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SOAH DOCKET NO. 473-20-1554.WS
DOCKET NO. 49225



PETITION BY OUTSIDE CITY
RATEPAYERS APPEALING THE
WATER RATES ESTABLISHED BY
THE CITY OF CELINA

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PUBLIC UTILITY COMMISSION
OF TEXAS

**CITY OF CELINA'S MOTION TO COMPEL OUTSIDE CITY RATEPAYERS TO
RESPOND TO CITY'S FIRST REQUEST FOR INFORMATION AND FIRST
REQUEST FOR ADMSSIONS**

TO THE HONORABLE ADMINSTRATIVE LAW JUDGES:

COME NOW, the CITY OF CELINA ("City") and files this Motion to Compel in response to the Outside City Ratepayers ("Ratepayers") Objections to the City's First Set of Requests for Information ("RFI") and First Set of Requests for Admissions ("RFA"), pursuant to 16 Tex. Admin. Code Ann. § 22.144 ("TAC"), and request the following information and answers to the following questions be provided under oath.

I. BACKGROUND

On February 14, 2019, Ratepayers filed a petition appealing the decision of the City to increase rates for water and wastewater services, effective January 1, 2019. The Ratepayers filed an amended petition on March 15, 2019. On June 27, 2019, Ratepayers filed a Motion to Consolidate and Align Parties, and to Designate a Party Representative. Through this motion, Ratepayers sought consolidation of this Docket and Docket 49448, whereby the Collin County Municipal Utility District No. 1 ("Collin County MUD No. 1") filed a petition also appealing the City's water and wastewater rates. Ultimately, the Dockets were not consolidated and Docket 49448, appealing the same rates that are the subject of this Docket, was dismissed.

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On May 21, 2020, the City filed its First Request for Information and First Request for Admissions to the Ratepayers. On June 1, 2020, Ratepayers filed Objections to City's RFI Nos. 1-8, 1-11, 1-13, 1-14, 1-15, 1-16, 1-18, 1-19, 1-22, 1-23, 1-24, 1-25, 1-26, 1-27, 1-28, 1-29, 1-30, 1-31, 1-32, and 1-33 and to the City's RFA Nos. 1-1, 1-2, 1-3, 1-4, and 1-5. Pursuant to 16 Tex. Admin. Code § 22.144(e), the party seeking discovery must file a motion to compel no later than five working days after an objection is received. Therefore, the City's motion is timely filed.

II. STANDARD

Relevance in discovery is intentionally set at a low bar in order to facilitate the development of a full factual record. Procedural Rule § 22.221(a) states:

Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.¹

Further, the Texas Supreme Court has held that the phrase "relevant to the subject matter" is to be "liberally construed to allow the litigants to obtain the fullest knowledge of the facts and issues prior to trial."² The Commission has consistently found that these principles extend to the administrative context, holding that "[t]he scope of relevance for purposes of discovery is far broader than it is for admission of documents into evidence. To be relevant, a document must only

¹ 16 Tex. Admin. Code § 22.141(a); *see also* Tex. R. Civ. P. 192.3(a):

In general, a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not a 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.

² *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009) (citing *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex.1990)).

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be reasonably calculated to lead to the discovery of admissible evidence."³ Under the Texas Rules of Evidence, information is "relevant" for admissibility if it has "any tendency to make a fact more or less probable than it would be without the evidence."⁴ A denial of discovery is improper unless there exists "no possible relevant, discoverable testimony, facts, or material to support or lead to evidence" that would support a claim or defense at issue in this case.⁵

III. ARGUMENT AND AUTHORITIES

Requests for Information

A. City's Request to Ratepayers 1-8

"Please produce all documents relevant to this matter that were provided, reviewed, or created by or relied upon by any consulting expert whose mental impressions or opinions have been reviewed by a testifying expert."

The Ratepayers' objected to this request claiming, "The request is cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense." They further asserted that the City had previously submitted a request from the same information in the City's Request to Ratepayers 1-5. Ratepayers claim that RFI 1-5 asks them to 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 the expert's testimony"

³ Tex. Pub. Util. Comm'n, *Joint Report and Application of Oncor Electric Delivery Company, LLC and NextEra Energy, Inc. for Regulatory Approvals Pursuant to PURA 14.101, 39.262, 39.915*, Docket No. 46238 (SOAH Discovery Order No. 1 Ruling on Oncor Electric Delivery Company LLC's Objections to Texas Industrial Energy Consumers First Request for Information at 3 (Dec. 12, 2016)); *see also* Tex. R. Civ. P. 192.3(a).

