



Control Number: 49225



Item Number: 114

Addendum StartPage: 0



**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	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**CITY OF CELINA’S MOTION TO COMPEL OUTSIDE CITY RATEPAYERS TO
RESPOND TO CITY’S SECOND REQUEST FOR INFORMATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES 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 Second Set of Requests for Information (“RFI”), 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.

On May 28, 2020, the City filed its Second Request for Information to the Ratepayers. On June 8, 2020, Ratepayers filed Objections to City’s RFI Nos. Nos. 2-6, 2-7, 2-10, 2-11, 2-12, 2-

PCD: 270534
270534

City of Celina’s Motion to Compel Outside Ratepayers to
Respond to City’s 2nd Request for Information

114

13, 2-14, 2-16, 2-17, 2-18, 2-19, 2-20, 2-21, 2-22, 2-23, 2-24, 2-25, 2-26, 2-27, 2-29, 2-30, 2-32, 2-33, 2-34, 2-35, 2-36, and 2-37. 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 be reasonably calculated to lead to the discovery of admissible evidence."³ Under the Texas Rules

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 *Axelsson, Inc. v. McIlhenny*, 798 S.W.2d 550, 553 (Tex.1990)).

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).

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 2-6

To the extent not provided in workpapers already filed with the ratepayers’ testimony, please provide any documents, data, and workpapers which support, are relevant, or are associated with the development of the testimony of each person providing testimony on behalf of the Outside Ratepayers.

The Ratepayers objected to this request, claiming: “The request is cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense.”⁶ To support this contention, Ratepayers first cite that the materials sought by this request are “also responsive under Request 2-5,” which “increases the request’s burden and unreasonableness.”⁷ As acknowledged in their *Objections*, however, the City has “agreed that RFI 2-5 is repetitive of RFI 2-6 and need not be answered.”⁸ Ratepayers cannot now claim that RFI

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.”).

⁶ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 2 (June 8, 2020).

⁷ *Id.*

⁸ *Id.*

No. 2-5 somehow adds an additional burden. Additionally, as acknowledged in Ratepayers' objection to this RFI, the City has "altered the current request" and asked for "materials that support or are relevant to the development of the testimony of each person providing testimony on behalf of the Petitioners."⁹ Indeed, while RFI 2-5 may have been a request for information that was included in RFI 2-6, RFI 2-6 contains additional requests for information not requested elsewhere. Seeking this additional information does not, in any way, make the request cumulative, duplicative, unduly burdensome, an annoyance, or an unnecessary expense.

Ratepayers also argue that the request is "duplicative because the responsive materials have already been filed and are obtainable from other sources more convenient, less burdensome, and less expensive."¹⁰ Specifically, Ratepayers allege that, when they filed the pre-filed testimony, they "expended the resources to provide the City with" the documents sought by RFI No. 2-6.¹¹ The City acknowledges that Ratepayers included multiple documents, data, and workpapers when submitting the pre-filed testimony of its witnesses. This request seeks all documents, data, and workpapers responsive to this request that *were not included* with the pre-filed testimony, to the extent such documents exist.¹² The request specifically excludes documents already filed with pre-filed testimony: "To the extent not provided in workpapers already filed with the ratepayers' testimony"¹³ Ratepayers cannot argue that RFI No. 2-6 is duplicative when the City expressly

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² City of Celina's Second Request for Information to Outside City Ratepayers at 7 (May 28, 2020).

¹³ *Id.*

excluded the duplicative materials on which Ratepayers base their objection. To the extent no additional documents, data, and/or workpapers exist, the City requests that Ratepayers acknowledge this fact.

As the Ratepayers have provided nothing to support that RFI No. 2-6 is cumulative, duplicative, unduly burdensome, an annoyance, or an unnecessary expense, the ALJ should overrule the Ratepayers' objections and order Ratepayers to fully respond.

B. City's Request to Ratepayers 2-7

To the extent not already provided, please provide the final testimony, underlying data, and exhibits in both paper and electronic (Microsoft Word, Excel or equivalent software) form for each person providing testimony on behalf of the Outside Ratepayers. For all Microsoft Excel or equivalent software documents, please provide the worksheets with all links and formulas embedded in the worksheets used to create and manipulate the data in the worksheet active.

As with RFI No. 2-6, Ratepayers argue that the request is "duplicative because the responsive materials have already been filed and are obtainable from other sources more convenient, less burdensome, and less expensive," specifically alleging again that, when they filed the pre-filed testimony, they "expended the resources to provide the City with" the documents sought by RFI No. 2-6.¹⁴ Again, this request seeks the final testimony, underlying data, and exhibits responsive to this request that *were not included* with the pre-filed testimony, to the extent such documents exist.¹⁵ Again, the request specifically addresses documents already filed with pre-filed testimony: "To the extent not provided in workpapers already filed with the ratepayers'

¹⁴ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 3 (June 8, 2020).

¹⁵ City of Celina's Second Request for Information to Outside City Ratepayers at 7 (May 28, 2020).

testimony”¹⁶ Ratepayers cannot argue that RFI No. 2-7 is duplicative when the City expressly excluded duplicative materials. To the extent no additional documents, data, and/or workpapers exist, the City requests that Ratepayers acknowledge this fact.

As the Ratepayers have provided nothing to support that RFI No. 2-7 is cumulative, duplicative, unduly burdensome, an annoyance, or an unnecessary expense, the ALJ should overrule the Ratepayers’ objections and order Ratepayers to fully respond.

C. City’s Request to Ratepayers 2-10

Please identify dates of all meetings, including in-person or by other means, between any representative of the Outside Ratepayers, including but not limited to legal counsel or any person providing prefiled testimony on behalf of the Outside Ratepayers, with the Developer(s) regarding the City’s water and wastewater system and/or its rates. To the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log.

The Ratepayers objected to this request, claiming that the request “seeks information that is protected by attorney client privilege and work product doctrine.”¹⁷ Petitioners only object to this Request “[t]o the extent [it] would include privileged conversations and attorney work product.”¹⁸ As stated in the request, the City requests that, “[t]o the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log.”¹⁹ Under the Texas Rules of Civil Procedure, the privilege log should include a sufficient description of the items/information withheld so that, without revealing the

¹⁶ *Id.*

¹⁷ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 4 (June 8, 2020).

¹⁸ *Id.*

¹⁹ City of Celina’s Second Request for Information to Outside City Ratepayers at 7 (May 28, 2020).

privileged information, the City can assess the applicability of the privilege.²⁰ Additionally, the request contemplates the production of information that would not be covered by the attorney-client privilege or the work product doctrine—as this information is not privileged, it must be produced.

