⁴ Discovery by Lavon is essential to develop its case and to adequately respond to the PUC’s list of issues.

The Texas Supreme Court has explained that the “ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts revealed, not by what facts are concealed.”⁵ Likewise, requests for production must be “reasonably tailored to include only matters relevant to the case.”⁶ However, “[a] reasonably tailored discovery request is not overbroad merely because it may include some information of doubtful relevance.”⁷ Lavon has taken significant steps to tailor discovery tied closely to matters relevant to this proceeding. The Texas Supreme Court has specifically recognized that parties must be allowed some latitude in creating discovery requests.⁸

² By this Motion to Compel, Lavon does not intend to waive its objections to either of Bear Creek’s and Nevada SUD’s interventions in this proceeding.

³ TRCP R. 192.3(a)

⁴ *Id.*

⁵ *Jampole v. Touchy*, 673 S.W.2d 569, 573 (Tex. 1984).

⁶ *In re Nolle*, 265 S.W.3d 487, 491-92 (Tex. App.—Houston [1st Dist.] 2008).

⁷ *Id.*

⁸ *Id.* (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex.1995)).

III. REQUESTS FOR INFORMATION AND ADMISSIONS ARE RELEVANT AND APPROPRIATE

Bear Creek's objections to Lavon's requests for information and admissions are generally, either: A) that the information sought is not relevant; or B) that the request is overly vague or unduly burdensome. Lavon will address these by type of objection. As discussed, neither has any merit.

A. RELEVANCE OBJECTIONS (RFI NOS. 1-4, 1-11, 1-13, AND 1-14) AND (RFA NO. 1-2):

Lavon's RFA No. 1-2 and RFI Nos. 1-11 and 1-14(a)-(e) relate to the creation documents and creation procedures of the entity that is currently Bear Creek Special Utility District. Lavon asserts that these Requests are clearly and specifically tailored to elicit discoverable information relevant to this case.

Request for Admission No. 1-2. Admit that attached as Exhibit RFA 1-2-A is a true and correct copy of the TCEQ order authorizing the creation of the Lavon Special Utility District, dated September 8, 2010.

Bear Creek's Objection: BCSUD objects to this Request because it is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence (K-Mart Corp. v. Sanderson, 937 S.W.2d 429, 431-2 (Tex. 1996); see also Tex. R. Civ. P. 192.3. The issues to be addressed in this case are established by Texas Water Code § 13.246 and PUC Substantive Rule 24.102, and generally relate to whether Lavon possesses the financial, managerial or technical capabilities to provide continuous and adequate sewer service, and whether granting or amending the sewer CCN to Lavon is necessary for the service, accommodation, convenience, or safety of the public. The TCEQ Order creating Lavon Special Utility District does not have any tendency to make the existence of any fact that is of consequence relating to Lavon's capabilities to provide sewer service, or whether granting Lavon's application for a sewer CCN is necessary for the service, accommodation, convenience, or safety of the public, more or less probable than it would be without the evidence.

Request for Information No. 1-11. If You cannot unequivocally admit that Exhibit RFA 1-2-A is a true and correct copy of the TCEQ order authorizing the creation of the Lavon Special Utility District, produce any document that authorizes the creation of the District.

Bear Creek's Objection: BCSUD objects to this request because it is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence for the same reasons set forth in the Objection to City RFA No. 1-2 above.

Request for Information No. 1-14. Provide:

- a) **The notice of confirmation and director election required upon creation of the District, and any subsequent election notice issued by the District.**
- b) **A sample ballot for the confirmation and director election required upon creation of the District, and for any subsequent election for the District.**
- c) **Any certification by the District board of directors that a successful confirmation election had been held, confirming creation or modification of the District.**
- d) **The notice of election.**
- e) **A certification by the Office of the Secretary of State that Lavon Water Supply Corporation had submitted a Certificate of Termination.**
- f) **[withdrawn]**

Bear Creek's Objection: BCSUD objects to RFI 1-14(a)-(e) based on relevancy because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. PUC Procedural Rule 22.141 authorizes discovery regarding any matter that is not privileged and that is relevant to the subject matter of a proceeding. The issues to be addressed in this case are established by Texas Water Code § 13.246 and PUC Substantive Rule 24.102, and generally relate to whether Lavon possesses the financial, managerial or technical capabilities to provide continuous and adequate sewer service, and whether granting or amending the sewer CCN to Lavon is necessary for the service, accommodation, convenience, or safety of the public. Information regarding the notice of BCSUD's confirmation election, a ballot from the election, certification from the Board regarding the election, certification from the Secretary of State regarding termination of Lavon Water Supply Corporation does not have any tendency to make the existence of any fact that is of consequence relating to Lavon's capabilities to provide sewer service, or whether granting Lavon's application for a sewer CCN is necessary for the service, accommodation, convenience, or safety of the public, more or less probable than it would be without the evidence.

