



Control Number: 49225



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

PETITION BY OUTSIDE CITY	§	
RATEPAYERS APPEALING THE	§	PUBLIC UTILITY COMMISSION
WATER AND WASTEWATER RATES	§	
ESTABLISHED BY THE CITY OF	§	OF TEXAS
CELINA	§	

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

TO THE HONORABLE JUDGES SIANO AND QUINN:

COME NOW, the Outside City Ratepayers of the City of Celina ("Petitioners") and file this Response to the City of Celina's Motion to Compel Outside City Ratepayers to Respond to City's First Request for Information and First Request for Admissions, and in support thereof would show as follows.

I. BACKGROUND

The City of Celina ("City") filed and served its Motion to Compel Outside City Ratepayers to Respond to City's First Request for Information and First Request for Admissions on June 8, 2020. Pursuant to 16 Tex. Admin. Code ("TAC") § 22.144(f), "[r]esponses to a motion to compel shall be filed within five working days after receipt." Five working days from Monday, June 8, 2020, is Monday, June 15, 2020, and Petitioners filed this response timely.

II. STANDARD

Relevance in this proceeding is governed by the Commission rules, Texas Rules on Civil Procedure, and Texas Rules of Evidence and evaluated based on the issues laid out in the Texas Water Code and the Commission's Preliminary Order. Discovery requests that seek information on issues well outside the scope of the issues the Texas Legislature and Commission have expressly identified are not reasonably calculated to lead to any discovery of admissible evidence.

Commission 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 Relevance is “liberally construed to allow the litigants to obtain the fullest knowledge of the facts and issues prior to trial,” but it still must be “reasonably calculated to lead to the discovery of admissible evidence.”²

Texas Rules of Evidence explains information is “relevant” if it has “any tendency to make a fact more or less probable than it would be without the evidence.”³ Discovery requests may nevertheless be denied if “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.⁴

The Texas Water Code, Commission Rules, and the Commission’s Preliminary Order expressly outline the “claims” and “defenses” at issue in this case and deviating from these issues at this juncture would be improper. Texas Water Code and Commission Rules permits Petitioners to “appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates” to the Commission.⁵ The Commission shall hear such an appeal *de novo* and “shall ensure that every rate made, demanded, or received by any retail public utility ... shall be just and reasonable.”⁶ Additionally, “[r]ates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers.”⁷

Beyond the Texas Water Code and the Commission Rules, “[t]he Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any

¹ 16 TAC § 22.221(a).

² *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009); Tex. R. Civ. P. 192.3(a).

³ Tex. R. Evid. 401.

⁴ *Castillo*, 279 S.W.3d at 664.

⁵ Tex. Water Code § 13.047(b); 16 TAC § 24.101(a).

⁶ TWC § 13.047(j); 16 TAC § 24.101(d), (e).

⁷ TWC § 13.047(j); 16 TAC § 24.101(i).

proceeding referred to SOAH.”⁸ After considering recommendations of issues from the Petitioners, City, and Commission Staff, the Commission laid out ten issues for the ALJs to address. These are the ten issues to which the discovery requests must be relevant.

While the Preliminary Order and the issues outlined therein are not exhaustive, any ruling deviating from the Preliminary Order may be appealed to the Commission.⁹ To deviate from the Preliminary Order, circumstances must dictate that it is reasonable to do so and upon motion by the ALJs themselves or by the motion by any party.¹⁰ This has not yet occurred. Accordingly, any discovery requests that seek information on issues outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order are not reasonably calculated to lead to any discovery of admissible evidence.

III. ARGUMENT

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.**

While Petitioners objected to this Request on June 1, 2020, Petitioners have since responded no responsive documents to this request exist.¹¹ Accordingly, Petitioners’ response rendered the City’s motion to compel Petitioners to respond to this request moot.

Notwithstanding the foregoing, Petitioners objected to this Request on the bases that the request sought information that was cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense.¹² Petitioners hereby incorporate the

⁸ See *Preliminary Order* at 2 (Jan. 17, 2020); Tex. Gov’t Code § 2003.049(e).

⁹ *Preliminary Order* at 5.

¹⁰ *Id.*

¹¹ See *Objections of Outside City Ratepayers to City of Celina’s First Request for Information and First Request for Admissions*, (June 1, 2020) [hereinafter *Ratepayers’ Objections to City of Celina’s First RFI and RFA*]; *Outside City Ratepayers’ Responses to City of Celina’s First Request for Information and First Request for Admissions*, (June 10, 2020) [hereinafter *Ratepayers’ Responses to City of Celina’s First RFI and RFA*].

¹² See *Ratepayers’ Objections to City of Celina’s First RFI and RFA* (June 1, 2020).

Ratepayers' Objections to City of Celina's First RFI and RFA in its entirety. Petitioners hereby incorporate the *Ratepayers' Responses to City of Celina's First RFI and RFA* in its entirety.

