

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  
WATER AND WASTEWATER RATES  
ESTABLISHED BY THE CITY OF  
CELINA

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PUBLIC UTILITY COMMISSION  
OF TEXAS

**OUTSIDE CITY RATEPAYERS' RESPONSE TO  
CITY OF CELINA'S MOTION TO COMPEL OUTSIDE CITY RATEPAYERS  
TO RESPOND TO SECOND REQUEST FOR INFORMATION**

TO THE HONORABLE JUDGES SIANO AND QUINN:

COME NOW, the Outside City Ratepayers ("Petitioners") and file this Response to the City of Celina's Motion to Compel Outside City Ratepayers to Respond to City's Second Request for Information, 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 Second Request for Information on June 15, 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 15, 2020, is Monday, June 22, 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.*”<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.”<sup>6</sup> 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.”<sup>7</sup>

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 proceeding referred to SOAH.”<sup>8</sup> After considering recommendations of issues from the

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<sup>1</sup> 16 TAC § 22.221(a) (emphasis added).

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

<sup>3</sup> Tex. R. Evid. 401.

<sup>4</sup> *Castillo*, 279 S.W.3d at 664.

<sup>5</sup> Tex. Water Code § 13.047(b); 16 TAC §24.101(a).

<sup>6</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e) (emphasis added).

<sup>7</sup> TWC § 13.047(j); 16 TAC § 24.101(i).

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

Petitioners, City, and Commission Staff, the Commission laid out ten issues for the ALJs to address.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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 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.**

While Petitioners objected to this Request on June 8, 2020, Petitioners have since identified where the City may find the requested information.<sup>12</sup> 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 (1) the request is cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense; and (2) the responsive materials have already been filed and are obtainable from other sources that are more convenient, less burdensome, and less expensive.<sup>13</sup>

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<sup>9</sup> See *Preliminary Order* at 2 (Jan. 17, 2020).

<sup>10</sup> *Preliminary Order* at 5.

<sup>11</sup> *Id.*

<sup>12</sup> See *Objections of Outside City Ratepayers to City of Celina's Second Request for Information* (June 8, 2020) [hereinafter *Ratepayers' Objections to City of Celina's Second RFI*]; *Outside City Ratepayers' Responses to City of Celina's Second Request for Information* (June 17, 2020) [hereinafter *Ratepayers' Responses to City of Celina's Second RFI*].

<sup>13</sup> *Ratepayers' Objections to City of Celina's Second RFI* (June 8, 2020).

Petitioners hereby incorporate the *Ratepayers' Objections to City of Celina's Second RFI* 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.<sup>14</sup> The City sought the same information from Petitioners' experts in Request 1-5, which duplicates and unnecessarily increases the costs for Petitioners to respond. Request 1-5 asked for "all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony."<sup>15</sup> Here, this would have Petitioners duplicate the "documents, data, and workpapers which support, are relevant, or are associated with the development of the testimony" of Petitioners' experts.<sup>16</sup> The City appears to be going to great lengths to make this proceeding unnecessarily wasteful for Petitioners and the City by repeating 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.

Additionally, the responsive materials have already been filed and are obtainable from other sources that are more convenient, less burdensome, and less expensive.<sup>17</sup> When Petitioners filed the pre-filed testimony, Petitioners expended the resources to provide the City with the documents, data, and workpapers that support, are relevant, or are associated with the development of the testimony of each person providing testimony on behalf of the Petitioners. Additionally, Petitioners provided this information as required by 1-5, which Petitioners cite to in their answer. Because Petitioners have produced all information relevant to this request, no further accommodation in the interest of judicial economy is required, pursuant to Texas Rule of Civil

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<sup>14</sup> See Tex. R. Civ. P. 192.4.

<sup>15</sup> *City of Celina's First Request for Information and First Request for Admission to Outside City Ratepayers*, at 6-7 (May 21, 2020).

<sup>16</sup> Compare

<sup>17</sup> *Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 466 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).

Procedure 193.2(b).<sup>18</sup> As such, the City may obtain these requested public records in a more convenient, less burdensome, and less expensive manner.

**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.

While Petitioners objected to this Request on June 8, 2020, Petitioners have since identified where the City may find the requested information.<sup>19</sup> 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 basis that the request was duplicative because Petitioners already filed responsive materials or the City may obtain those materials from other sources that are more convenient, less burdensome, and less expensive.<sup>20</sup>

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.<sup>21</sup> The City sought the same information in Request 2-6, which duplicates and unnecessarily increases the costs for Petitioners to respond. Request 2-6 already requests “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 Petitioners. Further, the City’s definition of “document” already includes data and workpapers, whether in paper, electronic, or native format.<sup>22</sup> The City appears to be going to great lengths to make this proceeding unnecessarily wasteful for Petitioners and the City by repeating requests and asking for information outside the scope of the proceeding. If the Commission allows these efforts go

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<sup>18</sup> See *id.*; Tex. R. Civ. P. 193.2.

<sup>19</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020); *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

<sup>20</sup> *Id.*

<sup>21</sup> See Tex. R. Civ. P. 192.4.

<sup>22</sup> See *City of Celina’s Second Request for Information to Outside City Ratepayers*, at 2 (May 28, 2020).

unchecked, the City may effectively deprive Petitioners of their right to appeal under the Texas Water Code. As such, Petitioners objected to this request.

**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.**

Pursuant to negotiations, Petitioners and the City agreed that Request 2-10 is limited to the time period that begins when the Petitioners began considering an appeal of the City's rates.<sup>23</sup> However, Petitioners and the City could not come to an agreement on Petitioners' remaining objections, so Petitioners objected to this Request on June 8, 2020.<sup>24</sup> Petitioners have since responded no such meetings have occurred.<sup>25</sup> 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 protected by attorney client privilege and work product doctrine and these privileges and protections were not waived.<sup>26</sup> Texas attorney client privilege protects discourse between the lawyer, the client, and the client's representatives.<sup>27</sup> Accordingly, Petitioners objected.