⁴ Tex. R. Evid. 401.

⁵ *Castillo*, 279 S.W.3d at 664; *see also State v. Lowry*, 802 S.W.2d 669, 671 (Tex. 1991) ("Only in certain narrow circumstances is it appropriate to obstruct the search for truth by denying discovery.").

and that RFI 1-8 “merely requests again the very same documents that the testifying expert reviewed.”⁶ However, Ratepayers fail to cite the full language of RFI 1-5. Request for Information 1-5 specifically asks for information in regards to each *testifying expert*.⁷ Request for Information 1-8, to which Ratepayers are objecting, is asking for documents provided, reviewed, or created by or relied upon by any *consulting expert* whose mental impressions or opinions have been reviewed by a testifying expert. Under the Texas Rules of Civil Procedure, discovery is permitted for “a consulting expert whose mental impressions or opinions have been reviewed by a testifying expert.”⁸ The rule does not require that the testifying expert review all of the same documents provided, reviewed, or created or relied upon by the consulting expert. In order for the consulting expert’s work to become discoverable, all that is necessary is that consulting expert’s *mental impressions or opinions* be reviewed by a testifying expert. The Texas Rules of Civil Procedure specifically make the information the City has requested in RFI 1-8 discoverable.⁹ Ratepayers cannot circumvent the rules by claiming it would be “duplicative” or “unduly burdensome” to produce what is being requested. The City does not know, and cannot be expected to know, that each of the testifying experts retained by the Ratepayers would review all of the same documents provided, reviewed, or created by or relied upon by any consulting expert.

The ALJ should overrule the Ratepayers’ objections and order Ratepayers to fully respond.

⁶ Objections of Outside City Ratepayers’ to City of Celina’s First Request for Information and First Request for Admissions at 2 (June 1, 2020).

⁷ City of Celina’s First Request for Information and First Request for Admissions to Outside City Ratepayers at 6 (May 21, 2020).

⁸ Tex. R. Civ. P. 192.3(e).

⁹ *Id.*

B. City's Request to Ratepayers 1-11

“Please identify all documents you intend to introduce as exhibits at the hearing on the merits. Provide an index of all voluminous materials.”

Ratepayers object to this request on the grounds that, “The request is overbroad, unduly burdensome, and would require the Petitioners to marshal all evidence they intend to offer at a hearing.”¹⁰ They further state that “[r]equests for production may properly ask a party to provide ‘all,’ ‘each,’ or ‘every’ document pertaining to a relevant, narrow subject of the litigation” and that this request is not “narrow or tailored to any subject of this proceeding.”¹¹ First, this request is narrowly tailored as it is specifically seeking documents that Ratepayers intend to introduce as exhibits at the hearing on the merits. Obviously, if Ratepayers are intending to introduce these documents as exhibits, they are relevant. Additionally, this set of Requests for Information was issued prior to the Ratepayers pre-filing their direct testimony. Under the Texas Rules of Civil Procedure, a party has a duty to amend or supplement if that party “learns that the party’s response to written discovery was incomplete or incorrect when made, or, although complete and correct when made, is no longer complete and correct.”¹² Ratepayers’ objections were filed after Ratepayers had already submitted their pre-filed direct testimony, which included the exhibits of each witness. Ratepayers’ objection stating that this request would require them to “marshal evidence” is misplaced as Ratepayers have already produced these exhibits. However, the duty to supplement continues to apply to this request. The Scheduling Order in this case, and in all PUC cases, assumes the parties have sufficient time to issue discovery requests on the testimony filed

¹⁰ Objections of Outside City Ratepayers’ to City of Celina’s First Request for Information and First Request for Admissions at 3 (June 1, 2020).

¹¹ *Id.*

¹² Tex. R. Civ. P. 193.5(a).

prior to hearing. If the Ratepayers know they are going to change their pre-filed testimony, including the exhibits provided, but wait until the actual hearing to do so, then they have denied the parties an opportunity for discovery on those changes. The duty to supplement this request for information requires a prompt filing of any such planned changes to the pre-filed testimony before the hearing to allow the parties an opportunity for further discovery.

The ALJ should overrule the Ratepayers' objections and order Ratepayers to fully respond to this request.