The City is not entitled to discovery on information that is cumulative and duplicative because it renders a response unduly burdensome, an annoyance, and an unnecessary expense.¹³ The City sought the same information in Request 1-16, which duplicated and unnecessarily increased the costs for Petitioners to respond. The City appears to be going to great lengths to make this proceeding unnecessarily wasteful for Petitioners and the City by duplicating requests and asking for information outside the scope of the proceeding. If the Commission allows these efforts go unchecked, the City may effectively deprive Petitioners of their right to appeal under the Texas Water Code. As such, Petitioners objected to this request.

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.

While Petitioners objected to this Request on June 1, 2020, Petitioners have since responded where the City may find any responsive documents the Petitioners filed in this matter previously.¹⁴ Accordingly, Petitioners' response rendered the City's motion to compel Petitioners to respond to this request moot.

Notwithstanding the foregoing, in order to respond to this overly broad and unduly burdensome request, Petitioners would need to marshal all its evidence. Texas case law supports Petitioners' objection. The cases do not address a request for "all documents" intended to be introduced "as exhibits at the hearing of the merits" as broadly set forth in City's request.¹⁵ However, the case law does consider when parties argue that a narrowly-tailored request requires

¹³ See Tex. R. Civ. P. 192.4.

¹⁴ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); *Ratepayers' Responses to City of Celina's First RFI and RFA*, (June 10, 2020).

¹⁵ See *In re Sting Soccer Grp., LP*, 2017 WL 5897454 (Tex. App.—Dallas 2017, no pet); *In re Mohawk Rubber Co.*, 982 S.W. 2d 494 (Tex. App.—Texarkana 1998, no pet); *Stern v. State ex rel. Ansel*, 869 S.W.2d 614 (Tex. App.—Houston [14th Dist.] 1994).

a party to marshal its evidence. According to the case law, “Marshaling means ‘[a]rranging all of a party's evidence in the order that it will be presented at trial.’”¹⁶

The City requested all documents that may be presented as exhibits. Parties may request extensive discovery on a narrowly-tailored subject, but it may not request a party to marshal every document it may present as exhibits.¹⁷ Identifying all the documents as requested would require the Petitioners to present and arrange the evidence. This expansive search would require the Petitioners to expend extensive time and unnecessary funds to respond. Accordingly, Petitioners objected.

C. CITY’S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request sought information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request sought information protected by attorney client privilege and these privileges and protections have not been waived.¹⁸ Petitioners hereby incorporate the *Ratepayers’ Objections to City of Celina’s First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.¹⁹ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.²⁰ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.²¹

¹⁶ *In re Sting Soccer Grp., LP*, 2017 WL 5897454 (citing *Sheffield Dev. Co., Inc. v. Carter & Burgess, Inc.*, No. 02-11-00204-CV, 2012 WL 6632500, at *6 (Tex. App.—Fort Worth Dec. 21, 2012, pet. dismissed) (quoting Black's Law Dictionary 1063 (9th ed. 2009))).

¹⁷ See Tex. R. Civ. P. 194.2, 197.1.

¹⁸ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020).

¹⁹ 16 TAC § 24.101(e).

²⁰ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

²¹ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

A request for “the agreement or agreements, in whatever form, between the attorneys representing the Outside City Ratepayers in this proceeding” does not relate to a *de novo* review of whether the City’s rates are just and reasonable, and it seeks information on issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Petitioners’ legal services agreements do not relate to the City’s costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners’ objections or ordering the filing of a privilege index.²²

D. CITY’S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.²³ Petitioners hereby incorporate the *Ratepayers’ Objections to City of Celina’s First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.²⁴ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just

²² See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

²³ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020).

²⁴ 16 TAC § 24.101(e).

and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.²⁵ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.²⁶

A request for “all invoices for legal service delivered by, or on behalf of, the attorneys representing the Outside City Ratepayers in this proceeding,” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Petitioners’ invoices for legal services do not impact the City’s costs or relate to its rates in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners’ objections or ordering the filing of a privilege index.²⁷

E. CITY’S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client

²⁵ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

²⁶ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

²⁷ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

privilege and these privileges and protections have not been waived.²⁸ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.²⁹ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.³⁰ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.³¹

A request for “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” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Petitioners’ checks or other payments for legal services do not relate to the City’s costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners’ objections or ordering the filing of a privilege index.³²

²⁸ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

²⁹ 16 TAC § 24.101(e).

³⁰ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

³¹ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

³² See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

F. CITY'S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.³³ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.³⁴ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.³⁵ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.³⁶

The information requested here seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this

³³ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

³⁴ 16 TAC § 24.101(e).

³⁵ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

³⁶ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

matter and an in-camera review before any order is entered denying Petitioners' objections or ordering the filing of a privilege index.³⁷

G. CITY'S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.³⁸ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.³⁹ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁴⁰ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁴¹

Whether a particular petitioner "resides within Collin County Municipal Utility District No. 1" is not a relevant fact with regard to the City's cost to provide service and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

³⁷ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

³⁸ See *id.*

³⁹ 16 TAC § 24.101(e).