To the extent information responsive to this request is covered by the attorney-client privilege, the ALJ should require the Ratepayers to submit, if possible, such information with privileged information redacted, and/or a privilege log that allows the City to assess the applicability of the privilege. To the extent information responsive to this request is not covered by the attorney-client privilege or the work product doctrine, the ALJ should overrule the Ratepayers' objections and order the Ratepayers to fully respond.

D. City's Request to Ratepayers 2-11

Please produce all documents provided, discussed, reviewed by or exchanged with the Developer(s) with any representative of the Outside Ratepayers, including but not limited to legal counsel or any person providing prefiled testimony on behalf of the Outside Ratepayers, regarding the City's water and wastewater system and/or its rates. To the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log.

Ratepayers assert three separate objections to RFI No. 2-11. First, the Ratepayers object to this request, claiming that the request "seeks information that is protected by attorney client privilege and work product doctrine."²¹ As stated in the request, the City requests that, "[t]o the extent any document includes privileged or confidential information, please provide such

²⁰ Tex. R. Civ. P. 193.3(b)(1).

²¹ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 5 (June 8, 2020).
PCD: 270534

270534

City of Celina's Motion to Compel Outside Ratepayers to
Respond to City's 2nd Request for Information

information in redacted form and the requisite privilege log.”²² Under the Texas Rules of Civil Procedure, the privilege log should include a sufficient description of the items/information withheld so that, without revealing the privileged information, the City can assess the applicability of the privilege.²³ Additionally, the request contemplates the production of information that would not be covered by the attorney-client privilege or the work product doctrine—as this information is not privileged, it must be produced. To the extent information responsive to this request is covered by the attorney-client privilege, the ALJ should require the Ratepayers to submit, if possible, such information with privileged information redacted, and/or a privilege log that allows the City to assess the applicability of the privilege. To the extent information responsive to this request is not covered by the attorney-client privilege or the work product doctrine, the ALJ should overrule the Ratepayers’ objections and order the Ratepayers to fully respond.

The Ratepayers also objected to this request, claiming the request “duplicates materials requested under Request 2-6.”²⁴ Specifically, Ratepayers argue that “non-privileged and responsive documents reviewed by the persons who provided pre-filed testimony would already need to be provided under Request 2-6,” as they would be “associated with the development” of testimony.²⁵ City RFI No. 2-11, however, requests different information than that contemplated by RFI No. 2-6, specifically documents “provided, discussed, reviewed by, or exchanged with the

²² City of Celina’s Second Request for Information to Outside City Ratepayers at 7 (May 28, 2020).

²³ Tex. R. Civ. P. 193.3(b)(1).

²⁴ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 5 (June 8, 2020).

²⁵ *Id.* at 6.

Developer(s) with any representative of the Outside Ratepayers.”²⁶ While some or all of this documentation may be included in Ratepayers’ response to RFI No. 2-6, the City has no way of knowing what documents responsive to RFI No. 2-6 were “provided, discussed, reviewed by, or exchanged with the Developer(s) with any representative of the Outside Ratepayers.”²⁷ This distinction is key to an adequate response to RFI No. 2-11, and this distinction separates the requests in RFI No. 2-11 from the requests in RFI No. 2-6. To the extent Ratepayers’ all documents responsive to this request are included in Ratepayers’ response to RFI No. 2-6, however, the City would be satisfied with a reference to the Bates numbers of information specifically responsive to RFI No. 2-11, which would both be responsive to this request and negate the need for duplication or reproduction of the documents requested.

Finally, as with prior objections, Ratepayers argue that this request is “duplicative because the responsive materials have already been filed and are obtainable from other sources more convenient, less burdensome, and less expensive,” specifically alleging again that, when they filed the pre-filed testimony, the Ratepayers “expended the resources to provide the City with” the documents sought by RFI No. 2-11.²⁸ As with Ratepayers’ other objection, this request seeks different information than that provided by their pre-filed testimony, specifically which documents were “provided, discussed, reviewed by, or exchanged with the Developer(s) with any representative of the Outside Ratepayers.”²⁹ If all of these documents were produced along with

²⁶ City of Celina’s Second Request for Information to Outside City Ratepayers at 7 (May 28, 2020).

²⁷ *Id.*

²⁸ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 6 (June 8, 2020).

²⁹ *Id.*

the Ratepayers' pre-filed testimony, the City would be satisfied with references to the specific location within the pre-filed testimony of information specifically responsive to RFI No. 2-11, which would both be responsive to this request and negate the need for duplication or reproduction of the documents requested.

E. City's Request to Ratepayers 2-12

Please identify dates of all meetings, phone calls, or other communications between any representative of the Outside Ratepayers, including but not limited to any legal counsel or person providing prefiled testimony on behalf of the Outside Ratepayers, with any representative of the Public Utility Commission regarding the City's water and wastewater system and/or its rates. Please provide all documents discussed, reviewed or exchanged during these communications. To the extent any document includes privileged or confidential information, please produce with such information redacted and the requisite privilege log.

The Ratepayers objected to this request, claiming that the request "seeks information that is protected by attorney client privilege and work product doctrine."³⁰ Petitioners only object to this Request "to the extent it requires [Ratepayers] to disclose privileged information."³¹ As stated in the request, the City requests that, "[t]o the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log."³² Under the Texas Rules of Civil Procedure, the privilege log should include a sufficient description of the items/information withheld so that, without revealing the privileged information, the City can assess the applicability of the privilege.³³ Additionally, the request

³⁰ *Id.* at 7.

³¹ *Id.*

³² City of Celina's Second Request for Information to Outside City Ratepayers at 7 (May 28, 2020).

³³ Tex. R. Civ. P. 193.3(b)(1).

contemplates the production of information that would not be covered by the attorney-client privilege or the work product doctrine—as this information is not privileged, it must be produced.

To the extent information responsive to this request is covered by the attorney-client privilege, the ALJ should require the Ratepayers to submit, if possible, such information with privileged information redacted, and/or a privilege log that allows the City to assess the applicability of the privilege. To the extent information responsive to this request is not covered by the attorney-client privilege or the work product doctrine, the ALJ should overrule the Ratepayers' objections and order the Ratepayers to fully respond.

F. City's Request to Ratepayers 2-13

For each person providing prefiled testimony on behalf of the Outside Ratepayers, provide the dates and a summary of all meetings and/or conversations with City staff, operators, engineers and any other City representative regarding the City's water and wastewater system and /or its rates. Specifically identify all City personnel with whom the person providing testimony for the Outside Ratepayers discussed and the subject matter that was discussed. If there have been no such meetings and/or conversations, please specifically state so.