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<sup>23</sup> See *Ratepayers' Objections to City of Celina's Second RFI* (June 8, 2020).

<sup>24</sup> *Id.*

<sup>25</sup> See *Ratepayers' Responses to City of Celina's Second RFI* (June 17, 2020).

<sup>26</sup> *Id.*; See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *In re XL Specialty Ins. Co.*, 373 S.W. 3d 46, 50 (Tex. 2012); *National Tank Co. v. 30th Judicial Dist. Court*, 851 S.W.2d 193, 202 (Tex. 1993) (adopting the federal interpretation of work product).

<sup>27</sup> See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *XL Specialty Ins. Co.*, 373 S.W.3d at 49 (citing Tex. R. Evid. 503).

**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.

Pursuant to negotiations, Petitioners and the City agreed that Request 2-11 is limited to the time period that begins when the Petitioners began considering an appeal of the City’s rates.<sup>28</sup> However, Petitioners and the City could not come to an agreement on Petitioners’ remaining objections, so Petitioners objected to this Request on June 8, 2020.<sup>29</sup> Petitioners have since responded there are no responsive documents as no such meeting has occurred.<sup>30</sup> 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 (1) the request sought information that was protected by attorney client privilege and work product doctrine and Petitioners did not waive these privileges and protections; (2) the request in so far as it duplicated already-requested materials, which would render a response unduly burdensome, an annoyance, and an unnecessary expense; and (3) the request was further duplicative because any possible non-privileged and responsive materials relating to those who filed testimony would have already been filed or would be obtainable from other sources that are more convenient, less burdensome, and less expensive.<sup>31</sup>

Petitioners objected to this Request on the bases that the request sought information that was protected by attorney client privilege and work product doctrine and Petitioners did not waive

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<sup>28</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020).

<sup>29</sup> *Id.*

<sup>30</sup> See *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

<sup>31</sup> *Id.*



these privileges and protections.<sup>32</sup> Texas attorney client privilege protects discourse between the lawyer, the client, and the client's representatives.<sup>33</sup>

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.<sup>34</sup> The City sought the same information in Requests 2-6 and 2-7, which duplicates and unnecessarily increases the costs for Petitioners to respond. Request 2-6 asks for “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 Petitioners and Request 2-7 similarly asks for “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.”<sup>35</sup> The City's definition of “document” further already includes data and workpapers, whether in paper, electronic, or native format.<sup>36</sup> Finally, any responsive documents would have been filed alongside the testimony to which it supports.

The City appears to be going to great lengths to make this proceeding unnecessarily wasteful for Petitioners and the City by repeating 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.

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<sup>32</sup> *Id.*; See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *In re XL Specialty Ins. Co.*, 373 S.W. 3d 46, 50 (Tex. 2012); *National Tank Co. v. 30th Judicial Dist. Court*, 851 S.W.2d 193, 202 (Tex. 1993) (adopting the federal interpretation of work product).

<sup>33</sup> See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *XL Specialty Ins. Co.*, 373 S.W.3d at 49 (citing Tex. R. Evid. 503).

<sup>34</sup> See Tex. R. Civ. P. 192.4.

<sup>35</sup> See *City of Celina's Second Request for Information to Outside City Ratepayers*, at 7 (May 28, 2020).

<sup>36</sup> See *id.* at 2.

**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.

Pursuant to negotiations, Petitioners and the City agreed that Request 2-12 is limited to the time period that begins when the Petitioners began considering an appeal of the City's rates and is related to communications between the Staff of the Public Utility Commission and the representatives of the Petitioners.<sup>37</sup> However, Petitioners and the City could not come to an agreement on Petitioners' remaining objections, so Petitioners objected to this Request on the basis that the request seeks information that is protected by attorney client privilege and work product doctrine and Petitioners did not waive these privileges and protections.<sup>38</sup> Petitioners have since responded no such meeting has occurred.<sup>39</sup> Accordingly, Petitioners' response rendered the City's motion to compel Petitioners to respond to this request moot.

Petitioners objected to this Request on the bases that the request seeks information that is protected by attorney client privilege and work product doctrine and these privileges and protections have not been waived.<sup>40</sup> Texas attorney client privilege protects discourse between the lawyer, the client, and the client's representatives.<sup>41</sup>

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<sup>37</sup> See *Ratepayers' Objections to City of Celina's Second RFI* (June 8, 2020).

<sup>38</sup> *Id.*

<sup>39</sup> See *Ratepayers' Responses to City of Celina's Second RFI* (June 17, 2020).

<sup>40</sup> *Id.*; See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *In re XL Specialty Ins. Co.*, 373 S.W. 3d 46, 50 (Tex. 2012); *National Tank Co. v. 30th Judicial Dist. Court*, 851 S.W.2d 193, 202 (Tex. 1993) (adopting the federal interpretation of work product).

<sup>41</sup> See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *XL Specialty Ins. Co.*, 373 S.W.3d at 49 (citing Tex. R. Evid. 503).

**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 an 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.

Pursuant to negotiations, Petitioners and the City agreed that Request 2-13 is limited to the time period that begins when the Petitioners began considering an appeal of the City’s rates.<sup>42</sup> However, Petitioners and the City could not come to an agreement on Petitioners’ remaining objections, so Petitioners objected to this Request on June 8, 2020.<sup>43</sup> Petitioners have since responded no such meeting has occurred.<sup>44</sup> 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 basis 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.<sup>45</sup>

Although the City has access to the information requested here through its employees, it attempts to argue that retrieving the information directly within its control is not more convenient, less burdensome, or less expensive. Its reasoning relies on the statement that “one employee of the City was privy to some of these meetings and/or conversations is no longer with the City,” and pointedly ignores that it could still obtain this information from those under its employ and from its own records. Because the responsive materials relating to meetings and conversations with the City’s own staff are obtainable from other sources that are more convenient, less burdensome, and less expensive—specifically the City’s own employees—Petitioners object.<sup>46</sup> Petitioners and their witnesses are not responsible for maintaining the City’s own records “regarding the City’s water

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<sup>42</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020).