⁴⁰ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁴¹ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

H. CITY’S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁴² Petitioners incorporate the *Ratepayers’ Objections to City of Celina’s First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁴³ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁴⁴ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁴⁵

Whether a particular petitioner “resides outside the boundaries of Collin County Municipal Utility District No. 1” is not a relevant fact with regard to the City’s cost to provide service and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

I. CITY’S REQUEST TO RATEPAYERS 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

⁴² See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020).

⁴³ 16 TAC § 24.101(e).

⁴⁴ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁴⁵ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

Ratepayers' consultant or agent, used to determine which water and wastewater facilities are not used and useful in rendering service to the public.

While Petitioners objected to this Request on June 1, 2020, Petitioners have since responded no responsive documents to this request exist.⁴⁶ Accordingly, Petitioners' response has rendered the City's motion to compel Petitioners to respond to this request moot.

Notwithstanding the foregoing, Petitioners objected to this Request on the basis that the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁴⁷ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

As already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁴⁸

J. CITY'S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the basis that the request seeks information that is cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense.⁴⁹ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety. Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

The City is not entitled to discovery on information that is cumulative and duplicative because it renders a response unduly burdensome, an annoyance, and an unnecessary expense.⁵⁰

⁴⁶ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); *Ratepayers' Responses to City of Celina's First RFI and RFA*, (June 10, 2020).

⁴⁷ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See Tex. R. Civ. P. 192.4.

The City seeks the same information in Request 1-16, which duplicates and increases the costs for Petitioners to respond. The City appears to be going to lengths to make this proceeding unnecessarily expensive for Petitioners by duplicating requests and asking for information outside the scope of the proceeding. If these efforts go unchecked, the City may effectively deprive Petitioners of their right to appeal under the Texas Water Code. As such, Petitioners object to this request.

K. CITY’S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁵¹ Petitioners incorporate the *Ratepayers’ Objections to City of Celina’s First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁵² Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁵³ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁵⁴

A request for “the professional services agreement entered into by the Outside City Ratepayers with Gilbert Wilburn PLLC” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Petitioners’ legal services agreements do not relate to the City’s costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking

⁵¹ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020).

⁵² 16 TAC § 24.101(e).

⁵³ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁵⁴ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners' objections or ordering the filing of a privilege index.⁵⁵

L. CITY'S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁵⁶ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁵⁷ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁵⁸ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁵⁹

⁵⁵ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

⁵⁶ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

⁵⁷ 16 TAC § 24.101(e).

⁵⁸ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁵⁹ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

A request for “invoices received from Gilbert Wilburn PLLC by the Outside City Ratepayers” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Collin County Municipal Utility District’s legal services agreements do not relate to the City’s costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners’ objections or ordering the filing of a privilege index.⁶⁰

M. CITY’S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁶¹ Petitioners incorporate the *Ratepayers’ Objections to City of Celina’s First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁶² Any other proceedings have no bearing on this action to determine whether the rates the City charges are just

⁶⁰ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

⁶¹ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020).

⁶² 16 TAC § 24.101(e).

and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁶³ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁶⁴

A request for “the professional services agreement entered into by the Collin County Municipal Utility District No. 1 with Gilbert Wilburn PLLC” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Collin County Municipal Utility District’s legal services agreements do not relate to the City’s costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners’ objections or ordering the filing of a privilege index.⁶⁵

N. CITY’S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client

⁶³ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁶⁴ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

⁶⁵ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

privilege and these privileges and protections have not been waived.⁶⁶ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁶⁷ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁶⁸ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁶⁹

A request for “a copy of all invoices received from Gilbert Wilburn PLLC by the Collin County Municipal Utility District No. 1” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Collin County Municipal Utility District’s legal services invoices do not relate to the City’s costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners’ objections or ordering the filing of a privilege index.⁷⁰

⁶⁶ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

⁶⁷ 16 TAC § 24.101(e).

⁶⁸ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁶⁹ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

⁷⁰ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

O. CITY'S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁷¹ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁷² Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁷³ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁷⁴

A request for "the professional services agreement entered into by the Outside City Ratepayers with The Carlton Law Firm, PLLC" does not relate to a *de novo* review of the City's rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Petitioners' legal services agreements do not relate to the City's costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked

⁷¹ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

⁷² 16 TAC § 24.101(e).

⁷³ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁷⁴ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners' objections or ordering the filing of a privilege index.⁷⁵

P. CITY'S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁷⁶ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁷⁷ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁷⁸ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁷⁹

A request for "a copy of all invoices received from The Carlton Law Firm, PLLC by the Outside City Ratepayers" does not relate to a *de novo* review of the City's rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Collin County Municipal Utility District's legal services agreements do not relate to the City's costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the

⁷⁵ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

⁷⁶ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

⁷⁷ 16 TAC § 24.101(e).

⁷⁸ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁷⁹ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners' objections or ordering the filing of a privilege index.⁸⁰

Q. CITY'S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁸¹ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁸² Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁸³ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁸⁴

⁸⁰ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

⁸¹ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

⁸² 16 TAC § 24.101(e).