In its Request for Contested Case and Motion to Intervene, Bear Creek claims that areas located within the Application Service Area are located within the boundaries of Bear Creek Special Utility District, and that Bear Creek has the right and intent to provide sewer service in that area in addition to the water service it provides under its Water CCN, thus making Bear Creek a party adversely affected by the grant of the Sewer CCN to Lavon.⁹ The documents

⁹ Bear Creek's Request for Contested Case Hearing and Motion to Intervene at 4 (May 7, 2017)
("Assuming Lavon seeks a sewer CCN, then Bear Creek SUD would also be adversely affected by approval of the
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requested by these RFIs and RFA would indicate whether Bear Creek is a properly-created, legitimate entity, with the power to provide water and sewer service as it claims. If Bear Creek has the right to provide sewer service within the Application Service Area, then it constitutes a “retail public utility that [intends to provide and has the capability to provide] the same service” as outlined in Issue 9(c)(iii) of the PUC’s Preliminary Order. Additionally, the boundaries of a legitimate Bear Creek entity could overlap with the applicant’s requested sewer service area, which directly relates to Issue 2 from the Preliminary Order. If Bear Creek does not have the right to provide sewer service as it claims, the questions presented by these Issues are answered in the negative. Either way, this information could lead to evidence that addresses multiple Issues from the Commission’s Preliminary Order. The requests are clearly relevant.

Lavon’s **RFI No. 1-4** also relates to the need for sewer service in the Application Service Area. Lavon asserts that these Requests are clearly and specifically tailored to elicit discoverable information relevant to this case.

Request for Information No. 1-4. Provide any document, including (but not limited to) any study, business plan, report, agreement or memorandum, within the past (5) years that addresses the need for water service in portions of Your CCN area that includes the Application Area.

Bear Creek’s Objection: BCSUD objects to this Request because it is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence (K-Mart Corp. v. Sanderson, 937 S.W.2d 429, 431-2 (Tex. 1996); see also Tex. R. Civ. P. 192.3. The issues to be addressed in this case are established by Texas Water Code § 13.246 and PUC Substantive Rule 24.102, and generally relate to whether Lavon possesses the financial, managerial or technical capabilities to provide continuous and adequate sewer service, and whether granting or amending the sewer CCN to Lavon is necessary for the service, accommodation, convenience, or safety of the public. This proceeding does not relate to water service furnished by BCSUD. The existence of planning and engineering studies, business plans, reports, agreements or memoranda by BCSUD relating to water service or the need for water service does not have any tendency to make the existence of any fact that is of consequence relating to Lavon's capabilities to provide sewer service, or whether granting Lavon's application for a sewer CCN is necessary for the service, accommodation, convenience, or safety of the public,

CCN because Bear Creek SUD intends to provide retail sewer service to the lands within its corporate boundaries. Bear Creek SUD has undertaken significant planning and engineering studies for construction of a regional wastewater system. Bear Creek SUD is currently in negotiations with developers regarding the provision of sewer service for lands that are located within the area that Lavon seeks to certificate, and is in the process of securing a site for a regional wastewater treatment plant facility to be constructed and operated by Bear Creek SUD”).

more or less probable than it would be without the evidence. The need for sewer service is relevant, not the need for water service.

Lavon's requests related to Bear Creek's provision of water service and the need for water service are specifically tailored to elicit discoverable information relevant to this case. Due to the nature of water service and wastewater service, a need for water service can almost invariably indicate a similar need for sewer service, especially in high-grown areas. Bear Creek's Water CCN is verifiable evidence of a state-recognized need for potable water within portions of the Application Service Area. Thus, documents including studies, business plans, reports, agreements, and memorandums indicating the need for water service in the portions of Bear Creek's Water CCN that overlap with the Application Service Area may lead to similar information relating to the need for sewer service within the Application Service Area, which directly addresses Issues No. 8, and 9(b) of the Preliminary Order. As such, the question is clearly relevant to this proceeding.