C. City's Request to Ratepayers 1-13, 1-14, 1-15, 1-16, 1-24, 1-25, 1-26, 1-27, 1-28, 1-29, 1-30, and 1-31

RFI 1-13 "Please identify and provide a copy of the agreement or agreements, in whatever form, between the attorneys representing the Outside City Ratepayers in this proceeding."

RFI 1-14 "Please provide a copy of all invoices for legal service delivered by, or on behalf of, the attorneys representing the Outside City Ratepayers in this proceeding, with any privileged or confidential information redacted, other than the name(s) and address(s) to whom the invoice is addressed."

RFI 1-15 "Please provide a copy of each check or evidence of other form of payment of each invoice produced in response to the City's RFI 1-14 above, with the routing and account number redacted."

RFI 1-16 "Among all of the Outside City Ratepayers, identify those persons who are authorized, or who have been, to make decisions and representations on behalf of the Outside City Ratepayers in this proceeding."

RFI 1-24 "Please provide a copy of the professional services agreement entered into by the Outside City Ratepayers with Gilbert Wilburn PLLC, with any privileged or confidential information redacted."

RFI 1-25 "Please provide a copy of all invoices received from Gilbert Wilburn PLLC by the Outside City Ratepayers, with any privileged or confidential information redacted."

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RFI 1-26 “Please provide a copy of the professional services agreement entered into by the Collin County Municipal Utility District No. 1 with Gilbert Wilburn PLLC, with any privileged or confidential information redacted.”

RFI 1-27 “Please provide a copy of all invoices received from Gilbert Wilburn PLLC by the Collin County Municipal Utility District No. 1, with any privileged or confidential information redacted.”

RFI 1-28 “Please provide a copy of the professional services agreement entered into by the Outside City Ratepayers with The Carlton Law Firm, PLLC, with any privileged or confidential information redacted.”

RFI 1-29 “Please provide a copy of all invoices received from The Carlton Law Firm, PLLC by the Outside City Ratepayers, with any privileged or confidential information redacted.”

RFI 1-30 “Please provide a copy of the professional services agreement entered into by the Collin County Municipal Utility District No. 1 with The Carlton Law Firm, PLLC, with any privileged or confidential information redacted.”

RFI 1-31 “Please provide a copy of all invoices received from The Carlton Law Firm, PLLC by the Collin County Municipal Utility District No. 1, with any privileged or confidential information redacted.”

Ratepayers have stated the exact same objections for each of the above-mentioned requests.

For the sake of brevity, the City will address each of the same copy and pasted, cookie cutter objections, collectively. Ratepayers assert the following objections to each of the aforementioned requests by the City.

Ratepayers claim that, “The request is not relevant to the subject matter of this docket and the request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.”¹³ They assert that copies of the agreement(s) sought, copies of the legal invoices sought, copies of the physical checks or other evidence of payment of legal

¹³ Objections of Outside City Ratepayers’ to City of Celina’s First Request for Information and First Request for Admissions at 3 (June 1, 2020).

services sought, copies of the professional services agreements sought, and designating who is or has been authorized to make decisions and representations on behalf of the Outside City Ratepayers “has no bearing on whether the City’s rates are just, reasonable, or based on the actual cost of providing services to Petitioners.”¹⁴ Ratepayers incorrectly deem these reasons as the only reasons these requested items could be relevant to this proceeding. While a determination of the reasonableness of the rates imposed and the cost of service are the critical issues to be addressed in this Docket, “[t]o be relevant, a document must only be reasonably calculated to lead to the discovery of admissible evidence.”¹⁵ Further, “a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or *defense* of the party seeking discovery or the claim or defense of any other party.”¹⁶ It has come to the City’s attention that one of the original signatory Petitioners (an Outside City Ratepayer) in this Docket is also on the Board of the Collin County MUD No. 1. As stated *supra*, the Collin County MUD No. 1 previously filed a petition appealing the same water and wastewater rates that are the subject of this case.¹⁷ The Petitioners in that case, the Collin County Municipal Utility District No. 1, and the Petitioners in this case, the Ratepayers, filed a joint motion to consolidate to align the parties.¹⁸ That motion was not granted as Docket No. 49448 was ultimately

¹⁴ *Id.* at 5-7, 9, 14-17, 19-22.