<sup>43</sup> *Id.*

<sup>44</sup> See *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

<sup>45</sup> *Id.*

<sup>46</sup> *Brewer & Pritchard, P C. v. Johnson*, 167 S.W.3d 460, 466 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).

and wastewater system and /or its rates.” Because the City has better access to this information than Petitioners, no further accommodation in the interest of judicial economy is required, pursuant to Texas Rule of Civil Procedure 193.2(b).<sup>47</sup> As such, the City may obtain these requested records in a more convenient, less burdensome, and less expensive manner.

**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.**

Request 2-13 asks Petitioners to “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” for each person providing prefiled testimony on behalf of Petitioners.<sup>48</sup> While Petitioners objected to Request 2-14 on June 8, 2020, Petitioners have since responded no responsive documents exist because no meeting described in Request 2-13 occurred.<sup>49</sup> 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 (1) the request is cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense; and (2) this request is further duplicative because the responsive materials, if any, would have already been filed and would be obtainable from other sources that are more convenient, less burdensome, and less expensive.<sup>50</sup>

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.<sup>51</sup> The City sought the same information in Requests 2-6, which duplicated and unnecessarily increased the costs for Petitioners to respond. Request 2-6 asks for “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 Petitioners. Any possible documents responsive

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<sup>47</sup> See *id.*; Tex. R. Civ. P. 193.2.

<sup>48</sup> See *City of Celina’s Second Request for Information to Outside City Ratepayers*, at 8 (May 28, 2020).

<sup>49</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020); *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

<sup>50</sup> *Id.*

<sup>51</sup> See Tex. R. Civ. P. 192.4.

under this Request would also have been responsive under Request 2-6 because they would have been relevant to the development of testimony.

Additionally, any responsive documents would have been filed alongside the testimony to which it supports. 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.

**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.**

Request 2-15 asks Petitioners to “provide the dates and a summary of all meetings and/or conversations with Upper Trinity Regional Water District staff, operators, engineers and any other UTR WD representatives regarding the City of Celina’s water and wastewater system and/or its rates” for each person providing prefiled testimony on behalf of Petitioners.<sup>52</sup> While Petitioners objected to Request 2-16 on June 8, 2020, Petitioners have since responded no responsive documents exist because no meeting described in Request 2-15 occurred.<sup>53</sup> 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 (1) the request is cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense; and (2) this request is further duplicative because the responsive materials, if any, would have already been filed and would be obtainable from other sources that are more convenient, less burdensome, and less expensive.<sup>54</sup>

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<sup>52</sup> See *City of Celina’s Second Request for Information to Outside City Ratepayers*, at 8 (May 28, 2020).

<sup>53</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020); *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

<sup>54</sup> *Id.*

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.<sup>55</sup> The City sought the same information in Request 2-6, which duplicated and unnecessarily increased the costs for Petitioners to respond. Request 2-6 asks for “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 Petitioners. Any responsive documents under this Request would also have been responsive under Request 2-6 because they would have been relevant to the development of testimony.

Additionally, any responsive documents would have been filed alongside the testimony to which it supports. 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.

**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.**

While Petitioners objected to this Request on June 8, 2020, Petitioners have since responded no responsive documents exist.<sup>56</sup> 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 (1) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (2) the request is overbroad, extensive, and not properly limited in time, scope, or relation to the facts at issue in this proceeding; and (3) the request would require Petitioners to duplicate materials already

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<sup>55</sup> See Tex. R. Civ. P. 192.4.

<sup>56</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020); *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

provided, which would render a response unduly burdensome, an annoyance, and an unnecessary expense.<sup>57</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>58</sup> Whether Petitioners' experts were engaged by other municipalities has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>59</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>60</sup>

A request for "names of every municipal water and wastewater utility that engaged" those who provided pre-filed testimony "to prepare or participate in the preparation of a municipal water and wastewater rate study or analysis since the year 2010[,] . . . the dates of every identified engagement and . . . whether the utility adopted the person's rate recommendations" 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. Other municipal water and wastewater rates 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, this 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.<sup>61</sup> Requests for production must pertain to a relevant, narrow subject of the proceeding.<sup>62</sup> Petitioners have already demonstrated that this request is not relevant to the proceeding, but the request is also neither narrow nor tailored to this proceeding. Requesting line-

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<sup>57</sup> *Id.*

<sup>58</sup> 16 TAC § 24.101(e).

<sup>59</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>60</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

<sup>61</sup> See Tex. R. Civ. P. 192.4; *American Optical Corp.*, 988 S.W.2d at 713 (noting that an overly broad order compelling discovery well outside proper bounds is reviewable by mandamus).

<sup>62</sup> See *In re Allstate*, 227 S.W.3d 667, 669 (Tex. 2007) (orig. proceeding) (emphasis added)

by-line information involving the last decade's-worth of work and results from each person who provided pre-filed testimony on behalf of the Petitioners is unreasonably extensive and burdensome.<sup>63</sup>

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.<sup>64</sup> The City seeks the same information in Request 1-17, which duplicates and increases the costs for Petitioners to respond. Request 1-17 requests copies 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.<sup>65</sup>

Petitioners and the City agreed to limit Request 1-17 to "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/district jurisdiction and retail customers of the city/district that were outside the city/district jurisdiction."<sup>66</sup> Request 2-17 duplicates Request 1-17 because Mr. Joyce provided pre-filed testimony and would have already been required to disclose whether he "prepare[d] or participate[d] in the preparation of a municipal water and wastewater rate study or analysis since the year 2010" for instances where in-city and out-of-city rates differed.

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<sup>63</sup> See Tex. R. Civ. P. 192.4.