Ratepayers object to this request, claiming that the request “is unduly burdensome because the responsive materials relating to meetings and conversations with City staff are obtainable from other sources that are more convenient, less burdensome, and less expensive.”³⁴ Specifically, Ratepayers allege that “the city has better access to this information than Petitioners.”³⁵ Ratepayers provide no evidence or other argument to support this contention, merely assuming that all employees of the City involved in these conversations continue to be in the City's employ. Indeed,

³⁴ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 8 (June 8, 2020).

³⁵ *Id.*

at least one employee of the City that was privy to some of these meetings and/or conversations is no longer with the City, and the City no longer has the “access to this information” through individuals who are no longer employed by the City. The Outside Ratepayers, however, have direct access to “each person providing pre-filed testimony” on their behalf and have specific information responsive to this request. As such, this request is not unduly burdensome or obtainable from “other sources that are more convenient, less burdensome, and less expensive.”³⁶ As such, the ALJ should overrule the Ratepayers’ objections and order Ratepayers to fully respond.

G. City’s Request to Ratepayers 2-14

Please provide all documents reviewed or discussed during the meetings referenced in RFI 2-13 directly above.

Ratepayers assert two separate objections to RFI No. 2-14. First, the Ratepayers claim that the request is “cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense,” as the documents requested “are also responsive under Request 2-5 because they are ‘associated with the development’ of testimony.”³⁷ City RFI No. 2-14, however, requests different information than that contemplated by RFI No. 2-5 (and required to be produced under RFI No. 2-6³⁸), specifically documents “reviewed or discussed during the meetings referenced in RFI 2-13.”³⁹ While some or all of this documentation may be included in

³⁶ *Id.*

³⁷ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 8, 9 (June 8, 2020).

³⁸ As noted above, City and Ratepayers have agreed that no response to RFI No. 2-5 would be necessary, as RFI No. 2-5 is repetitive of RFI No. 2-6. For the sake of clarity, the City’s arguments as to this RFI will refer to RFI No. 2-6.

³⁹ City of Celina’s Second Request for Information to Outside City Ratepayers at 8 (May 28, 2020).

Ratepayers' response to RFI No. 2-6, the City has no way of knowing what documents responsive to RFI No. 2-6 were "reviewed or discussed during the meetings referenced in RFI 2-13."⁴⁰ This distinction is key to an adequate response to RFI No. 2-14, and this distinction separates the requests in RFI No. 2-14 from the requests in RFI No. 2-6. To the extent all documents responsive to this request are included in Ratepayers' response to RFI No. 2-6, however, the City would be satisfied with a reference to the Bates numbers of information specifically responsive to RFI No. 2-14, which would both be responsive to this request and negate the need for duplication or reproduction of the documents requested.

Ratepayers also object on the basis that this request is "duplicative because the responsive materials have already been filed and are obtainable from other sources more convenient, less burdensome, and less expensive," specifically alleging again that, when they filed the pre-filed testimony, the Ratepayers "expended the resources to provide the City with" the documents sought by RFI No. 2-14.⁴¹ As with Ratepayers' other objection, this request seeks different information than that provided by their pre-filed testimony, specifically which documents were "reviewed or discussed during the meetings referenced in RFI 2-13."⁴² If all of these documents were produced along with the Ratepayers' pre-filed testimony, the City would be satisfied with references to the specific location within the pre-filed testimony of information specifically responsive to RFI No. 2-14, which would both be responsive to this request and negate the need for duplication or reproduction of the documents requested.

⁴⁰ *Id.*

⁴¹ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 9 (June 8, 2020).

⁴² City of Celina's Second Request for Information to Outside City Ratepayers at 8 (May 28, 2020).

H. City's Request to Ratepayers 2-16

Please provide all documents reviewed or discussed during the meetings referenced in RFI 2-15 directly above.

Ratepayers assert two separate objections to RFI No. 2-16. First, the Ratepayers claim that the request is “cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense,” as the documents requested “are also responsive under Request 2-5 because they are ‘associated with the development’ of testimony.”⁴³ City RFI No. 2-14, however, requests different information than that contemplated by RFI No. 2-5 (and required to be produced under RFI No. 2-6⁴⁴), specifically documents “reviewed or discussed during the meetings referenced in RFI 2-15.”⁴⁵ While some or all of this documentation may be included in Ratepayers’ response to RFI No. 2-6, the City has no way of knowing what documents responsive to RFI No. 2-6 were “reviewed or discussed during the meetings referenced in RFI 2-15.”⁴⁶ This distinction is key to an adequate response to RFI No. 2-16, and this distinction separates the requests in RFI No. 2-16 from the requests in RFI No. 2-6. To the extent Ratepayers’ all documents responsive to this request are included in Ratepayers’ response to RFI No. 2-6, however, the City would be satisfied with a reference to the Bates numbers of information specifically responsive to RFI No. 2-16, which would both be responsive to this request and negate the need for duplication or reproduction of the documents requested.

⁴³ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 10 (June 8, 2020).

⁴⁴ As with the previous objection, the City’s arguments as to this RFI will refer to RFI No. 2-6, rather than RFI No. 2-5 for which the City is no longer requiring a response.

⁴⁵ City of Celina’s Second Request for Information to Outside City Ratepayers at 8 (May 28, 2020).

⁴⁶ *Id.*

Ratepayers also object on the basis that this request is “duplicative because the responsive materials have already been filed and are obtainable from other sources more convenient, less burdensome, and less expensive,” specifically alleging again that, when they filed the pre-filed testimony, the Ratepayers “expended the resources to provide the City with” the documents sought by RFI No. 2-16.⁴⁷ As with Ratepayers’ other objection to this RFI, this request seeks different information than that provided by their pre-filed testimony, specifically which documents were “reviewed or discussed during the meetings referenced in RFI 2-15.”⁴⁸ If all of these documents were produced along with the Ratepayers’ pre-filed testimony, the City would be satisfied with references to the specific location within the pre-filed testimony of information specifically responsive to RFI No. 2-16, which would both be responsive to this request and negate the need for duplication or reproduction of the documents requested.

I. City’s Request to Ratepayers 2-17

For each person providing prefiled testimony on behalf of the Outside Ratepayers, provide the names of every municipal water and wastewater utility that engaged the person to prepare or participate in the preparation of a municipal water and wastewater rate study or analysis since the year 2010. Provide the dates of every identified engagement and identify whether the utility adopted the person’s rate recommendations.

Relevance Objection

Ratepayers assert three separate objections to RFI No. 2-17. First, they object on the basis that the request “is not relevant to the subject matter of this document and . . . seeks information

⁴⁷ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 11 (June 8, 2020).

