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DOCKET NO. 49225 RECEIVED

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

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2019 MAY 10 AM 10:22
PUBLIC UTILITY COMMISSION
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OF TEXAS

**CITY OF CELINA'S OBJECTIONS
TO COMMISSION STAFF'S THIRD SET OF REQUESTS FOR INFORMATION
AND MOTION FOR EXTENSION OF TIME**

Now comes CITY OF CELINA ("CITY") and files these Objections to Commission Staff's Third Set of Requests for Information ("Objections") and Motion for Extension of Time and would respectfully show as follows.

I. PROCEDURAL HISTORY

The Staff of the Public Utility Commission of Texas ("Commission") served its Third Set of RFIs to the City of Celina which were received on May 1, 2019. Pursuant to Commission Procedural Rule 22.144(d)¹, these Objections are timely filed on or before May 10, 2019.

The Administrative Law Judge ("ALJ") issued Order No. 3 on March 18, 2019 directing the parties and Staff to file comments regarding how to proceed with the petition and propose a procedural schedule. On March 18, 2019, Staff included in its response the statement that "Staff requests that this proceeding be referred to the State Office of Administrative Hearings (SOAH) so that an evidentiary record may be developed. Because Staff recommends that this proceeding be referred to SOAH, Staff will not recommend a procedural schedule at this time." On April 17, 2019, the ALJ issued Order No. 4, which closed with the statement, "Commission Staff's recommendation that this docket be referred to SOAH will be addressed in a separate order."

¹ 16 Tex. Admin. Code § 22.144(d) ("TAC").

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The City also requested that this matter be referred to SOAH so that a procedural schedule may be developed.

The City now requests an opportunity to fairly prepare its direct testimony in support of its rates in this matter pursuant to a procedural schedule allowing a reasonable amount of time to prepare such testimony. Specifically, the City asks that the deadline for it to respond to this Third Set of RFIs be extended to 20 days after the City has had an opportunity to file its direct case in this matter.

II. NEGOTIATIONS

Counsel for the City and Staff have negotiated diligently and in good faith, but were unable to reach agreement regarding the requests in Staff's Third Set of RFIs, necessitating the filing of these Objections. However, Staff has agreed to grant the City an additional twenty days to provide answers to the RFIs. The City will continue to negotiate with Staff on these and future RFIs, and to the extent that any agreement is subsequently reached, the City will withdraw such objections.

III. GENERAL OBJECTIONS

The City objects generally to Staff RFIs 3-1 through 3-16 because they prematurely seek information constituting the City's direct case in this matter before the City has had a reasonable opportunity to prepare its direct case in this matter. The City must be allowed a reasonable amount of time pursuant to an established procedural schedule to prepare its direct case. The Staff's RFIs constitute a circumvention of the intended effect of a procedural schedule by seeking the City's direct case piecemeal before the City has had a fair chance to prepare its case in this matter. Furthermore, responses to these RFIs would yield misleading information without

the context of the City's direct testimony, harming the City's reasonable expectation of due process in this matter.

The City is fully willing to respond to the RFIs in question, subject to the Specific Objections listed, in a reasonable time after the City has filed its direct testimony in this case. The extension of time for responses offered by the Staff is completely inadequate to provide the City with reasonable due process in this matter. The City should be allowed a reasonable amount of time to prepare its direct case in this matter pursuant to an established procedural schedule. The City requests an extension of time, subject to the specific objections below, to a date 20 days after the City files its direct testimony in this case, to provide its responses to this set of RFIs.

IV. SPECIFIC OBJECTIONS

Subject to the General Objections described above, the City provides the following specific objections for each RFI listed below.

Staff 3-1. Provide any and all rate studies, including methodologies, best practice references, and calculations, and assumptions used to support the rate changes subject to this appeal.

Objections:

The City objects to this question on the grounds that it is overly broad and unduly burdensome. TEX. R. CIV. P. 192.4(b). The request for all rate studies, including methodologies, best practice references, and calculations, and assumptions used to support the rate changes subject to this appeal could encompass decades of information cumulatively supporting the rates prior to the current rates which would, in turn, support the changes in rates subject to this appeal.

The City also objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(a), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, because of the sweeping scope of the request, prior attorney-client communications or attorney work product from years prior may exist and must be protected as privileged.

Staff 3-2. Please provide any and all rate studies showing the calculations for costs allocated between the inside city and outside city customers receiving water and/or sewer service.

Objections:

The City objects to this request to the extent it seeks information that is outside the City's possession, custody, or control. TEX. R. CIV. P. 192.3(b) and 192.7(b), 16 TAC § 22.141(a). This request is not reasonably limited to information prepared by or at the direction of the City, so the City would not have the information or documents requested, if they were not prepared by or at the direction of the City.

The City objects to this question on the grounds that it is overly broad and unduly burdensome. TEX. R. CIV. P. 192.4(b). The request for any and all rate studies showing the calculations for costs allocated between the inside city and outside city customers receiving water and/or sewer service could encompass decades of information cumulatively supporting the rates prior to the current rates which would, in turn, support the changes in rates subject to this appeal.

The City also objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(A), TEX. R.

CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, because of the sweeping scope of the request, prior attorney-client communications or attorney work product from years prior may exist and must be protected as privileged.