<sup>64</sup> *Id.*

<sup>65</sup> *City of Celina's First Request for Information and First Request for Admission to Outside City Ratepayers*, at 9 (May 21, 2020).

<sup>66</sup> See *Objections of Outside City Ratepayers to City of Celina's First Request for Information and first Request for Admissions*, at 10 (June 1, 2020).



Cumulative and duplicative requests render responses unduly burdensome, an annoyance, and an unnecessary expense—even if the Request duplicates a response of “None” and no responsive materials.<sup>67</sup> 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.

**J. CITY’S REQUEST TO RATEPAYERS 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.**

Request 2-17 asks Petitioners to “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” for each person providing prefiled testimony on behalf of Petitioners.<sup>68</sup> While Petitioners objected to Request 2-18 on June 8, 2020, Petitioners have since responded no responsive documents exist based on the answer to Request 2-17.<sup>69</sup> 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 basis that the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>70</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>71</sup> Whether Petitioners’ experts were engaged by other municipalities and to who those municipalities provide service has no bearing on this action to determine whether the rates the City charges are just and

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<sup>67</sup> See Tex. R. Civ. P. 192.4.

<sup>68</sup> See *City of Celina’s Second Request for Information to Outside City Ratepayers*, at 8 (May 28, 2020).

<sup>69</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020); *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

<sup>70</sup> *Id.*

<sup>71</sup> 16 TAC § 24.101(e).

reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>72</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>73</sup>

A request to identify whether municipal water and wastewater utilities “provide[] service to retail residential and non-residential customers outside the city limits” 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. The rates and services of other municipal water and wastewater utilities does 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.

**K. CITY’S REQUEST TO RATEPAYERS 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 to outside city customers that is higher than the inside city limit rate. Specifically state whether the utility adopted the person’s recommendations.**

Request 2-17 asks Petitioners to “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” for each person providing prefiled testimony on behalf of Petitioners.<sup>74</sup> While Petitioners objected to Request 2-19 on June 8, 2020, Petitioners have since responded no responsive documents exist based on the answer to Request 2-17.<sup>75</sup> Accordingly, Petitioners’ response rendered the City’s motion to compel Petitioners to respond to this request moot.

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<sup>72</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>73</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

<sup>74</sup> See *City of Celina’s Second Request for Information to Outside City Ratepayers*, at 8 (May 28, 2020).

<sup>75</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020); *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

Notwithstanding the foregoing, Petitioners objected to this Request on the basis that the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>76</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>77</sup> Whether Petitioners' experts were engaged by other municipalities and to who and at what rate those municipalities provide service has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>78</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>79</sup>

This request 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. The rates and services of other municipal water and wastewater utilities does 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.

**L. CITY'S REQUEST TO RATEPAYERS 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.**

Request 2-17 asks Petitioners to "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" for each person

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<sup>76</sup> *Id.*

<sup>77</sup> 16 TAC § 24.101(e).

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

<sup>79</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

providing prefiled testimony on behalf of Petitioners.<sup>80</sup> While Petitioners objected to Request 2-20 on June 8, 2020, Petitioners have since responded no responsive documents exist based on the answer to Request 2-17.<sup>81</sup> 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 basis that the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>82</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>83</sup> Whether Petitioners' experts were engaged by other municipalities and to who and at what rate those municipalities provide service has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>84</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>85</sup>

This request 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. The rates and services of other municipal water and wastewater utilities does 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.

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<sup>80</sup> See *City of Celina's Second Request for Information to Outside City Ratepayers*, at 8 (May 28, 2020).

<sup>81</sup> See *Ratepayers' Objections to City of Celina's Second RFI* (June 8, 2020); *Ratepayers' Responses to City of Celina's Second RFI* (June 17, 2020).

<sup>82</sup> *Id.*

<sup>83</sup> 16 TAC § 24.101(e).

<sup>84</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>85</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

**M. CITY’S REQUEST TO RATEPAYERS 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.**

Request 2-17 asks Petitioners to “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” for each person providing prefiled testimony on behalf of Petitioners.<sup>86</sup> While Petitioners objected to Request 2-21 on June 8, 2020, Petitioners have since responded no responsive documents exist based on the answer to Request 2-17.<sup>87</sup> 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 basis that the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>88</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>89</sup> Whether Petitioners’ experts were engaged by other municipalities and to who and at what rate those municipalities provide service has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>90</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>91</sup>

A request to identify whether other utilities charge “a retail residential water and wastewater rate that is lower than the rate charged to inside city customers” does not relate to a *de novo* review of the City’s rates and seeks information to explore issues well outside the scope of

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<sup>86</sup> See *City of Celina’s Second Request for Information to Outside City Ratepayers*, at 8 (May 28, 2020).

<sup>87</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020); *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

<sup>88</sup> *Id.*

<sup>89</sup> 16 TAC § 24.101(e).

<sup>90</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>91</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

the Texas Water Code, Commission Rules, and Preliminary Order. The rates and services of other municipal water and wastewater utilities does 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.

**N. CITY'S REQUEST TO RATEPAYERS 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.**

Request 2-17 asks Petitioners to "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" for each person providing prefiled testimony on behalf of Petitioners.<sup>92</sup> While Petitioners objected to Request 2-22 on June 8, 2020, Petitioners have since responded no responsive documents exist based on the answer to Request 2-17.<sup>93</sup> 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 basis that the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>94</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>95</sup> Whether Petitioners' experts were engaged by other municipalities and to who and at what rate those municipalities provide service has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>96</sup>

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<sup>92</sup> See *City of Celina's Second Request for Information to Outside City Ratepayers*, at 8 (May 28, 2020).

<sup>93</sup> See *Ratepayers' Objections to City of Celina's Second RFI* (June 8, 2020); *Ratepayers' Responses to City of Celina's Second RFI* (June 17, 2020).