⁴⁸ City of Celina’s Second Request for Information to Outside City Ratepayers at 8 (May 28, 2020).

that is neither relevant nor reasonably calculated to the discovery of admissible evidence.”⁴⁹ Specifically, Ratepayers argue that “this request has no bearing on or relation to whether the City’s rates are just, reasonable, or based on the actual cost of providing service to” the Ratepayers, and that the “request does not seek information that would aid in the dispute’s resolution.”⁵⁰

Ratepayers ignore the potential effect of this information on the credibility of their pre-filed testimony. In order to prove that the City’s rates are not just, reasonable, or based on the actual cost of providing service to the them, the Ratepayers submitted pre-filed testimony from the individuals referenced in the request, which included an analysis of the “appropriate retail water and sewer rates for the City’s outside city retail water and sewer customers,” including providing recommendations as to the same.⁵¹ 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.”⁵² 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.”⁵³

⁴⁹ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 11 (June 8, 2020).

⁵⁰ *Id.* at 12.

⁵¹ Direct Testimony of Jay Joyce on Behalf of Outside City Ratepayers at 10:3–9 (May 26, 2020).

⁵² 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).

⁵³ Tex. R. Civ. P. 192.3(a).

The request seeks information regarding whether the individuals filing pre-filed testimony on this basis have completed the same type of study or analysis and/or have provided the same type of recommendations regarding the same matter for other, similar entities, as well as the specific entities and dates on which these studies, analyses, and recommendations were done and made, including whether their recommendations were followed.⁵⁴ Such information could indicate prior consistent or inconsistent statements on the part of the witnesses, such information could indicate bias or interest on the part of the witnesses, and such information could indicate a lack of experience with regard to one or more key factors present in the analysis done for this case.⁵⁵ Any of these could impact the credibility of the witnesses' testimony regarding the same matters in this case, and are thus clearly relevant to this case. As such, the ALJ should overrule the Ratepayers' objections and order the Ratepayers to fully respond.

Overbroad, Extensive, and Not Properly Limited Objection

Ratepayers also object to RFI No. 2-17 on the basis that the "request to gather information and materials over the last decade is overbroad, extensive, and not properly limited in time, scope, or relation to the facts at issue in this proceeding."⁵⁶ The request is not overbroad or extensive, as it asks for *specific* information related to prior work done by the Ratepayers' testifying witnesses, that being the names of the entities at issue, dates of engagement, and whether the recommendation was followed by the entity.⁵⁷ The request does not seek documentation related to those cases, but

⁵⁴ City of Celina's Second Request for Information to Outside City Ratepayers at 8 (May 28, 2020).

⁵⁵ See Tex. R. Evid. 613(b).

⁵⁶ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 12 (June 8, 2020).

⁵⁷ City of Celina's Second Request for Information to Outside City Ratepayers at 8 (May 28, 2020).

rather the specific information listed above. Ratepayers also take issue with the time period for information requested by the City: “Requesting copies of the last decade’s-worth of work and results from each person who provided pre-filed testimony on behalf of the [Ratepayers] is unreasonably extensive and burdensome.”⁵⁸ Again, the City is not requesting “copies” of any documentation or the production of documents.

Because the City’s request is narrowly tailored to obtain specific information relevant to this case, and because Ratepayers have presented no argument as to why the request is overbroad, extensive, or not properly limited, the ALJ should overrule the Ratepayer’s objection and order the Ratepayers to fully respond.

Duplication of Materials Objection

Finally, Ratepayers object to RFI No. 2-17 on the basis that “provid[ing] responsive materials again” would be a “duplication of materials, [which] would render a response unduly burdensome, an annoyance, and an unnecessary expense.”⁵⁹ Ratepayers base this objection on the City’s prior request in RFI No. 1-17, which provided:

Produce a copy of each electric, gas, water, or wastewater cost of service study or rate study prepared in whole or in part by Jay Joyce for any Texas municipally-owned utility or a Texas conservation and reclamation district for the past ten years, or direct testimony filed by Jay Joyce with the Texas Commission on Environmental Quality or the Public Utility Commission of Texas in which divided customers between customers within the city’s or district’s boundary and customers located outside of the city’s or district’s boundary recommended a higher rate for the class of customers located outside of the city’s or district’s boundaries, or did not recommend that the city or district cease charging a higher rate for the city’s or district’s customers located outside of the boundaries.⁶⁰

⁵⁸ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 3 (June 8, 2020).

⁵⁹ *Id.* at 12.

⁶⁰ City of Celina’s Second Request for Information to Outside City Ratepayers at 8 (May 28, 2020).

As pointed out by the Ratepayers, the City agreed for that request that Ratepayers could limit their response to copies of “rate studies or testimony of Jay Joyce in situations where the dispute involved a study/testimony related to rates that were different for retail customers within the city/jurisdiction and retail customers outside of the city/district that were outside of the city/district jurisdiction.”⁶¹ In these objections, Ratepayers state that “Jay Joyce’s responsive materials under this request are still responsive under Request 1-17.”⁶²

Ratepayers provided their *Responses to City of Celina’s First Request for Information and Requests for Admissions* to the City of Celina on June 10, 2020. In response to the modified Request No. 1-17, Ratepayers answered “None,” and provided no responsive documents.⁶³ As there were no responsive documents provided in response to RFI No. 1-17, a response to Request No. 2-17 would clearly not result in duplication of materials. As such, the ALJ should overrule the Ratepayer’s objection and order the Ratepayers to fully respond.

J. City’s Request to Ratepayers 2-18, 2-19, 2-20, 2-21, 2-22, and 2-33

RFI 2-18. For each municipal utility identified in RFI 2-17 directly above, identify whether that utility provides service to retail residential and non-residential customers outside the city limits.

RFI 2-19. For each municipal utility identified in RFI 2-17 above, identify whether that utility charges a retail residential water and wastewater rate for outside customers that is **higher** than the rate charged to inside city customers. If so, identify the percentage or multiplier of the retail outside city residential rate differential. Specifically state whether the person providing prefiled testimony on behalf of the Outside Ratepayers recommended that the utility charge a retail rate

⁶¹ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 3 (June 8, 2020).

⁶² *Id.* at 13.

⁶³ Outside City Ratepayers’ Responses to City of Celina’s First Request for Information and First Request for Admissions at 21 (June 10, 2020).

to outside city customers that is higher than the inside city limit rate. Specifically state whether the utility adopted the person's recommendations.

RFI 2-20. For each municipal utility identified in RFI 2-17 above, identify whether that utility charges a retail residential water and wastewater rate for outside customers that is **equal** to the rate charged to inside city customers. Specifically state whether the person providing prefiled testimony on behalf of the Outside Ratepayers recommended that the utility charge a retail rate to outside city customers that is equal to the inside city limit rate. Specifically state whether the utility adopted the person's recommendations.