Lavon's **RFI Nos. 1-13** relates to Bear Creek's assertion that it has the right to provide water or sewer service to parts of the Application Service Area and the possible or actual provision of such service in that area. Lavon asserts that these Requests are clearly and specifically tailored to elicit discoverable information relevant to this case.

Request for Information No. 1-13. Please list any residential or business developments in the Application Area that You claim to have a right to serve with water or sewer service:

- a) Provide a copy of any service application and amendments/attachments thereto;
- b) Provide a map of the development;
- c) List the estimated number of water connections associated with the development, the estimated number of and types of connections in the development actually receiving water service from the District (whether residential or commercial), and the current status of the development with regard to such service; and
- d) List the estimated number of sewer connections associated with the development, the estimated number of and types of connections in the development actually receiving sewer service from the District (whether residential or commercial), and the current status of the development with regard to such service.

Bear Creek's Objection¹⁰: BCSUD objects to this Request to the extent it seeks information regarding water service furnished by BCSUD because such information is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. PUC Procedural Rule 22.141 authorizes discovery regarding any matter that is not privileged and that is relevant to the subject matter of a proceeding. The issues to be addressed in this case are established by Texas Water Code § 13.246 and PUC Substantive Rule 24.102, and generally relate to whether Lavon possesses the financial, managerial or technical capabilities to provide continuous and adequate sewer service, and whether granting or amending the sewer CCN to Lavon is necessary for the service, accommodation, convenience, or safety of the public. This proceeding does not relate to water service furnished by BCSUD. As a result, information regarding BCSUD's right to provide water service within its water CCN area, historical applications for water service, maps of developments to which BCSUD provides or may provide water service, the number of water connections (whether estimated or actual), and the current status of the development with regard to water service, does not have any tendency to make the existence of any fact that is of consequence relating to Lavon's capabilities to provide sewer service, or whether granting Lavon's application for a sewer CCN is necessary for the service, accommodation, convenience, or safety of the public, more or less probable than it would be without the evidence.

Lavon's requests related to Bear Creek's provision of water service and the specific areas to which Bear Creek provides water service are specifically tailored to elicit discoverable information relevant to this case. Due to the nature of water service and wastewater service, a need for water service almost invariably indicates a similar need for sewer service, particularly in high-growth areas. Bear Creek's provision of water service to residential or business developments can indicate or lead to evidence which responds to four of the issues in the Preliminary Order. First, evidence of the locations to which Bear Creek provides water service could indicate an overlap with the areas to which Bear Creek intends to provide sewer service and could indicate that Bear Creek is (or is not) a retail public utility providing service that is affected by the grant of the Sewer CCN. Additionally, the locations to which Bear Creek provides or plans to provide water service could lead to evidence of a need for service within the Application Service Area, which would directly answer Issues No. 8 and 9(b) of the Preliminary Order.

¹⁰ Bear Creek objected to RFI No. 1-13 on the basis of *both* relevance and that the request was overly broad and unduly burdensome. Only Bear Creek's relevance objection is reproduced here. Bear Creek's objection that the Request is overly broad and unduly burdensome is replicated below.

The PUC's Preliminary Order outlines most of the issues to be addressed in this proceeding. Lavon reasonably tailored its requests for information and admissions to be able to develop its case to respond to these issues. Bear Creek's Objections to relevance are unfounded here because each of the RFIs and the RFA objected to is reasonably tailored to obtain evidence or lead to the discovery of evidence that would respond to these issues. None of Bear Creek's relevance objections are meritorious. As such, Bear Creek should be compelled to provide responses to RFI Nos. 1-4, 1-11, 1-13, and 1-14 and RFA No. 1-2.

B. OVERLY BROAD AND UNDULY BURDENSOME OBJECTION (RFI NO. 1-13):

Lavon's RFI No. 1-13 seeks information related to the residential or business developments within the Application Service Area that Bear Creek claims to have a right to serve with water or sewer service. As noted before, the information is relevant to the proceeding. In addition, this request focuses on the Application Service Area. However, Bear Creek also claims it is overly broad and unduly burdensome.¹¹

Request for Information No. 1-13. Please list any residential or business developments in the Application Area that You claim to have a right to serve with water or sewer service:

- a) Provide a copy of any service application and amendments/attachments thereto;
- b) Provide a map of the development;
- c) List the estimated number of water connections associated with the development, the estimated number of and types of connections in the development actually receiving water service from the District (whether residential or commercial), and the current status of the development with regard to such service; and
- d) List the estimated number of sewer connections associated with the development, the estimated number of and types of connections in the development actually receiving sewer service from the District (whether residential or commercial), and the current status of the development with regard to such service.