<sup>94</sup> *Id.*

<sup>95</sup> 16 TAC § 24.101(e).

<sup>96</sup> 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.<sup>97</sup>

A request to identify whether another utility “charged different sets of outside city retail residential rates to different outside city retail residential customers” 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. The rates and services of other municipal water and wastewater utilities does 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.

**O. CITY’S REQUEST TO RATEPAYERS 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.**

Pursuant to negotiations, Petitioners and the City agreed that Request 2-23 such that the term “is familiar with” is intended to mean “is aware of” or “has personal knowledge of.”<sup>98</sup> However, Petitioners and the City could not come to an agreement on Petitioners’ remaining objections, so Petitioners objected to this Request on June 8, 2020.<sup>99</sup> Petitioners have since responded to the City’s request.<sup>100</sup> 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 basis that the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>101</sup>

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<sup>97</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

<sup>98</sup> See *Ratepayers’ Objections to City of Celina’s Second RFI* (June 8, 2020).

<sup>99</sup> *Id.*

<sup>100</sup> See *Ratepayers’ Responses to City of Celina’s Second RFI* (June 17, 2020).

<sup>101</sup> *Id.*

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>102</sup> Whether Petitioners' experts were engaged by other municipalities and to who and at what rate those municipalities provide service has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>103</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>104</sup>

This request 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. The rates and services of other municipal water and wastewater utilities does 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.

**P. CITY'S REQUEST TO RATEPAYERS 2-24: Please provide total financial compensation levels for each Board Member of Collin County MUD #1 by year for the past five years.**

Although the City references Request 2-24 in Section I, Background, and Section IV, Conclusion, in its Motion to Compel, the City failed to provide any support for its request that Petitioners generally be compelled to respond to its second requests for information. Such an absence should be construed as an indication that the dispute over this Request is resolved.<sup>105</sup>

Irrespective of the City's failure to support its general motion to compel, Petitioners objected to this Request on the bases that (1) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and (2) the request is unduly burdensome because it is equally

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<sup>102</sup> 16 TAC § 24.101(e).

<sup>103</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>104</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

<sup>105</sup> See 16 TAC § 22.144(e) (stating "The party seeking discovery shall file a motion to compel no later than five working days after the objection is received. Absence of a motion to compel will be construed as an indication that the parties have resolved their dispute. The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument.").



accessible and obtainable from other sources that are more convenient, less burdensome, and less expensive.<sup>106</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>107</sup> The compensation of Collin County MUD #1's Board Members has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>108</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>109</sup>

A request to "provide total financial compensation levels for each Board Member of Collin County MUD #1 by year for the past five years" 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. Contrary to what the City argues, Collin County MUD #1's compensation levels do not impact the City's costs or relate to its rates in any way.

In relation to another Request, the City argues exploring another municipal utility district's records was appropriate because it related to the "costs of infrastructure, facilities, operations, capital improvements, and administrative services' to provide service to the Ratepayers."<sup>110</sup> This misinterpretation warps the express language the Commission used. Specifically, the Commission asked the ALJs to consider in Issue 4.c.iv.:

4. Do the retail water and sewer rates being charged petitioners by the City of Celina fulfill the requirements of TWC § 13.043(j)6 and 16 TAC § 24.101(i)? In addressing this question, evaluate the following:

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<sup>106</sup> *Id.*

<sup>107</sup> 16 TAC § 24.101(e).

<sup>108</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>109</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

<sup>110</sup> *City of Celina's Motion to Compel Outside Ratepayers to Respond to City's 2<sup>nd</sup> Request for Information*, at 35 (June 15, 2020) (citing *Preliminary Order*, at 4 (Jan. 17, 2020)).

c. Are the rates sufficient, equitable, and consistent in application to each class of customers?

\* \* \*

iv. How do the costs of infrastructure, facilities, operations, capital improvements, and administrative services to provide service to the out-of-city customer class differ from those costs to provide service to the in-city customers?<sup>111</sup>

This inquiry, therefore, is meant to be an inquiry into the factors that affect the City's costs and rates, not irrelevant analyses of a wholly separate municipality utility district that does not provide water or sewer service. 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, the request is unduly burdensome because it is equally accessible and obtainable from other sources that are more convenient, less burdensome, and less expensive. *Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 466 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). This information is equally available on the Texas Commission on Environmental Quality's Water District Database ("WDD") (see <https://www.tceq.texas.gov/waterdistricts/iwdd.html>). As such, the City may obtain these requested public records in a more convenient, less burdensome, and less expensive manner.

**Q. CITY'S REQUEST TO RATEPAYERS 2-25: Please list the names of each current Collin County MUD #1 Board Member, and state whether that Board Member maintains a residence in Collin County MUD #1.**

Although the City references Request 2-25 in Section I, Background, and Section IV, Conclusion, in its Motion to Compel, the City failed to provide any support for its request that Petitioners generally be compelled to respond to its second requests for information. Such an absence should be construed as an indication that the dispute over this Request is resolved.<sup>112</sup>

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<sup>111</sup> *Preliminary Order*, at 3-4 (Jan. 17, 2020).

<sup>112</sup> See 16 TAC § 22.144(e) (stating "The party seeking discovery shall file a motion to compel no later than five working days after the objection is received. Absence of a motion to compel will be construed as an indication that

Irrespective of the City's failure to support its general motion to compel, Petitioners objected to this Request on the bases that (1) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and (2) the request is unduly burdensome because it is equally accessible and obtainable from other sources that are more convenient, less burdensome, and less expensive.<sup>113</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>114</sup> Colling County MUD #1's Board Members and residences 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.<sup>115</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>116</sup>

A request to identify "the names of each current Collin County MUD #1 Board Member, and state whether that Board Member maintains a residence in Collin County MUD #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. Contrary to what the City argues, the identity of Collin County MUD #1's Board members and the location of their residences does not impact the City's costs or relate to its rates in any way.