RFI 2-21. For each municipal utility identified in RFI 2-17 identify whether that utility charges a retail residential water and wastewater rate that is **lower** than the rate charged to inside city customers, and if so, identify the percentage or multiplier of the retail rate differential. Specifically state whether the utility adopted the person's recommendations.

RFI 2-22. For each municipal utility identified in RFI 2-17 above, specifically identify whether the utility charged different sets of outside city retail residential rates to different outside city retail residential customers. Identify the basis or justification for charging different sets of outside city retail rates to different outside city retail residential customers.

RFI 2-23. List every municipal water and wastewater utility in the state of Texas that any person providing prefiled testimony on behalf of the Outside Ratepayers is familiar with that charges a lower retail residential outside city water and/or wastewater rate than the rate the utility charges its inside city retail residential customers.

For each of these requests, Ratepayers have utilized the same relevance objection. For the sake of brevity, the City will address each of the same objections collectively.

As with their objection to RFI No. 2-17, Ratepayers object to this request on the basis that it "is not relevant to the subject matter of this document and . . . seeks information that is neither relevant nor reasonably calculated to the discovery of admissible evidence."⁶⁴ Specifically, for each RFI above, Ratepayers argue that "the rates charged by other utilities has (sic) no bearing on

⁶⁴ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 13–17 (June 8, 2020). PCD: 270534

270534

City of Celina's Motion to Compel Outside Ratepayers to Respond to City's 2nd Request for Information

or relation to whether the City's rates are just, reasonable, or based on the actual cost of providing service to" the Ratepayers and that each "request does not seek information that would aid in the dispute's resolution."⁶⁵

Ratepayers ignore the potential effect of this information on the credibility of their pre-filed testimony. In order to prove that the City's rates are not just, reasonable, or based on the actual cost of providing service to the them, the Ratepayers submitted pre-filed testimony from the individuals referenced in the request, which included an analysis of the "appropriate retail water and sewer rates for the City's outside city retail water and sewer customers," including providing recommendations as to the same.⁶⁶ 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."⁶⁷ 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."⁶⁸

These requests seek information regarding specific information related to the entities referred to in RFI No. 2-17 and how those entities compare with the City, including requesting

⁶⁵ *Id.*

⁶⁶ Direct Testimony of Jay Joyce on Behalf of Outside City Ratepayers at 10:3–9 (May 26, 2020).

⁶⁷ 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).

⁶⁸ Tex. R. Civ. P. 192.3(a).

information regarding how these entities may be similar or differ in key respects that may affect the analysis done regarding the City's rates in this case.⁶⁹

As with RFI No. 2-17, such information could indicate prior consistent or inconsistent statements on the part of the witnesses, such information could indicate bias or interest on the part of the witnesses, and such information could indicate a lack of experience with regard to one or more key factors present in the analysis done for this case.⁷⁰ Any of these could impact the credibility of the witnesses' testimony regarding the same matters in this case, and are thus clearly relevant to this case. As such, the ALJ should overrule the Ratepayers' objections and order the Ratepayers to fully respond to each of the above requests.

K. City's Request to Ratepayers 2-26

Please produce all documents presented to or discussed by any representative of the Outside Ratepayers, including but not limited to any person providing prefiled testimony on behalf of the Outside Ratepayers, in preparation for, or attendance at, any meeting with the Board of Directors of Collin County MUD #1 regarding the City's water and wastewater system and/or its rates. To the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log.

The Ratepayers objected to this request, claiming that the request "seeks information that is protected by attorney client privilege and work product doctrine."⁷¹ Petitioners only object to this Request "to the extent it requires [Ratepayers] to disclose privileged information."⁷² As stated in the request, the City requests that, "[t]o the extent any document includes privileged or

⁶⁹ See City of Celina's Second Request for Information to Outside City Ratepayers at 8–9 (May 28, 2020).

⁷⁰ See TEX. R. EVID. 613(b).

⁷¹ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 20 (June 8, 2020).

⁷² *Id.*

confidential information, please provide such information in redacted form and the requisite privilege log.”⁷³ Under the Texas Rules of Civil Procedure, the privilege log should include a sufficient description of the items/information withheld so that, without revealing the privileged information, the City can assess the applicability of the privilege.⁷⁴ Additionally, the request contemplates the production of information that would not be covered by the attorney-client privilege or the work product doctrine—as this information is not privileged, it must be produced.

To the extent information responsive to this request is covered by the attorney-client privilege, the ALJ should require the Ratepayers to submit, if possible, such information with privileged information redacted, and/or a privilege log that allows the City to assess the applicability of the privilege. To the extent information responsive to this request is not covered by the attorney-client privilege or the work product doctrine, the ALJ should overrule the Ratepayers’ objections and order the Ratepayers to fully respond.

L. City’s Request to Ratepayers 2-27

Please produce any documents provided by any representative of the Outside Ratepayers, including but not limited to any person providing prefiled testimony on behalf of the Outside Ratepayers, at any time to any individual member of the Board of Directors of Collin County MUD #1 regarding the City’s water and wastewater system and/or its rates. To the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log.

⁷³ City of Celina’s Second Request for Information to Outside City Ratepayers at 10 (May 28, 2020).

⁷⁴ Tex. R. Civ. P. 193.3(b)(1).

The Ratepayers objected to this request, claiming that the request “seeks information that is protected by attorney client privilege and work product doctrine.”⁷⁵ Petitioners only object to this Request “to the extent it requires [Ratepayers] to disclose privileged information.”⁷⁶ As stated in the request, the City requests that, “[t]o the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log.”⁷⁷ Under the Texas Rules of Civil Procedure, the privilege log should include a sufficient description of the items/information withheld so that, without revealing the privileged information, the City can assess the applicability of the privilege.⁷⁸ Additionally, the request contemplates the production of information that would not be covered by the attorney-client privilege or the work product doctrine—as this information is not privileged, it must be produced.

To the extent information responsive to this request is covered by the attorney-client privilege, the ALJ should require the Ratepayers to submit, if possible, such information with privileged information redacted, and/or a privilege log that allows the City to assess the applicability of the privilege. To the extent information responsive to this request is not covered by the attorney-client privilege or the work product doctrine, the ALJ should overrule the Ratepayers’ objections and order the Ratepayers to fully respond.

M. City’s Request to Ratepayers 2-29

Please identify the dates of all meetings, phone calls or other communication between any representative of the Outside Ratepayers, including but not limited to

⁷⁵ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 20 (June 8, 2020).

⁷⁶ *Id.* at 21.

⁷⁷ City of Celina’s Second Request for Information to Outside City Ratepayers at 10 (May 28, 2020).