⁸³ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁸⁴ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

A request for “the professional services agreement entered into by the Collin County Municipal Utility District No. 1 with The Carlton Law Firm, PLLC” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Collin County Municipal Utility District’s legal services agreements do not relate to the City’s costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners’ objections or ordering the filing of a privilege index.⁸⁵

R. CITY’S REQUEST TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived.⁸⁶ Petitioners incorporate the *Ratepayers’ Objections to City of Celina’s First RFI and RFA* in its entirety.

According to Commission Rules, this proceeding is reviewed *de novo*.⁸⁷ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just

⁸⁵ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

⁸⁶ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020).

⁸⁷ 16 TAC § 24.101(e).

and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁸⁸ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.⁸⁹

A request for “a copy of all invoices received from The Carlton Law Firm, PLLC by the Collin County Municipal Utility District No. 1” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of the Texas Water Code, Commission Rules, and Preliminary Order. Collin County Municipal Utility District’s legal services invoices do not relate to the City’s costs in any way. As such, this request is not relevant to the subject matter of this docket, seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Accordingly, this request is excessively burdensome and creates unnecessary costs for Petitioners.

Additionally, as already stated and incorporated through reference, this request seeks information that is protected by attorney client privilege and these privileges and protections have not been waived. Because Petitioners objected to the relevance of the request, as well as invoked privilege, Petitioners also objected to filing a privilege log or index and requested a hearing on this matter and an in-camera review before any order is entered denying Petitioners’ objections or ordering the filing of a privilege index.⁹⁰

S. CITY’S REQUEST TO RATEPAYERS 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.

While Petitioners objected to this Request on June 1, 2020, Petitioners have since responded and confirmed the records are equally available to the City from the Texas Commission on Environmental Quality and the City has obtained the same information from Collin County

⁸⁸ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

⁸⁹ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

⁹⁰ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

Municipal Utility District No. 1 through a request under the Texas Public Information Act.⁹¹ Accordingly, Petitioners' response has rendered the City's motion to compel Petitioners to respond to this request moot.

Notwithstanding the foregoing, the Commission procedural rules are clear in how responding parties should respond for requests for information that "may be derived or ascertained from local public records."⁹² The "responding party shall not be obligated to produce the documents for the requesting party. It shall be sufficient answer to identify with particularity the public records that contain the requested information."⁹³ Petitioners have already met the Commission's requirement in their response.⁹⁴ Any further demands from the City for this information is cumulative and duplicative, which renders a response unduly burdensome, an annoyance, and an unnecessary expense.⁹⁵ The City appears to be going to lengths to make this proceeding unnecessarily expensive for Petitioners by duplicating requests and asking for information outside the scope of the proceeding. If these efforts go unchecked, the City may effectively deprive Petitioners of their right to appeal under the Texas Water Code. As such, Petitioners object to this request.

T. CITY'S REQUEST TO RATEPAYERS 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.

While Petitioners objected to this Request on June 1, 2020, Petitioners have since responded and confirmed the records are equally available to the City from the Texas Commission on Environmental Quality and the City has obtained the same information from Collin County

⁹¹ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); *Ratepayers' Responses to City of Celina's First RFI and RFA*, (June 10, 2020).

⁹² 16 TAC § 22.144(c)(2)(D).

⁹³ *Id.*

⁹⁴ *Ratepayers' Responses to City of Celina's First RFI and RFA*, (June 10, 2020).

⁹⁵ See Tex. R. Civ. P. 192.4 (2019).

Municipal Utility District No. 1 through a request under the Texas Public Information Act.⁹⁶ Accordingly, Petitioners' response has rendered the City's motion to compel Petitioners to respond to this request moot.

Notwithstanding the foregoing, the Commission procedural rules are clear in how responding parties should respond for requests for information that "may be derived or ascertained from local public records."⁹⁷ The "responding party shall not be obligated to produce the documents for the requesting party. It shall be sufficient answer to identify with particularity the public records that contain the requested information."⁹⁸ Petitioners have already met the Commission's requirement in their response.⁹⁹ Any further demands from the City for this information is cumulative and duplicative, which renders a response unduly burdensome, an annoyance, and an unnecessary expense.¹⁰⁰ The City appears to be going to lengths to make this proceeding unnecessarily expensive for Petitioners by duplicating requests and asking for information outside the scope of the proceeding. If these efforts go unchecked, the City may effectively deprive Petitioners of their right to appeal under the Texas Water Code. As such, Petitioners object to this request.

U. CITY'S REQUEST FOR ADMISSION TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) the request exceeds the scope permissible under Tex. R. Civ. P.

⁹⁶ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); *Ratepayers' Responses to City of Celina's First RFI and RFA*, (June 10, 2020).

⁹⁷ 16 TAC § 22.144(c)(2)(D).

⁹⁸ *Id.*

⁹⁹ *Ratepayers' Responses to City of Celina's First RFI and RFA*, (June 10, 2020).

¹⁰⁰ See Tex. R. Civ. P. 192.4 (2019).