Bear Creek's Objection¹²: BCSUD also objects to this Request because it is overly broad and unduly burdensome. While conferring, Lavon's legal

¹¹ While this request was already limited as to place and type of services subject to the inquiry, Lavon notes that, as a result of good-faith consultation with counsel for Bear Creek, the scope of this request has been further narrowed. This point is acknowledged by Bear Creek in its response, below.

¹² Bear Creek objected to RFI No. 1-13 on the basis of both relevance and that the Request was overly broad and unduly burdensome. Only Bear Creek's objection that the Request is overly broad and unduly burdensome is replicated here. Bear Creek's relevance objection is reproduced above.

counsel clarified that the term “development” should be defined as a subdivision of land, or as two or more water or sewer service connections on a single contiguous tract of land, in accordance with the definition of “developer under Section 13.2502 of the Texas Water Code. Lavon’s counsel also agreed that Lavon does not seek the information regarding individual customer service applications or individual customer service accounts, does not seek such information more than 10 years in the past, or information relating to service within Lavon’s corporate limits. Nevertheless, the Request remains unduly burdensome to the extent it seeks for Bear Creek SUD to prepare a list or map of all subdivisions in Lavon’s application area to which BCSUD has a right to provide retail water or sewer service. Such request would require BCSUD to research the subdivision plat records of Lavon (for subdivisions in Lavon’s platting jurisdiction) and Collin County, Texas (for subdivisions in the County’s platting jurisdiction) to identify every subdivision previously platted.

As stated within Bear Creek’s Objection, during conference regarding Bear Creek’s objections, Lavon’s legal counsel clarified the term “development” and clarified the scope of its Request. Despite this good-faith effort to further limit and define its Request, Bear Creek still objects to the request that Bear Creek list and further define through different mediums the developments to which it claims it has the right to provide water or sewer service. This request is neither overly broad nor unduly burdensome in that it is narrowly tailored to be limited by time, type of document, and subject matter.¹³ It is also restricted to the Application Service Area involved in this proceeding. It seeks only information about developments in this well-defined area to which Bear Creek has already claimed the right to provide water or sewer service, and very specific documents related thereto. It was unclear to Lavon how this request is overly broad or unduly burdensome, even before the parties’ conference.

As noted previously, the “ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts revealed, not by what facts are concealed.”¹⁴ These requests for production are “reasonably tailored to include only matters relevant to the case.”¹⁵ However, “[a] reasonably tailored discovery request is not overbroad merely because it may

¹³ See *In re National Lloyds Ins.*, 449 S.W.3d 486, 489 (Tex.2014); *In re Allstate Cty. Mut. Ins.*, 227 S.W.3d 667, 670 (Tex.2007); *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex.1995); *In re Patel*, 218 S.W.3d 911, 915 (Tex.App.—Corpus Christi 2007, orig. proceeding).

¹⁴ *Jampole*, 673 S.W.2d at 573.

¹⁵ *In re Nolle*, 265 S.W.3d at 491-92.


include some information of doubtful relevance.”¹⁶ Lavon has taken significant steps to tailor discovery tied closely to matters relevant to this proceeding, and it should be allowed some latitude in creating discovery requests.¹⁷ Because this objection is not meritorious, Bear Creek should be compelled to provide all information responsive to RFI No. 1-13.

IV. CONCLUSION

Lavon respectfully requests that the Honorable Administrative Law Judge expeditiously grant this motion to compel and requests any and all other relief to which it is justly entitled.

Respectfully submitted,

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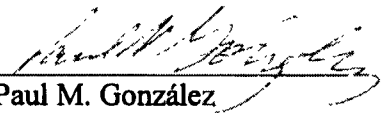
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¹⁶ *Id.*

¹⁷ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was served on all parties of record in this proceeding on August 16th, 2017, in the following manner: by facsimile.


Paul M. González