⁷⁸ Tex. R. Civ. P. 193.3(b)(1).

legal counsel or any person providing prefiled testimony on behalf of the Outside Ratepayers, with any individual member of the Board of Directors of Collin County MUD #1, including but not limited to the legal counsel of the Collin County MUD #1 regarding the City's water and wastewater system and/or its rates. Please provide all documents discussed, reviewed or exchanged during these communications. To the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log.

Relevance Objection

Ratepayers assert two separate objections to RFI No. 2-29. First, they object on the basis that the request "is not relevant to the subject matter of this document and . . . seeks information that is neither relevant nor reasonably calculated to the discovery of admissible evidence."⁷⁹ Specifically, Ratepayers argue that "this request has no bearing on or relation to whether the City's rates are just, reasonable, or based on the actual cost of providing service to" the Ratepayers, and that the "request does not seek information that would aid in the dispute's resolution."⁸⁰

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."⁸¹ 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

⁷⁹ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 21 (June 8, 2020).

⁸⁰ *Id.* at 22.

⁸¹ 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).

PCD: 270534

270534

City of Celina's Motion to Compel Outside Ratepayers to
Respond to City's 2nd Request for Information

seeking discovery or the claim or defense of any other party.”⁸² 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.⁸³ 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.⁸⁴ That motion was not granted as Docket No. 49448 was ultimately dismissed by the Commission.⁸⁵ Generally, evidence of bias of a witness is relevant and admissible.⁸⁶

The City has a right to 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.⁸⁷ The specific documents and information sought by the City could 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. As such, the ALJ should overrule the Ratepayers’ relevance objections and order the Ratepayers to fully respond to these requests.

⁸² Tex. R. Civ. P. 192.3(a).

⁸³ 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).

⁸⁴ Petitioners’ Joint Motions to Consolidate, to Align Parties, and to Designate a Party Representative (June 27, 2019).

⁸⁵ Tex. Pub. Util. Comm’n, *Order of Dismissal on Rehearing of Interim Appeal*, Docket No. 49448 (Jan. 28, 2020).

⁸⁶ 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).

⁸⁷ *In re Kemper Lloyds Ins. Co.*, 2006 WL 475436, at *2-3.

Attorney-Client Privilege and Work Product Doctrine Objection

The Ratepayers objected to this request, claiming that the request “seeks information that is protected by attorney client privilege and work product doctrine.”⁸⁸ As stated in the request, the City requests that, “[t]o the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log.”⁸⁹ Under the Texas Rules of Civil Procedure, the privilege log should include a sufficient description of the items/information withheld so that, without revealing the privileged information, the City can assess the applicability of the privilege.⁹⁰ The Ratepayers object to filing a privilege log or index in response to this request, as a result of their relevance objection.⁹¹ As discussed above, however, the requests seeks relevant information. As such, Ratepayers should be required to produce the redacted documents and privilege log for items covered by the privilege.

Additionally, the request contemplates the production of information that would not be covered by the attorney-client privilege or the work product doctrine—as this information is not privileged, it must be produced.

To the extent information responsive to this request is covered by the attorney-client privilege, the ALJ should require the Ratepayers to submit, if possible, such information with privileged information redacted, and/or a privilege log that allows the City to assess the applicability of the privilege. To the extent information responsive to this request is not covered

⁸⁸ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 22 (June 8, 2020).

⁸⁹ City of Celina’s Second Request for Information to Outside City Ratepayers at 10 (May 28, 2020).

⁹⁰ Tex. R. Civ. P. 193.3(b)(1).

⁹¹ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 22 (June 8, 2020).
PCD: 270534

270534

City of Celina’s Motion to Compel Outside Ratepayers to
Respond to City’s 2nd Request for Information

by the attorney-client privilege or the work product doctrine, the ALJ should overrule the Ratepayers' objections and order the Ratepayers to fully respond.

N. City's Request to Ratepayers 2-30

Provide all invoices for all services rendered by any person providing prefiled testimony on behalf of the Outside Ratepayers. If any invoices were submitted to the Law Firm of Gilbert Wilburn PLLC, the Carlton Law Firm PLLC, Crawford & Jordan LLP, or any entity other than Collin County MUD #1, please specifically state whether funds to pay these invoices were obtained directly or indirectly from Collin County MUD #1.

Relevance Objection

Ratepayers assert two separate objections to RFI No. 2-30. First, they object on the basis that the request "is not relevant to the subject matter of this document and . . . seeks information that is neither relevant nor reasonably calculated to the discovery of admissible evidence."⁹² Specifically, Ratepayers argue that "this request has no bearing on or relation to whether the City's rates are just, reasonable, or based on the actual cost of providing service to" the Ratepayers, and that the "request does not seek information that would aid in the dispute's resolution."⁹³

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."⁹⁴

⁹² Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 23 (June 8, 2020).

⁹³ *Id.*

⁹⁴ 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).

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.”⁹⁵ 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.⁹⁶ 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.⁹⁷ That motion was not granted as Docket No. 49448 was ultimately dismissed by the Commission.⁹⁸ Generally, evidence of bias of a witness is relevant and admissible.⁹⁹

The City has a right to 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.¹⁰⁰ The specific documents and information sought by the City could tend to show that this case is motivated not to lower residential rates, but rather to improve Collin County MUD No. 1’s

⁹⁵ Tex. R. Civ. P. 192.3(a).

⁹⁶ 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).

⁹⁷ Petitioners’ Joint Motions to Consolidate, to Align Parties, and to Designate a Party Representative (June 27, 2019).

⁹⁸ Tex. Pub. Util. Comm’n, *Order of Dismissal on Rehearing of Interim Appeal*, Docket No. 49448 (Jan. 28, 2020).

⁹⁹ 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).

¹⁰⁰ *In re Kemper Lloyds Ins. Co.*, 2006 WL 475436, at *2-3.

financial standing. As such, the ALJ should overrule the Ratepayers' relevance objections and order the Ratepayers to fully respond to these requests.

Attorney-Client Privilege and Work Product Doctrine Objection

The Ratepayers objected to this request, claiming that the request "seeks information that is protected by attorney client privilege and work product doctrine."¹⁰¹ As stated in the request, the City requests that, "[t]o the extent any document includes privileged or confidential information, please provide such information in redacted form and the requisite privilege log."¹⁰² Under the Texas Rules of Civil Procedure, the privilege log should include a sufficient description of the items/information withheld so that, without revealing the privileged information, the City can assess the applicability of the privilege.¹⁰³ The Ratepayers object to filing a privilege log or index in response to this request, as a result of their relevance objection.¹⁰⁴ As discussed above, however, the requests seeks relevant information. As such, Ratepayers should be required to produce the redacted documents and privilege log for items covered by the privilege.