¹⁵ Tex. Pub. Util. Comm’n, *Joint Report and Application of Oncor Electric Delivery Company, LLC and NextEra Energy, Inc. for Regulatory Approvals Pursuant to PURA 14.101, 39.262, 39.915*, Docket No. 46238 (SOAH Discovery Order No. 1 Ruling on Oncor Electric Delivery Company LLC’s Objections to Texas Industrial Energy Consumers First Request for Information at 3 (Dec. 9, 2016)); see also Tex. R. Civ. P. 192.3(a).

¹⁶ Tex. R. Civ. P. 192.3(a) (emphasis added).

¹⁷ Tex. Pub. Util. Comm’n, *Petition of Collin County Municipal Utility District No. 1 Appealing Water and Wastewater Rates of the City of Celina and Request for Interim Rates*, Docket No. 49448 (April 15, 2019).

¹⁸ Petitioners’ Joint Motions to Consolidate, to Align Parties, and to Designate a Party Representative (June 27, 2019).

dismissed by the Commission.¹⁹ Generally, evidence of bias of a witness is relevant and admissible.²⁰ Ratepayers also incorrectly assert that these requests constitute “fishing expeditions.” However, because discovery of potential bias is permitted and because evidence is considered relevant if it has “any tendency to make a fact more or less probable than it would be without the evidence,”²¹ the City has a right to discovery any evidence of bias, motive, and any other factor that would discredit or reduce the probative value of the testimony submitted by the Ratepayers.²² The specific documents sought by the City (Agreements, invoices, and/or checks or other methods of payment) between Ratepayers’ counsel, and the Collin County MUD No. 1, and/or the Ratepayers themselves—who consist of at least one member of the Board of the Collin County MUD No.1—would tend to show that this case is motivated not to lower residential rates, but rather to improve Collin County MUD No. 1’s financial standing.

For the aforementioned reasons, the ALJ should overrule the Ratepayers’ objections and order Ratepayers to fully respond to these requests.

D. City’s Request to Ratepayers 1-18 and 1-19

RFI 1-18 “Please identify each Outside City Ratepayer who is a party to this proceeding who resides within the boundaries of Collin County Municipal Utility District No. 1.”

¹⁹ Tex. Pub. Util. Comm’n, *Order of Dismissal on Rehearing of Interim Appeal*, Docket No. 49448 (Jan. 28, 2020).

²⁰ Tex. R. Civ. P. 192.3(e)(5); Tex. R. Evid. 613(b); *In re Kemper Lloyds Ins. Co.*, No. 12-05-00309-CV, 2006 WL 475436, at *2 (Tex. App.—Tyler 2006, no pet.) (mem. op.); *Olinger v. Curry*, 926 S.W.2d 832, 833 (Tex. App.—Fort Worth 1996, writ granted).

²¹ Tex. R. Evid. 401.

²² *In re Kemper Lloyds Ins. Co.*, 2006 WL 475436, at *2-3.

RFI 1-19 “Please identify each Outside City Ratepayer who is a party to this proceeding who resides outside of the boundaries of Collin County Municipal Utility District No. 1.”

For both of the aforementioned requests, Ratepayers assert the following objections: “The request is not relevant to the subject matter of this docket and the request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.”²³ While not specifically asserting a “fishing expedition objection,” Ratepayers also state that, “Texas courts have repeatedly emphasized that discovery may not be used as a fishing expedition.”²⁴ Evidence is considered relevant if it has “any tendency to make a fact more or less probable than it would be without the evidence.”²⁵ Here, the City has a right to identify Ratepayers in this proceeding who do and do not reside within the boundaries of the Collin County MUD No. 1. This is not a fishing expedition. Ratepayers themselves have submitted prefiled testimony which asserts that there are Petitioners in this case who reside in the Light Farms Development, which is located within the Collin County MUD No. 1. The City has the right to know which of those Ratepayers reside within Collin County MUD No. 1. “[A] party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or *defense* of the party seeking discovery or the claim or defense of any other party.”²⁶ Further, as previously stated, a party has right to discover potential bias.²⁷ The City has been able

²³ Objections of Outside City Ratepayers’ to City of Celina’s First Request for Information and First Request for Admissions at 10-11 (June 1, 2020).

²⁴ *Id.*

²⁵ Tex. R. Evid. 401.

²⁶ Tex. R. Civ. P. 192.3(a) (emphasis added).