In relation to another Request, the City argues exploring another municipal utility district's records was appropriate because it related to the "'costs of infrastructure, facilities, operations, capital improvements, and administrative services' to provide service to the Ratepayers."<sup>117</sup> This misinterpretation warps the express language the Commission used. Specifically, the Commission asked the ALJs to consider in Issue 4.c.iv.:

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the parties have resolved their dispute. The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument.").

<sup>113</sup> *Id.*

<sup>114</sup> 16 TAC § 24.101(e).

<sup>115</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>116</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

<sup>117</sup> *City of Celina's Motion to Compel Outside Ratepayers to Respond to City's 2<sup>nd</sup> Request for Information*, at 35 (June 15, 2020) (citing *Preliminary Order*, at 4 (Jan. 17, 2020)).

4. Do the retail water and sewer rates being charged petitioners by the City of Celina fulfill the requirements of TWC § 13.043(j)6 and 16 TAC § 24.101(i)? In addressing this question, evaluate the following:

\* \* \*

c. Are the rates sufficient, equitable, and consistent in application to each class of customers?

\* \* \*

iv. How do the costs of infrastructure, facilities, operations, capital improvements, and administrative services to provide service to the out-of-city customer class differ from those costs to provide service to the in-city customers?<sup>118</sup>

This inquiry, therefore, is meant to be an inquiry into the factors that affect the City's costs and rates, not irrelevant analyses of a wholly separate municipality utility district that does not provide water or sewer service. 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.

Further, the request is unduly burdensome because it is equally accessible and obtainable from other sources that are more convenient, less burdensome, and less expensive. *Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 466 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). Petitioners have already informed the City that this information is equally available on the Electronic Municipal Market Access ("EMMA") system (*see* <https://emma.msrb.org/>). As such, the City may obtain these requested public records in a more convenient, less burdensome, and less expensive manner.

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<sup>118</sup> *Preliminary Order*, at 3-4 (Jan. 17, 2020).

**R. 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.

Petitioners objected to this Request on the bases that the request seeks information that is protected by attorney client privilege and work product doctrine and these privileges and protections have not been waived.<sup>119</sup> Texas attorney client privilege protects discourse between the lawyer, the client, and the client's representatives.<sup>120</sup> Accordingly, Petitioners object.

**S. 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.

Petitioners objected to this Request on the bases that the request seeks information that is protected by attorney client privilege and work product doctrine and these privileges and protections have not been waived.<sup>121</sup> Texas attorney client privilege protects discourse between the lawyer, the client, and the client's representatives.<sup>122</sup> Accordingly, Petitioners object.

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<sup>119</sup> *Id.*; See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *In re XL Specialty Ins. Co.*, 373 S.W. 3d 46, 50 (Tex. 2012); *National Tank Co. v. 30th Judicial Dist. Court*, 851 S.W.2d 193, 202 (Tex. 1993) (adopting the federal interpretation of work product).

<sup>120</sup> See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *XL Specialty Ins. Co.*, 373 S.W.3d at 49 (citing Tex. R. Evid. 503).

<sup>121</sup> *Id.*; See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *In re XL Specialty Ins. Co.*, 373 S.W. 3d 46, 50 (Tex. 2012); *National Tank Co. v. 30th Judicial Dist. Court*, 851 S.W.2d 193, 202 (Tex. 1993) (adopting the federal interpretation of work product).

<sup>122</sup> See Tex. R. Evid. 503; Tex. R. Civ. P. 192.5; *XL Specialty Ins. Co.*, 373 S.W.3d at 49 (citing Tex. R. Evid. 503).

**T. 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 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.

Petitioners objected to this Request on the basis that (1) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and work product doctrine and these privileges and protections have not been waived.<sup>123</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>124</sup> These meetings, phone calls, or other communications 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.<sup>125</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>126</sup>

This request 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. Information requested on such conversations ultimately 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.

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<sup>123</sup> *Id.*

<sup>124</sup> 16 TAC § 24.101(e).

<sup>125</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>126</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

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.<sup>127</sup>

**U. 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.**

Petitioners objected to this Request on the basis that (1) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and (2) the request seeks information that is protected by attorney client privilege and work product doctrine and these privileges and protections have not been waived.<sup>128</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>129</sup> Invoices for services rendered by those who provided prefiled testimony on behalf of Ratepayers 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.<sup>130</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>131</sup>

A request for "invoices for all services rendered by any person providing prefiled testimony on behalf" of the Petitioners 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,

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<sup>127</sup> See *Ratepayers' Objections to City of Celina's First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

<sup>128</sup> *Id.*

<sup>129</sup> 16 TAC § 24.101(e).

<sup>130</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>131</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

and Preliminary Order. Invoices for all services rendered by any person providing prefiled testimony on behalf” of the Petitioners ultimately 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.<sup>132</sup>

**V. 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.**

Petitioners objected to this Request on the basis that (1) the request is cumulative and duplicative, rendering a response unduly burdensome, an annoyance, and an unnecessary expense; and (2) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>133</sup>

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.<sup>134</sup> On May 28, 2020, the City submitted a request for the same information in City’s Requests to Ratepayers 2-30 and 2-31.<sup>135</sup> Specifically, in Request 2-30, the City asked Petitioners to “Provide all invoices for all services rendered by any person providing prefiled testimony on behalf of the

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<sup>132</sup> See *Ratepayers’ Objections to City of Celina’s First RFI and RFA*, (June 1, 2020); 16 TAC § 22.144(g).

<sup>133</sup> *Id.*

<sup>134</sup> See Tex. R. Civ. P. 192.4.

<sup>135</sup> See *City of Celina’s Second Request for Information to Outside City Ratepayers*, Docket No. 49225, at 10-11 (May 28, 2020).