198.1.¹⁰¹ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

Texas Water Code and Commission Rules permit Ratepayers to “appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates” to the Commission.¹⁰² According to Commission Rules, this proceeding is reviewed *de novo*.¹⁰³ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, or whether the rates are unreasonably preferential, prejudicial, or discriminatory.¹⁰⁴ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.¹⁰⁵

Additionally, as already stated and incorporated through reference, this request seeks an admission outside the scope of the Commission Rules and Texas Rules of Civil Procedure. The Commission Discovery Procedures will overrule the Texas Rules of Civil Procedure where they conflict because the Rules are not incorporated.¹⁰⁶ According to the Commission:

The Texas Rules of Civil Procedure regarding discovery are not controlling in Commission proceedings; rather, the Commission’s procedural rules govern such proceedings. The Commission’s rules provide for forms of discovery and a scope of discovery that differ in some respects from those provided by the Texas civil rules. While the Commission may look to the Texas civil rules for guidance, those rules are not controlling.¹⁰⁷

¹⁰¹ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

¹⁰² TWC § 13.047(b); 16 TAC §24.101(a).

¹⁰³ 16 TAC § 24.101(e).

¹⁰⁴ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

¹⁰⁵ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

¹⁰⁶ *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County Texas*, Docket No. 32070, Order on Appeal of Order No. 9 at 1 (Nov. 1, 2006) (reaffirmed in *Memorandum from Chairman DeAnn T. Walker, Public Utility Commission of Texas, to Commissioner Arthur C. D'Andrea & Commissioner Shelly Botkin, Public Utility Commission of Texas*, Docket No. 49831 (Dec. 12, 2019).

¹⁰⁷ *Id.*

In contrast to the Texas Rules of Civil Procedure, where a party may request a party “admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact, or the genuineness of any documents served with the request or otherwise made available for inspection and copying,” the Commission Rules on discovery only mention “requests for admission of *fact*.”¹⁰⁸ While requests for admission under the Texas Rules of Civil Procedure may be applied to several circumstances, the Commission rules specifically limit the requests to those of fact.¹⁰⁹ Although the process follows that of the Texas Rules of Civil Procedure, the Commission chose to limit admissions to those only of fact, as evidenced by the specificity in the Commission rules in comparison to the breadth allowed under the Texas Rules of Civil Procedure.

Further, Texas has long held that requests for admission are only meant to eliminate “matters about which there is no real controversy, but which may be difficult or expensive to prove.”¹¹⁰ Discovery rules were not designed as traps for the unwary, nor should they be construed to prevent Petitioners from presenting the truth.¹¹¹ While requests for admission under the Texas Rules of Civil Procedure may be used to elicit “statements of opinion or of fact or the application of law to fact,” they may not be used to dispose of the case in its entirety.¹¹² Requests that go to the heart of what is directly in controversy, would force parties to admit the validity of their claims, or concede any defenses are not intended to be resolved through requests for admission.¹¹³

Here, the City admits 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.”¹¹⁴ Such a request is improper under the Commission Rules, as it requests an

¹⁰⁸ Compare Tex. R. Civ. P. 198.1 with 16 TAC § 22.144(a), (j).

¹⁰⁹ Compare Tex. R. Civ. P. 198.1 with 16 TAC § 22.144(a), (j) (stating “Requests for admissions of *facts* shall be made in accordance with the Texas Rules of Civil Procedure.”).

¹¹⁰ *Stelly v. Papania*, 927 S.W.2d 620 (Tex. 1996).

¹¹¹ *Id.*

¹¹² *Marino v. King*, 355 S.W.3d 629, 632 (Tex. 2011); *Stelly*, 927 S.W.2d at 622.

¹¹³ Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

¹¹⁴ *City of Celina's Motion to Compel Outside Ratepayers to Respond to City's 1st Request for Information and 1st Request for Admissions* at 17.

admission more than just fact.¹¹⁵ And further, it is improper under the Texas Rules of Civil Procedure because the requests seek admission on issues that are directly in controversy.¹¹⁶ Accordingly, Petitioners request the ALJs sustain their objection.

V. CITY'S REQUEST FOR ADMISSION TO RATEPAYERS 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 RPG Property shall not exceed 150% 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) this request exceeds the scope permissible under Tex. R. Civ. P. 198.1.¹¹⁷ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

Texas Water Code and Commission Rules permit Ratepayers to "appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates" to the Commission.¹¹⁸ According to Commission Rules, this proceeding is reviewed *de novo*.¹¹⁹ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, or whether the rates are unreasonably preferential, prejudicial, or discriminatory.¹²⁰

¹¹⁵ See 16 TAC § 22.144(a), (j).

¹¹⁶ See Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

¹¹⁷ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

¹¹⁸ TWC § 13.047(b); 16 TAC §24.101(a).

¹¹⁹ 16 TAC § 24.101(e).