²⁷ *Id.* at 192.3(e)(5); Tex. R. Evid. 613(b); *In re Kemper Lloyds Ins. Co.*, 2006 WL 475436, at *2-3; *Olinger*, 926 S.W.2d at 833.

to independently identify that one of the Ratepayers in this case is also a board member of the Collin County MUD No. 1. If the City can identify where each of the Ratepayers reside, a determination that most, if not all, of Ratepayers reside in the are covered by the Collin County MUD No. 1 would tend to show that this case is motivated not to lower residential rates, but rather to improve Collin County MUD No. 1's financial standing.

For the aforementioned reasons, the ALJ should overrule the Ratepayers' objections and order Ratepayers to fully respond to these requests.

E. City's Request to Ratepayers 1-22

RFI 1-22 "Please provide all documents reflecting communications between any and all Outside City Ratepayers and the Outside City Ratepayers' consultant(s) or agent(s), and between any and all Outside City Ratepayers' consultant(s) or agent(s) and other Outside City Ratepayers' Consultant(s) or agent(s), that concern or reflect the analysis performed by an Outside City Ratepayer or any Outside City Ratepayers' consultant or agent, used to determine which water and wastewater facilities are not used and useful in rendering service to the public."

Ratepayers object to this request on the basis that the "request is overbroad, unduly burdensome, and the expense to respond with the proposed discovery vastly outweighs its likely benefit."²⁸ Ratepayers attempt to argue that the City's definition of the term "documents" is "extremely broad and includes extensive categories of materials."²⁹ The term document is defined by the City to ensure that the items requested, which are relevant to this proceeding, are produced in whatever form they may be. In their prefiled direct testimony, Ratepayers have specifically asserted that certain facilities, infrastructure, and/or systems are not used and useful to the Light

²⁸ Objections of Outside City Ratepayers' to City of Celina's First Request for Information and First Request for Admissions at 12 (June 1, 2020).

²⁹ *Id.*

Farms System—the system that is allegedly “essential” to the Light Farms development, the area where many of the Ratepayers reside.³⁰ Ratepayers cannot make this assertion and then, when asked to produce documents concerning the analysis performed by an Outside City Ratepayer or any Outside City Ratepayers' consultant or agent, used to determine which water and wastewater facilities are not used and useful in rendering service to the public, deny the City the ability to review how that determination was made. Ratepayers cannot now argue that this request is “overbroad” simply because the City defines a term to ensure relevant items are produced, in whatever form they may be.

For these reasons, the ALJ should overrule the Ratepayers' objections and order Ratepayers to fully respond to this request.

F. City's Request to Ratepayers 1-23

RFI 1-23 “Please identify the Outside City Ratepayers who are authorized to make decisions relating to this proceeding on behalf of all the Outside City Ratepayers and produce a copy of any document that designates that ratepayer, or ratepayers, to make those decisions.”

The Ratepayers assert the following objections to this request: “The request is cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense.³¹ They argue that the City has altered RFI 1-16 by requesting in RFI 1-23 “any document that designates that ratepayer or ratepayers to make such decisions.”³² Ratepayers cannot argue that this request is duplicative when they themselves assert that this request has been “altered.”

³⁰ Direct Testimony of Kevin Carlson, P.E. on Behalf of Outside City Ratepayers/Petitioners at 12 (May 26, 2020).

³¹ Objections of Outside City Ratepayers' to City of Celina's First Request for Information and First Request for Admissions at 13 (June 1, 2020).

³² *Id.*

This request seeks information in addition to merely identifying the names of those Outside City Ratepayers. This request *additionally* asks for that documentation demonstrating such designations. Further, Ratepayers have not asserted how producing these documents would be an “unnecessary expense.” Discovery is a significant part of any proceeding. Ratepayers chose to proceed with appealing the City’s rates by filing their petition before the Commission and they have filed extensive direct testimony. They cannot now argue that they should be exempt from producing relevant evidence because it will be an “unnecessary expense.” Such documentation could lead to discovery of admissible evidence by the City, making such expense very necessary.

For these reasons, the ALJ should overrule the Ratepayers’ objections and order Ratepayers to fully respond to this request.

G. City’s Request to Ratepayers 1-32 and 1-33

RFI 1-32 “Please provide the complete applications by the Collin County Municipal Utility District No. 1 filed with the Texas Commission on Environmental Quality requesting approval to issue the bonds, including but not limited to the engineer's report and the market study, but excluding the plans and specs and contract documents for facilities.”

RFI 1-33 “Please provide all documents related to the reimbursement report(s) submitted by or on behalf of the developer(s) and other persons to Collin County Municipal Utility District No. 1 requesting reimbursement from the proceeds of the bonds and any audit(s) of those reports.”