Outside Ratepayers” and identify whether, if any 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,” to specify “whether funds to pay these invoices were obtained directly or indirectly from Collin County MUD #1.”<sup>136</sup> Similarly, Request 2-31 asked Petitioners to “provide all invoices for all services rendered by the Law Firm of Gilbert Wilburn PLLC, the Carlton Law Firm, Crawford & Jordan LLP, and any other entity for any service related to these proceedings [and] specifically state whether funds to pay these invoices were obtained directly or indirectly from Collin County MUD #1.”<sup>137</sup> Any documents and information responsive under this Request would have also been responsive under Requests 2-30 and 2-31, which increases the request’s burden and unreasonableness.<sup>138</sup> 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.

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>139</sup> Whether Collin County MUD #1 has expended funds on this proceeding has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>140</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>141</sup>

A request for “invoices for all services rendered by any person providing prefiled testimony on behalf” of the Petitioners 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,

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> See Tex. R. Civ. P. 192.4(a) (indicating that discovery should be limited if the discovery sought is unreasonably cumulative or duplicative); *In re American Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998) (instructing that a “trial court must make an effort to impose reasonable discovery limits” and providing examples where discovery requests were “too broad”).

<sup>139</sup> 16 TAC § 24.101(e).

<sup>140</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>141</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

and Preliminary Order. Invoices for all services rendered by any person providing prefiled testimony on behalf of the Petitioners ultimately 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.

**W. CITY'S REQUEST TO RATEPAYERS 2-33: Please provide the debt service coverage requirements for all bonds issued by Collin County MUD #1.**

Petitioners objected to this Request on the bases that (1) the request is vague and lacks specificity such that Petitioner is not able to identify the information requested, (2) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and (3) the request is unduly burdensome because it is accessible and obtainable from other sources that are more convenient, less burdensome, and less expensive.<sup>142</sup>

The request is vague and lacks specificity such that Petitioner is not able to identify the information requested. The City's Requests 2-33 through 2-37 are all in reference to testimony where Petitioners "provided allegedly expert opinion testimony regarding the City's debt coverage requirements."<sup>143</sup> The failure to identify the particular testimony on debt service coverage that is referenced in the header makes this request overbroad and unduly burdensome, and the expense to respond with the proposed discovery would vastly outweigh its likely benefit.<sup>144</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>145</sup> The debt service coverage of a municipal utility district who neither provides water or sewer service has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>146</sup> This proceeding also must consider

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<sup>142</sup> *Id.*

<sup>143</sup> *City of Celina's Second Request for Information to Outside City Ratepayers*, at 11 (May 28, 2020).

<sup>144</sup> *See* Tex. R. Civ. P. 192.4.

<sup>145</sup> 16 TAC § 24.101(e).

<sup>146</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>147</sup>

A request to “provide the debt service coverage requirements for all bonds issued by Collin County MUD #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. The City has based its support for its rates in the “Utility Basis” methodology, which does not rely upon or use debt service coverage in any way. Debt service coverage might be an issue if the City were seeking rates based on the “Cash Basis” methodology, but the City is not relying on that methodology in any way. Accordingly, contrary to what the City argues, Collin County MUD #1’s debt service coverage requirements are not relevant.

Here, the City argues exploring another municipal utility district’s financial records is appropriate because it related to the “costs of infrastructure, facilities, operations, capital improvements, and administrative services’ to provide service to the Ratepayers.”<sup>148</sup> This misinterpretation warps the express language the Commission used. Specifically, the Commission asked the ALJs to consider in Issue 4.c.iv.:

4. Do the retail water and sewer rates *being charged petitioners by the City of Celina* fulfill the requirements of TWC § 13.043(j)6 and 16 TAC § 24.101(i)? In addressing this question, evaluate the following:

\* \* \*

c. Are the rates sufficient, equitable, and consistent in application to each class of customers?

\* \* \*

iv. How do the costs of infrastructure, facilities, operations, capital improvements, and administrative services to provide service to the out-of-city customer class differ from those costs to provide service to the in-city customers?<sup>149</sup>

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<sup>147</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

<sup>148</sup> *City of Celina's Motion to Compel Outside Ratepayers to Respond to City's 2<sup>nd</sup> Request for Information*, at 35 (June 15, 2020) (citing *Preliminary Order*, at 4 (Jan. 17, 2020)).

<sup>149</sup> *Preliminary Order*, at 3-4 (Jan. 17, 2020) (emphasis added).

This inquiry, therefore, is meant to be an inquiry into the factors that affect the City's costs and rates, not irrelevant analyses of a wholly separate municipality utility district that does not provide water or sewer service. 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.

Further, the request is unduly burdensome because it is equally accessible and obtainable from other sources that are more convenient, less burdensome, and less expensive. *Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 466 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). Petitioners have already informed the City that this information is equally available on the Electronic Municipal Market Access (“EMMA”) system (*see* <https://emma.msrb.org/>). As such, the City may obtain these requested public records in a more convenient, less burdensome, and less expensive manner.

**X. 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.**

Petitioners objected to this Request on the bases that (1) the request is vague and lacks specificity such that Petitioner is not able to identify the information requested, and (2) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>150</sup>

The request is vague and lacks specificity such that Petitioner is not able to identify the information requested. The City’s Requests 2-33 through 2-37 are all in reference to testimony where Petitioners “provided allegedly expert opinion testimony regarding the City’s debt coverage requirements.”<sup>151</sup> The failure to identify the particular testimony on debt service coverage that is referenced in the header makes this request overbroad and unduly burdensome, and the expense to respond with the proposed discovery would vastly outweigh its likely benefit.<sup>152</sup>

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<sup>150</sup> *Id.*

<sup>151</sup> *City of Celina’s Second Request for Information to Outside City Ratepayers*, at 11 (May 28, 2020).

<sup>152</sup> *See* Tex. R. Civ. P. 192.4.