¹²⁰ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.¹²¹

Additionally, as already stated and incorporated through reference, this request seeks an admission outside the scope of the Commission Rules and Texas Rules of Civil Procedure. The Commission Discovery Procedures will overrule the Texas Rules of Civil Procedure where they conflict because the Rules are not incorporated.¹²² According to the Commission:

The Texas Rules of Civil Procedure regarding discovery are not controlling in Commission proceedings; rather, the Commission's procedural rules govern such proceedings. The Commission's rules provide for forms of discovery and a scope of discovery that differ in some respects from those provided by the Texas civil rules. While the Commission may look to the Texas civil rules for guidance, those rules are not controlling.¹²³

In contrast to the Texas Rules of Civil Procedure, where a party may request a party "admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact, or the genuineness of any documents served with the request or otherwise made available for inspection and copying," the Commission Rules on discovery only mention "requests for admission of *fact*."¹²⁴ While requests for admission under the Texas Rules of Civil Procedure may applied to several circumstance, the Commission rules specifically limit the requests to those of fact.¹²⁵ Although the process follows that of the Texas Rules of Civil Procedure, the Commission chose to limit admissions to those only of fact, as evidenced by the

¹²¹ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

¹²² *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County Texas*, Docket No. 32070, Order on Appeal of Order No. 9 at 1 (Nov. 1, 2006) (reaffirmed in *Memorandum from Chairman DeAnn T. Walker, Public Utility Commission of Texas, to Commissioner Arthur C. D'Andrea & Commissioner Shelly Botkin, Public Utility Commission of Texas*, Docket No. 49831 (Dec. 12, 2019).

¹²³ *Id.*

¹²⁴ Compare Tex. R. Civ. P. 198.1 with 16 TAC § 22.144(a), (j).

¹²⁵ Compare Tex. R. Civ. P. 198.1 with 16 TAC § 22.144(a), (j) (stating "Requests for admissions of *facts* shall be made in accordance with the Texas Rules of Civil Procedure.").

specificity in the Commission rules in comparison to the breadth allowed under the Texas Rules of Civil Procedure.

Further, Texas has long held that requests for admission are only meant to eliminate “matters about which there is no real controversy, but which may be difficult or expensive to prove.”¹²⁶ Discovery rules were not designed as traps for the unwary, nor should they be construed to prevent Petitioners from presenting the truth.¹²⁷ While requests for admission under the Texas Rules of Civil Procedure may be used to elicit “statements of opinion or of fact or the application of law to fact,” they may not be used to dispose of the case in its entirety.¹²⁸ Requests that go to the heart of what is directly in controversy, would force parties to admit the validity of their claims, or concede any defenses are not intended to be resolved through requests for admission.¹²⁹

Here, the City admits 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.”¹³⁰ Such a request is improper under the Commission Rules, as it requests an admission more than just fact.¹³¹ And further, it is improper under the Texas Rules of Civil Procedure because the requests seek admission on issues that are directly in controversy.¹³² Accordingly, Petitioners request the ALJs sustain their objection.

¹²⁶ *Stelly v. Papania*, 927 S.W.2d 620 (Tex. 1996).

¹²⁷ *Id.*

¹²⁸ *Marino v. King*, 355 S.W.3d 629, 632 (Tex. 2011); *Stelly*, 927 S.W.2d at 622.

¹²⁹ Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

¹³⁰ *City of Celina’s Motion to Compel Outside Ratepayers to Respond to City’s 1st Request for Information and 1st Request for Admissions* at 17 (June 8, 2020).

¹³¹ See 16 TAC § 22.144(a), (j).

¹³² See Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

W. CITY'S REQUEST FOR ADMISSION TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) this request exceeds the scope permissible under Tex. R. Civ. P. 198.1.¹³³ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

Texas Water Code and Commission Rules permit Ratepayers to "appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates" to the Commission.¹³⁴ According to Commission Rules, this proceeding is reviewed *de novo*.¹³⁵ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, or whether the rates are unreasonably preferential, prejudicial, or discriminatory.¹³⁶ This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.¹³⁷

Additionally, as already stated and incorporated through reference, this request seeks an admission outside the scope of the Commission Rules and Texas Rules of Civil Procedure. The Commission Discovery Procedures will overrule the Texas Rules of Civil Procedure where they conflict because the Rules are not incorporated.¹³⁸ According to the Commission:

¹³³ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

¹³⁴ TWC § 13.047(b); 16 TAC §24.101(a).

¹³⁵ 16 TAC § 24.101(e).