Additionally, the request contemplates the production of information that would not be covered by the attorney-client privilege or the work product doctrine—as this information is not privileged, it must be produced.

To the extent information responsive to this request is covered by the attorney-client privilege, the ALJ should require the Ratepayers to submit, if possible, such information with

¹⁰¹ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 23 (June 8, 2020).

¹⁰² City of Celina's Second Request for Information to Outside City Ratepayers at 10–11 (May 28, 2020).

¹⁰³ Tex. R. Civ. P. 193.3(b)(1).

¹⁰⁴ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 24 (June 8, 2020).
PCD: 270534

270534

City of Celina's Motion to Compel Outside Ratepayers to
Respond to City's 2nd Request for Information

privileged information redacted, and/or a privilege log that allows the City to assess the applicability of the privilege. To the extent information responsive to this request is not covered by the attorney-client privilege or the work product doctrine, the ALJ should overrule the Ratepayers' objections and order the Ratepayers to fully respond.

O. City's Request to Ratepayers 2-32

Please specifically state whether Collin County MUD #1 has expended any funds in support of these proceedings, or in support of any person providing prefiled testimony on behalf of the Outside Ratepayers. If the answer is yes, provide a detailed listing of all funds expended, the dates, the recipients, and the purpose of the expended funds.

Relevance Objection

Ratepayers assert two separate objections to RFI No. 2-32. First, they object on the basis that the request "is not relevant to the subject matter of this document and . . . seeks information that is neither relevant nor reasonably calculated to the discovery of admissible evidence."¹⁰⁵ Specifically, Ratepayers argue that "whether Collin County MUD #1 has expended any funds in support of these proceedings, or in support of any person providing pre-filed testimony on behalf of the [Ratepayers] has no bearing on or relation to whether the City's rates are just, reasonable, or based on the actual cost of providing service to" the Ratepayers, and that the "request does not seek information that would aid in the dispute's resolution."¹⁰⁶

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

¹⁰⁵ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 25 (June 8, 2020).

¹⁰⁶ *Id.* at 25–26.

document must only be reasonably calculated to lead to the discovery of admissible evidence."¹⁰⁷ 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."¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰ That motion was not granted as Docket No. 49448 was ultimately dismissed by the Commission.¹¹¹ Generally, evidence of bias of a witness is relevant and admissible.¹¹²

The City has a right to 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.¹¹³

¹⁰⁷ 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).

¹⁰⁸ Tex. R. Civ. P. 192.3(a) (emphasis added).

¹⁰⁹ 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).

¹¹⁰ Petitioners' Joint Motions to Consolidate, to Align Parties, and to Designate a Party Representative (June 27, 2019).

¹¹¹ Tex. Pub. Util. Comm'n, *Order of Dismissal on Rehearing of Interim Appeal*, Docket No. 49448 (Jan. 28, 2020).

¹¹² 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).

¹¹³ *In re Kemper Lloyds Ins. Co.*, 2006 WL 475436, at *2-3.

Whether Collin County MUD #1 has expended funds in support of the Ratepayers in these proceedings is directly related to the bias and/or improper motive of the Ratepayers, as it could clearly 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. Additionally, whether Collin County MUD #1 has expended funds in support of those filing pre-filed testimony on behalf of the Ratepayers is directly related to the bias and/or improper motive of those filing pre-filed testimony, which could affect not only the credibility of those filing the testimony, but also the testimony itself. As such, the ALJ should overrule the Ratepayers' relevance objections and order the Ratepayers to fully respond to these requests.

Cumulative and Duplicative Objection

Ratepayers also object to this request on the grounds that it is "cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense," as the documents requested "would have also been responsive under Requests 2-30 and 2-31."¹¹⁴ City RFI No. 2-32, however, requests additional information than the information contemplated by RFIs No. 2-30 and 2-31. As Ratepayers point out, RFIs No. 2-30 and 2-31 request specific invoices related to payments made by or on behalf of the Ratepayers, including whether the funds were obtained directly or indirectly from Collin County MUD #1.¹¹⁵

To the extent that Collin County MUD #1 expended funds in paying the invoices discussed by RFIs No. 2-30 and 2-31, the City would be satisfied with a reference to the invoices provided in response to RFI No. 2-30 (or a reference to the privilege log entry, to the extent a privilege

¹¹⁴ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 25 (June 8, 2020).

¹¹⁵ City of Celina's Second Request for Information to Outside City Ratepayers at 10-11 (May 28, 2020).

applies to the invoice), which would both be responsive to this request and negate the need for duplication or reproduction of the documents requested. All other funds expended by Collin County MUD #1 in support of these proceedings are clearly outside the scope of Ratepayers' objection, and the ALJ should require that Ratepayers respond to this request in full.

P. City's Request to Ratepayers 2-33

Please provide the debt service coverage requirements for all bonds issued by Collin County MUD #1.

Vagueness and Specificity Objection

Ratepayers assert three separate objections to RFI No. 2-33. First, they object on the basis that the request is "vague and lacks specificity such that Petitioner is not able to identify the information requested."¹¹⁶ Specifically, Ratepayers object that the "request does not identify the particular testimony on debt service coverage that is referenced in the header."¹¹⁷ This request is very clear in the information the City seeks: debt service coverage requirements for *all bonds* issued by Collin County MUD #1. There is nothing vague about the request. The request relates to testimony by Ratepayers' witnesses that certain facilities, infrastructure, and/or systems were paid for not by the City, but by a developer, paid by Collin County MUD #1 using funds from bond sales.¹¹⁸ Ratepayers clearly have enough information to respond to this request.

¹¹⁶ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 26 (June 8, 2020).

¹¹⁷ *Id.*

¹¹⁸ *See, e.g.,* Direct Testimony of Kevin Carlson, P.E. on Behalf of Outside City Ratepayers/Petitioners at 8:24–26, 9:5–7, 9:23–26, 10:1–2 (May 26, 2020).

Relevance Objection

Ratepayers also object on the basis that the request “is not relevant to the subject matter of this document and . . . seeks information that is neither relevant nor reasonably calculated to the discovery of admissible evidence.”¹¹⁹ Specifically, Ratepayers argue that “the debt service coverage for Collin County MUD #1 has no bearing on or relation to whether the City’s rates are just, reasonable, or based on the actual cost of providing service to” the Ratepayers, and that the “request does not seek information that would aid in the dispute’s resolution.”¹²⁰

Ratepayers’ relevance objection is erroneous. Specifically, Ratepayers allege that the “debt service coverage for Collin County MUD #1 has no bearing or relation to whether the City’s rates are . . . based on the actual cost of providing service” to the Ratepayers.¹²¹ Indeed, one of the key issues in this matter is the “costs of infrastructure, facilities, operations, capital improvements, and administrative services” to provide service to the Ratepayers.¹²² To provide evidence that the City’s costs do not justify its rates, Ratepayers’ pre-filed testimony discusses at various points how certain facilities, infrastructure, and/or systems were paid for not by the City, but by a developer, paid by Collin County MUD #1 using funds from bond sales.¹²³ Information regarding these bond sales will assist the City in determining the veracity of these allegations, as well as understanding

¹¹⁹ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 26 (June 8, 2020).