Ratepayers object to these requests on the basis that the request “is overbroad and not properly limited in time, scope, or relation to the facts at issue in this proceeding since the requests are for information occurring over the course of Collin County Municipal Utility District No. 1’s life. . . . Additionally, the request is unduly burdensome because it is obtainable from other sources

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that are more convenient, less burdensome, and less expensive.”³³ This request is not overly broad as it asks for the specific applications completed by the Collin County Municipal Utility District No. 1 filed with the Texas Commission on Environmental Quality (“TCEQ”) requesting approval to issue bonds and the documents related to reimbursement from the proceeds of those bonds. Further, “The scope . . . for purposes of discovery is far broader than it is for admission of documents into evidence.”³⁴ The Collin County Municipal Utility District No. 1’s bond obligations may be the motivating force behind testimony submitted by the Ratepayers in this case. As we have previously asserted, a party may discover evidence of bias.³⁵ Ratepayers incorrectly assert that the City’s request “concedes in its request . . . the records are publicly available through the TCEQ.”³⁶ The City only states that it seeks documents filed with the TCEQ, this does not mean that they are publicly available. If the City could be sure that all of these documents were publicly available, the City would not superfluously request such documents. The City believes some records filed with the TCEQ on the bonds may not be publicly available, either by the passage of time or because some detailed documents are not made publicly available. The City seeks the documents themselves or a detailed online source for the exact online location of all such responsive documents.

³³ *Id.* at 23-24.

³⁴ Tex. Pub. Util. Comm’n, Joint Report and Application of Oncor Electric Delivery Company, LLC and NextEra Energy, Inc. for Regulatory Approvals Pursuant to PURA 14.101, 39.262, 39.915, Docket No. 46238 (SOAH Discovery Order No. 1 Ruling on Oncor Electric Delivery Company LLC’s Objections to Texas Industrial Energy Consumers First Request for Information at 3 (Dec. 12, 2016)).

³⁵ Tex. R. Civ. P. 192.3(e)(5); Tex. R. Evid. 613(b); *In re Kemper Lloyds Ins. Co.*, 2006 WL 475436, at *2-3; *Olinger*, 926 S.W.2d at 833.

³⁶ Objections of Outside City Ratepayers’ to City of Celina’s First Request for Information and First Request for Admissions at 23-24 (June 1, 2020).

For these reasons, the ALJ should overrule the Ratepayers' objections and order Ratepayers to fully respond to these requests.

Requests for Admissions

H. City's Request for Admission to Ratepayers 1-1, 1-2, 1-3, 1-4, and 1-5

RFA 1-1 "Admit or deny that the Outside Ratepayers who own land within the boundaries of Collin County Municipal District No. 1 are successors or assigns of the signatories to the Amended and Restated Development Agreement dated March 12, 2007 and filed in the public records of Collin County, Texas as document no. 20071101001489980."

RFA 1-2 "Admit or deny that Section 6.3 of the Amended and Restated Development Agreement described in Request for Admission 1-1 states:

6.3 Rates. The retail water rates charged to customers located within the RPO Property shall not exceed 1511% of those rates duly adopted and uniformly charged by the City for "in-city" service. The retail wastewater rates charged to customers located within the RPG Property shall be the same as those duly adopted and uniformly charged by the City for "in-city" services. Each end-buyer (as defined in Section 12.14(a) below) takes title to its portion of the Property, subject to these rates, and acknowledges that such rates are reasonable.

RFA 1-3 "Admit or deny Section 6.3 of the Amended and Restated Development Agreement, as described in Request for Admission 1-1 above provides that the signatories to the Amended and Restated Development Agreement described in Request for Admission 1-1, and the successors and assigns of those signatories, have agreed that the water rates charged to the Ratepayers that are up to 150% of the rates duly adopted and uniformly charged by the City for "in city" service are reasonable."