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>153</sup> The debt service coverage policy of a municipal utility district who neither provides water or sewer service has no bearing on this action to determine whether the rates the City charges are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.<sup>154</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>155</sup>

A request to “describe in detail the general policy of Collin County MUD #1 regarding debt service coverage for bonds it issues” 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. The City has based its support for its rates in the “Utility Basis” methodology, which does not rely upon or use debt service coverage in any way. Debt service coverage might be an issue if the City were seeking rates based on the “Cash Basis” methodology, but the City is not relying on that methodology in any way. Accordingly, contrary to what the City argues, Collin County MUD #1’s debt service coverage requirements are not relevant.

Here, the City argues exploring another municipal utility district’s records is appropriate because it related to the “costs of infrastructure, facilities, operations, capital improvements, and administrative services’ to provide service to the Ratepayers.”<sup>156</sup> This misinterpretation warps the express language the Commission used. Specifically, the Commission asked the ALJs to consider in Issue 4.c.iv.:

4. Do the retail water and sewer rates *being charged petitioners by the City of Celina* fulfill the requirements of TWC § 13.043(j)6 and 16 TAC § 24.101(i)? In addressing this question, evaluate the following:

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<sup>153</sup> 16 TAC § 24.101(e).

<sup>154</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>155</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).

<sup>156</sup> *City of Celina’s Motion to Compel Outside Ratepayers to Respond to City’s 2<sup>nd</sup> Request for Information*, at 35 (June 15, 2020) (citing *Preliminary Order*, at 4 (Jan. 17, 2020)).

c. Are the rates sufficient, equitable, and consistent in application to each class of customers?

\* \* \*

iv. How do the costs of infrastructure, facilities, operations, capital improvements, and administrative services to provide service to the out-of-city customer class differ from those costs to provide service to the in-city customers?<sup>157</sup>

This inquiry, therefore, is meant to be an inquiry into the factors that affect the City's costs and rates, not irrelevant analyses of a wholly separate municipality utility district that does not provide water or sewer service. 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.

**Y. 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.**

Petitioners objected to this Request on the bases that the request is vague and lacks specificity such that Petitioner is not able to identify the information requested.<sup>158</sup> The City's Requests 2-33 through 2-37 are all in reference to testimony where Petitioners "provided allegedly expert opinion testimony regarding the City's debt coverage requirements."<sup>159</sup> The failure to identify the particular testimony on debt service coverage that is referenced in the header makes this request overbroad and unduly burdensome, and the expense to respond with the proposed discovery would vastly outweigh its likely benefit.<sup>160</sup>

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<sup>157</sup> *Preliminary Order*, at 3-4 (Jan. 17, 2020) (emphasis added).

<sup>158</sup> *Id.*

<sup>159</sup> *City of Celina's Second Request for Information to Outside City Ratepayers*, at 11 (May 28, 2020).

<sup>160</sup> *See* Tex. R. Civ. P. 192.4.

**Z. 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.**

Petitioners objected to this Request on the bases that the request is vague and lacks specificity such that Petitioner is not able to identify the information requested.<sup>161</sup> The City's Requests 2-33 through 2-37 are all in reference to testimony where Petitioners "provided allegedly expert opinion testimony regarding the City's debt coverage requirements."<sup>162</sup> The failure to identify the particular testimony on debt service coverage that is referenced in the header makes this request overbroad and unduly burdensome, and the expense to respond with the proposed discovery would vastly outweigh its likely benefit.<sup>163</sup>

**AA. CITY'S REQUEST TO RATEPAYERS 2-37: Has Collin County MUD #1 received any awards for Excellence in Financial Reporting, Budgeting, Public Finance or any other entity in the last five years?**

Although the City references Request 2-37 in Section I, Background, and Section IV, Conclusion, in its Motion to Compel, the City failed to provide any support for its request that Petitioners generally be compelled to respond to its second requests for information. Such an absence should be construed as an indication that the dispute over this Request is resolved.<sup>164</sup>

Irrespective of the City's failure to support its general motion to compel, Petitioners objected to this Request on the bases that (1) the request is vague and lacks specificity such that Petitioner is not able to identify the information requested, and (2) the request is not relevant to the subject matter of this docket and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>165</sup>

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<sup>161</sup> *Id.*

<sup>162</sup> *City of Celina's Second Request for Information to Outside City Ratepayers*, at 11 (May 28, 2020).

<sup>163</sup> *See* Tex. R. Civ. P. 192.4.

<sup>164</sup> *See* 16 TAC § 22.144(e) (stating "The party seeking discovery shall file a motion to compel no later than five working days after the objection is received. Absence of a motion to compel will be construed as an indication that the parties have resolved their dispute. The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument.").

<sup>165</sup> *Id.*

The request is vague and lacks specificity such that Petitioner is not able to identify the information requested. The City's Requests 2-33 through 2-37 are all in reference to testimony where Petitioners "provided allegedly expert opinion testimony regarding the City's debt coverage requirements."<sup>166</sup> The failure to identify the particular testimony on debt service coverage that is referenced in the header makes this request overbroad and unduly burdensome, and the expense to respond with the proposed discovery would vastly outweigh its likely benefit.<sup>167</sup>

According to Commission Rules, this proceeding is reviewed *de novo*.<sup>168</sup> 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.<sup>169</sup> This proceeding also must consider whether the rates the City charges shall be sufficient, equitable, and consistent in application to each class of customers.<sup>170</sup>

A request to answer whether "Collin County MUD #1 received any awards for Excellence in Financial Reporting, Budgeting, Public Finance or any other entity in the last five years" 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. 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.

#### 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

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<sup>166</sup> *City of Celina's Second Request for Information to Outside City Ratepayers*, at 11 (May 28, 2020).

<sup>167</sup> *See* Tex. R. Civ. P. 192.4.

<sup>168</sup> 16 TAC § 24.101(e).


<sup>169</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (e), (i).

<sup>170</sup> TWC § 13.047(j); 16 TAC § 24.101(d), (i).



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 22<sup>nd</sup> day of June 2020.

\_\_\_\_\_

John J. Carlton