¹²⁰ *Id.* at 27.

¹²¹ *Id.*

¹²² Preliminary Order at 4 (January 17, 2020).

¹²³ See, e.g., Direct Testimony of Kevin Carlson, P.E. on Behalf of Outside City Ratepayers/Petitioners at 8:24–26, 9:5–7, 9:23–26, 10:1–2 (May 26, 2020).

the extent of the financial obligations involved, which could assist the City in understanding and responding to the pre-filed testimony of the Ratepayers' witnesses. Because the information requested is directly relevant to this proceeding, the ALJ should overrule the Ratepayers' objections and order Ratepayers to fully respond.

Q. City's Request to Ratepayers 2-34

Please describe in detail the general policy of Collin County MUD #1 regarding debt service coverage for bonds it issues.

Vagueness and Specificity Objection

Ratepayers assert two separate objections to RFI No. 2-34. First, they object on the basis that the request is "vague and lacks specificity such that Petitioner is not able to identify the information requested."¹²⁴ Specifically, Ratepayers object that the "request does not identify the particular testimony on debt service coverage that is referenced in the header."¹²⁵ This request is very clear in the information the City seeks: the general policy of Collin County MUD #1 regarding debt service coverage for bonds it issues. There is nothing vague about the request. As with the prior request, this request relates to testimony by Ratepayers' witnesses that certain facilities, infrastructure, and/or systems were paid for not by the City, but by Collin County MUD #1.¹²⁶ The testimony also describes how certain facilities were "paid for by the developer" who was

¹²⁴ *Id.* at 27.

¹²⁵ *Id.*

¹²⁶ *See, e.g., See, e.g.,* Direct Testimony of Kevin Carlson, P.E. on Behalf of Outside City Ratepayers/Petitioners at 8:24–26, 9:5–7, 9:23–26, 10:1–2 (May 26, 2020).

“subsequently reimbursed by CCMUD No. 1 for these expenditures through . . . (TCEQ) approved bond sales.”¹²⁷ Ratepayers clearly have enough information to respond to this request.

Relevance Objection

Ratepayers also object on the basis that the request “is not relevant to the subject matter of this document and . . . seeks information that is neither relevant nor reasonably calculated to the discovery of admissible evidence.”¹²⁸ Specifically, Ratepayers argue that “Collin County MUD #1[s] policy] regarding debt service coverage for bonds has no bearing on or relation to whether the City’s rates are just, reasonable, or based on the actual cost of providing service to” the Ratepayers, and that the “request does not seek information that would aid in the dispute’s resolution.”¹²⁹

Ratepayers’ relevance objection is erroneous. Specifically, Ratepayers allege that the its policy regarding “debt service coverage for bonds has no bearing or relation to whether the City’s rates are . . . based on the actual cost of providing service” to the Ratepayers.¹³⁰ One of the key issues in this matter is the “costs of infrastructure, facilities, operations, capital improvements, and administrative services” to provide service to the Ratepayers.¹³¹ To provide evidence that the City’s costs to not justify its rates, Ratepayers’ pre-filed testimony discusses at various points how certain facilities, infrastructure, and/or systems were paid for not by the City, but by a developer,

¹²⁷ *Id.*

¹²⁸ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 27 (June 8, 2020).

¹²⁹ *Id.* at 28.

¹³⁰ *Id.*

¹³¹ Preliminary Order at 4 (January 17, 2020).

paid by Collin County MUD #1 using funds from bond sales.¹³² Information regarding these bond sales will assist the City in determining the veracity of these allegations, as well as understanding the extent of the financial obligations involved, which could assist the City in understanding and responding to the pre-filed testimony of the Ratepayers' witnesses.

Because the information requested is directly relevant to this proceeding, the ALJ should overrule the Ratepayers' objections and order Ratepayers to fully respond.

R. City's Request to Ratepayers 2-35

Please provide audited financial statements for Collin County MUD #1 for Fiscal Year 2016, 2017 and 2018. To the extent any document includes privileged or confidential information, please produce with such information redacted.

Ratepayers object to this request on the basis that the request is "vague and lacks specificity such that Petitioner is not able to identify the information requested."¹³³ There is nothing vague about this request. As a Texas water district, Collin County MUD #1 must complete an audited annual report on its financial status.¹³⁴ The City's request seeks these documents for Fiscal Years 2016, 2017, and 2018.

S. City's Request to Ratepayers 2-36

Please provide approved budgets by detailed line item for Collin County MUD #1 for Fiscal Years 2016, 2017 and 2018.

¹³² See, e.g., See, e.g., Direct Testimony of Kevin Carlson, P.E. on Behalf of Outside City Ratepayers/Petitioners at 8:24–26, 9:5–7, 9:23–26, 10:1–2 (May 26, 2020).

¹³³ Objections of Outside City Ratepayers to City of Celina's Second Request for Information at 28 (June 8, 2020).

¹³⁴ See 30 Tex. Admin. Code § 293.94.

Ratepayers object to this request on the basis that the request is “vague and lacks specificity such that Petitioner is not able to identify the information requested.”¹³⁵ There is nothing vague about this request. As a Texas water district, Collin County MUD #1 is required to adopt and approve an operating budget for the upcoming fiscal year.¹³⁶ The City’s request seeks these documents for Fiscal Years 2016, 2017, and 2018.

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. 2-6, 2-7, 2-10, 2-11, 2-12, 2-13, 2-14, 2-16, 2-17, 2-18, 2-19, 2-20, 2-21, 2-22, 2-23, 2-24, 2-25, 2-26, 2-27, 2-29, 2-30, 2-32, 2-33, 2-34, 2-35, 2-36, and 2-37. The City also requests such other and further relief to which it may be justly entitled.

¹³⁵ Objections of Outside City Ratepayers to City of Celina’s Second Request for Information at 28 (June 8, 2020).

¹³⁶ 30 Tex. Admin. Code § 293.97(b).

PCD: 270534

270534

City of Celina’s Motion to Compel Outside Ratepayers to
Respond to City’s 2nd Request for Information

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City of Celina's Motion to Compel Outside Ratepayers to
Respond to City's 2nd Request for Information

CERTIFICATE OF SERVICE

I hereby certify that this document has been served on all parties of record on this 15th 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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