RFA 1-4 "Admit or deny Section 2.10 of the First Amended and Restated Development Agreement described in Request for Admission 1-1 above states the following:

2.10 Waiver. RPG, the East Commercial Property Owner and the West Commercial Property Owner (a) waive any and all claims against the City regarding validity or enforceability of the Development Fees and easement

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and site donations described in this Agreement, and (b) release any claims that RPG, the East Commercial Property Owner and the West Commercial Property Owner may have against the City regarding such fees and donations (whether such claim exists on the Effective Date or arises in the future). In addition, RPG, the East Commercial Property Owner and the West Commercial Property Owner on behalf of themselves and their respective assigns and successors in interest, including subsequent owners of the Property (a) waive any and all claims against the City regarding validity or enforceability of the Park Fee, Water Impact Fee, and Sewer Impact Fee, and water rates described in this Agreement, and (b) release any claims that RPG, the East Commercial Property Owner and the West Commercial Property Owner, and their respective assigns and successors in interest may have against the City regarding the collection of such fees and the payment of all or part of such fees to RPG.

RFA 1-5 “Admit or deny RPG, the East Commercial Property Owner and West Commercial Property Owner, on behalf of themselves and their respective assigns and successors in interest, including subsequent owners of the Property, waive any and all claims against the City regarding validity or enforceability of the Park Fee, Water Impact Fee, Sewer Impact Fee, and water rates described in the First Amended and Restated Development Agreement described in Request for Admission 1-1 above.”

Ratepayers assert the same objections to each of the aforementioned request: “The request is not relevant to the subject matter of this docket and the request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. . . . Further, this request exceeds the scope permissible under Tex. R. Civ. P. 198.1 and is therefore improper. Requests for admission may be used to elicit ‘statements of opinion or of fact or the application of law to fact.’”³⁷ Ratepayers fail to quote all of Texas Rule of Civil Procedure 198.1. Significantly, they omit the portion that states that a party may serve on another party “written requests that the

³⁷ *Id.* at 25.

other party admit the truth of *any matter within the scope of discovery*.”³⁸ As a cardinal rule in discovery, “The question of ‘what is relevant to the subject matter’ is to be broadly construed.”³⁹ Further, “a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or *defense* of the party seeking discovery or the claim or defense of any other party.”⁴⁰ The admissions the City is seeking go directly to the probative value of evidence being proposed challenging whether the rates charged by the City of Celina are just and reasonable.⁴¹ Each of the aforementioned requests for admissions is based on a Development Agreement which was originally entered into in 2007 between the City and Forestar/RPG Land Company, LLC, the developer of the Light Farms subdivision. The MUD and the Petitioners are successors in interest to the developers who entered into this agreement and this agreement runs with the land which the Petitioners purchased. The agreement to which the Petitioners are bound specifically states, “Each end-buyer [...] takes title to its portion of the Property, subject to these rates, and acknowledges that such rates are reasonable.” Furthermore, the development agreement states that the MUD and the landowners, including the Petitioners, *waive any and all claims against the City* regarding validity or enforceability of the Park Fee, Water Impact Fee, Sewer Impact Fee, and water rates.

³⁸ Tex. R. Civ. P. 198.1 (emphasis added).

³⁹ Petitioner’s Motion to Compel City of Celina to Respond to Ratepayers’ First Request for Information at 11 (March 23, 2020) (citing *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016)).

⁴⁰ Tex. R. Civ. P. 192.3(a) (emphasis added).

⁴¹ Preliminary Order at 3 (Jan. 17, 2020).

It is highly relevant whether the Petitioners' testimony claiming that the City's rates are *not* reasonable can be challenged by a statement against interest where the Petitioners had specifically agreed that they *are* reasonable. This topic is squarely within the scope of discovery.

For these reasons, the ALJ should overrule the Ratepayers' objections and order Ratepayers to fully respond to these requests for admissions.

IV. CONCLUSION

WHEREFORE PREMISES CONSIDERED, the City of Celina respectfully requests the Administrative Law Judge overrule the Outside City Ratepayers' objections and compel them to fully and adequately respond to the City's Request for Information Nos. 1-8, 1-11, 1-13, 1-14, 1-15, 1-16, 1-18, 1-19, 1-22, 1-23, 1-24, 1-25, 1-26, 1-27, 1-28, 1-29, 1-30, 1-31, 1-32, and 1-33 and to the City's Request for Admissions Nos. 1-1, 1-2, 1-3, 1-4, and 1-5. The City also requests such other and further relief to which it may be justly entitled.

Respectfully submitted,

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City of Celina's Motion to Compel Outside Ratepayers to
Respond to City's 1st Request for Information and 1st Request for Admissions

CERTIFICATE OF SERVICE

I hereby certify that this document has been served on all parties of record on this 8th day of June, 2020, via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, and/or Certified Mail Return Receipt Requested.

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