¹³⁶ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

¹³⁷ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

¹³⁸ *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County Texas*, Docket No. 32070, Order on Appeal of Order No. 9 at 1 (Nov. 1, 2006) (reaffirmed in *Memorandum from Chairman DeAnn T. Walker, Public Utility Commission of Texas*, to

The Texas Rules of Civil Procedure regarding discovery are not controlling in Commission proceedings; rather, the Commission's procedural rules govern such proceedings. The Commission's rules provide for forms of discovery and a scope of discovery that differ in some respects from those provided by the Texas civil rules. While the Commission may look to the Texas civil rules for guidance, those rules are not controlling.¹³⁹

In contrast to the Texas Rules of Civil Procedure, where a party may request a party "admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact, or the genuineness of any documents served with the request or otherwise made available for inspection and copying," the Commission Rules on discovery only mention "requests for admission of *fact*."¹⁴⁰ While requests for admission under the Texas Rules of Civil Procedure may applied to several circumstance, the Commission rules specifically limit the requests to those of fact.¹⁴¹ Although the process follows that of the Texas Rules of Civil Procedure, the Commission chose to limit admissions to those only of fact, as evidenced by the specificity in the Commission rules in comparison to the breadth allowed under the Texas Rules of Civil Procedure.

Further, Texas has long held that requests for admission are only meant to eliminate "matters about which there is no real controversy, but which may be difficult or expensive to prove."¹⁴² Discovery rules were not designed as traps for the unwary, nor should they be construed to prevent Petitioners from presenting the truth.¹⁴³ While requests for admission under the Texas Rules of Civil Procedure may be used to elicit "statements of opinion or of fact or the application of law to fact," they may not be used to dispose of the case in its entirety.¹⁴⁴ Requests that go to

Commissioner Arthur C. D'Andrea & Commissioner Shelly Botkin, Public Utility Commission of Texas, Docket No. 49831 (Dec. 12, 2019).

¹³⁹ *Id.*

¹⁴⁰ Compare Tex. R. Civ. P. 198.1 with 16 TAC § 22.144(a), (j).

¹⁴¹ Compare Tex. R. Civ. P. 198.1 with 16 TAC § 22.144(a), (j) (stating "Requests for admissions of *facts* shall be made in accordance with the Texas Rules of Civil Procedure.").

¹⁴² *Stelly v. Papania*, 927 S.W.2d 620 (Tex. 1996).

¹⁴³ *Id.*

¹⁴⁴ *Marino v. King*, 355 S.W.3d 629, 632 (Tex. 2011); *Stelly*, 927 S.W.2d at 622.

the heart of what is directly in controversy, would force parties to admit the validity of their claims, or concede any defenses are not intended to be resolved through requests for admission.¹⁴⁵

Here, the City admits 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.”¹⁴⁶ Such a request is improper under the Commission Rules, as it requests an admission more than just fact.¹⁴⁷ And further, it is improper under the Texas Rules of Civil Procedure because the requests seek admission on issues that are directly in controversy.¹⁴⁸ Accordingly, Petitioners request the ALJs sustain their objection.

X. CITY’S REQUEST FOR ADMISSION TO RATEPAYERS 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 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.

¹⁴⁵ Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

¹⁴⁶ *City of Celina’s Motion to Compel Outside Ratepayers to Respond to City’s 1st Request for Information and 1st Request for Admissions*, at 17 (June 8, 2020).

¹⁴⁷ See 16 TAC § 22.144(a), (j).

¹⁴⁸ See Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) this request exceeds the scope permissible under Tex. R. Civ. P. 198.1.¹⁴⁹ Petitioners incorporate the *Ratepayers' Objections to City of Celina's First RFI and RFA* in its entirety.

Texas Water Code and Commission Rules permit Ratepayers to “appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates” to the Commission.¹⁵⁰ According to the Commission Rules, this proceeding is reviewed *de novo*.¹⁵¹ Any other proceedings have no bearing on this action to determine whether the rates the City charges are just and reasonable, or whether the rates are unreasonably preferential, prejudicial, or discriminatory.¹⁵² This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.¹⁵³

Additionally, as already stated and incorporated through reference, this request seeks an admission outside the scope of the Commission Rules and Texas Rules of Civil Procedure. The Commission Discovery Procedures will overrule the Texas Rules of Civil Procedure where they conflict because the Rules are not incorporated.¹⁵⁴ According to the Commission:

The Texas Rules of Civil Procedure regarding discovery are not controlling in Commission proceedings; rather, the Commission’s procedural rules govern such proceedings. The Commission’s rules provide for forms of discovery and a scope of discovery that differ in some respects from those provided by the Texas civil

¹⁴⁹ See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020).

¹⁵⁰ TWC § 13.047(b); 16 TAC §24.101(a).

¹⁵¹ 16 TAC § 24.101(e).

¹⁵² TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

¹⁵³ TWC § 13.047(j); 16 TAC § 24.101(d), (i).

¹⁵⁴ *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County Texas*, Docket No. 32070, Order on Appeal of Order No. 9 at 1 (Nov. 1, 2006) (reaffirmed in *Memorandum from Chairman DeAnn T. Walker, Public Utility Commission of Texas, to Commissioner Arthur C. D'Andrea & Commissioner Shelly Botkin, Public Utility Commission of Texas*, Docket No. 49831 (Dec. 12, 2019).

rules. While the Commission may look to the Texas civil rules for guidance, those rules are not controlling.¹⁵⁵

In contrast to the Texas Rules of Civil Procedure, where a party may request a party “admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact, or the genuineness of any documents served with the request or otherwise made available for inspection and copying,” the Commission Rules on discovery only mention “requests for admission of *fact*.”¹⁵⁶ While requests for admission under the Texas Rules of Civil Procedure may applied to several circumstance, the Commission rules specifically limit the requests to those of fact.¹⁵⁷¹⁵⁸ Although the process follows that of the Texas Rules of Civil Procedure, the Commission chose to limit admissions to those only of fact, as evidenced by the specificity in the Commission rules in comparison to the breadth allowed under the Texas Rules of Civil Procedure.

Further, Texas has long held that requests for admission are only meant to eliminate “matters about which there is no real controversy, but which may be difficult or expensive to prove.”¹⁵⁹ Discovery rules were not designed as traps for the unwary, nor should they be construed to prevent Petitioners from presenting the truth. While requests for admission under the Texas Rules of Civil Procedure may be used to elicit “statements of opinion or of fact or the application of law to fact,” they may not be used to dispose of the case in its entirety.¹⁶⁰ Requests that go to the heart of what is directly in controversy, would force parties to admit the validity of their claims, or concede any defenses are not intended to be resolved through requests for admission.¹⁶¹

¹⁵⁵ *Id.*

¹⁵⁶ Compare Tex. R. Civ. P. 198.1 with 16 TAC § 22.144(a), (j).

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¹⁵⁸ *Id.*

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¹⁶⁰ *Marino v. King*, 355 S.W.3d 629, 632 (Tex. 2011); *Stelly*, 927 S.W.2d at 622.

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Here, the City admits 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.”¹⁶² Such a request is improper under the Commission Rules, as it requests an admission more than just fact.¹⁶³ And further, it is improper under the Texas Rules of Civil Procedure because the requests seek admission on issues that are directly in controversy.¹⁶⁴ Accordingly, Petitioners request the ALJs sustain their objection.

Y. CITY’S REQUEST FOR ADMISSION TO RATEPAYERS 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.

Petitioners objected to this Request on the bases that (1) the request seeks information not relevant to the subject matter of this docket and not reasonably calculated to lead to the discovery of admissible evidence, and (2) this request exceeds the scope permissible under Tex. R. Civ. P. 198.1.¹⁶⁵ Petitioners incorporate the *Ratepayers’ Objections to City of Celina’s First RFI and RFA* in its entirety.

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¹⁶² *City of Celina’s Motion to Compel Outside Ratepayers to Respond to City’s 1st Request for Information and 1st Request for Admissions*, at 17 (June 8, 2020).

¹⁶³ See 16 TAC § 22.144(a), (j).

¹⁶⁴ See Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

¹⁶⁵ See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020).

¹⁶⁶ Tex. Water Code § 13.047(b); 16 TAC §24.101(a).

¹⁶⁷ 16 TAC § 24.101(e).

¹⁶⁸ TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

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¹⁷⁰ *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County Texas*, Docket No. 32070, Order on Appeal of Order No. 9 at 1 (Nov. 1, 2006) (reaffirmed in *Memorandum from Chairman DeAnn T. Walker, Public Utility Commission of Texas, to Commissioner Arthur C. D'Andrea & Commissioner Shelly Botkin, Public Utility Commission of Texas*, Docket No. 49831 (Dec. 12, 2019).

¹⁷¹ *Id.*

¹⁷² Compare Tex. R. Civ. P. 198.1 with 16 TAC § 22.144(a), (j).

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IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Petitioners, the Outside City Ratepayers of the City of City of Celina, respectfully request the Administrative Law Judges deny the City of Celina’s Motion to Compel, grant Petitioners’ Objections to the City’s First Request for

¹⁷⁴ *Stelly v. Papania*, 927 S.W.2d 620 (Tex. 1996).

¹⁷⁵ *Id.*

¹⁷⁶ *Marino v. King*, 355 S.W.3d 629, 632 (Tex. 2011); *Stelly*, 927 S.W.2d at 622.

¹⁷⁷ Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

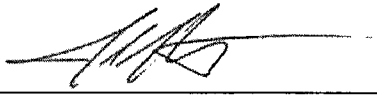
¹⁷⁸ *City of Celina’s Motion to Compel Outside Ratepayers to Respond to City’s 1st Request for Information and 1st Request for Admissions*, at 17 (June 8, 2020).

¹⁷⁹ See 16 TAC § 22.144(a), (j).

¹⁸⁰ See Tex. R. Civ. P. 198.1; *Marino*, 355 S.W.3d at 632; *Stelly*, 927 S.W.2d at 622.

Information and First Request for Admissions, and for such other and further relief to which the Outside City Ratepayers may be entitled.

Respectfully submitted,

By: 

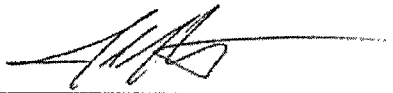
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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 15th day of June 2020.



John J. Carlton