Staff 3-3. Please provide any all documents showing the cost of service for water and waste water service provided by the City to inside city and outside city customers.

Objections:

The City objects to this request to the extent it seeks information that is outside the City's possession, custody, or control. TEX. R. CIV. P. 192.3(b) and 192.7(b), 16 TAC § 22.141(a). This request is not reasonably limited to information prepared by or at the direction of the City, so the City would not have the information or documents requested, if they were not prepared by or at the direction of the City.

The City objects to this question on the grounds that it is overly broad and unduly burdensome. TEX. R. CIV. P. 192.4(b). The request for any all documents showing the cost of service for water and waste water service provided by the City to inside city and outside city customers could encompass decades of information cumulatively supporting the rates prior to the current rates which would, in turn, support the changes in rates subject to this appeal.

The City also objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(A), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, because of the sweeping scope of the request, prior attorney-client communications or attorney work product from years prior may exist and must be protected as privileged.

Staff 3-4. Provide all documentation and information used by the City to set the rates which went into effect January 01, 2019 and March 19, 2019 subject to this appeal.

Objections:

The City objects to this question on the grounds that it is overly broad and unduly burdensome. TEX. R. CIV. P. 192.4(b). The request for all documentation and information used by the City to set the rates which went into effect January 01, 2019 and March 19, 2019 subject to this appeal could encompass decades of information cumulatively supporting the rates prior to the rates in question which would, in turn, support the changes in rates subject to this appeal.

The City also objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(a), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, because of the sweeping scope of the request, prior attorney-client communications or attorney work product from years prior may exist and must be protected as privileged.

Staff 3-5. Please provide a copy of the audited financial statements of the City completed at the time the City made its decision to institute the rates effective January 01, 2019 and March 19, 2019.

Objections:

The City objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(a), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, attorney-client communications or

attorney work product related to the preparation of the City's audited financial statements may exist and must be protected as privileged.

Staff 3-6. Please provide a copy of the City's budget available at the time the City made its decision to institute the rates effective January 01, 2019 and March 19, 2019.

Objections:

The City objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(a), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, attorney-client communications or attorney work product related to the preparation of the City's budget may exist and must be protected as privileged.

Staff 3-7. For outstanding debt, please providing documents showing:

- a. Total annual interest
- b. Principal payments
- c. amortization schedule
- d. allocation of debt between water and wastewater services for outside city customers and inside city customers
- e. allocation of debt for capital investment issued for water and wastewater services for outside city customers for years 2018-2019.

Objections:

The City objects to this request to the extent it seeks information that is outside the City's possession, custody, or control. TEX. R. CIV. P. 192.3(b) and 192.7(b), 16 TAC § 22.141(a). This request does not define the term "debt" and whether it is the debt of the City or the Municipal Utility District, or other bonding agency. The term "debt" has many possible meanings in a municipal context, and what is meant by the term is not explained. Furthermore

this request is not reasonably limited to information prepared by or at the direction of the City, so the City would not have the information or documents requested, if they were not prepared by or at the direction of the City.

The City objects to this question on the grounds that it is overly broad and unduly burdensome. TEX. R. CIV. P. 192.4(b). Subsections a. through c. are not limited to the rates in question.

The City also objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(A), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, because of the sweeping scope of the request, prior attorney-client communications or attorney work product may exist and must be protected as privileged.

Staff 3-8. Provide copies of all debt agreements including but not limited to bond agreements and loan agreements for any debt service used to provide water and wastewater service.

Objections:

The City objects to this request to the extent it seeks information that is outside the City's possession, custody, or control. TEX. R. CIV. P. 192.3(b) and 192.7(b), 16 TAC § 22.141(a). This request does not define the terms "debt," "bond," or "loan" which have many possible meanings in a municipal context. Furthermore this request is not reasonably limited to information prepared by, for, or at the direction of the City, or whether the City is a party to such agreements, so the City could potentially not have the information or documents requested.

The City objects to this question on the grounds that it is overly broad and unduly burdensome. TEX. R. CIV. P. 192.4(b). The request is for copies of all debt agreements regardless of their relevance to this case or with any limitation in time.

The City also objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(A), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, because of the sweeping scope of the request, prior attorney-client communications or attorney work product from years prior may exist and must be protected as privileged.

Staff 3-9. Please explain in detail what entity installed and paid for the infrastructure to provide water and wastewater service to the out of city customers and provide all agreements made with any entities that shared in payment for such infrastructure.

Objections:

The City objects to this request to the extent it seeks information that is outside the City's possession, custody, or control. TEX. R. CIV. P. 192.3(b) and 192.7(b), 16 TAC § 22.141(a). The City objects to the extent there are any responsive documents beyond the City's possession, custody, or control if "agreements made with any entities that shared in payment for such infrastructure" did not include the City as a party to such agreement.

The City also objects to this question on the grounds that some of the information responsive to this request may contain privileged information. TEX. R. CIV. P. 192.3(A), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3). While the City has no specific knowledge of any information responsive to this request that is privileged, because of the sweeping scope of

the request, prior attorney-client communications or attorney work product from years prior may exist and must be protected as privileged.

Staff 3-16 Provide a copy of the notice sent to each effected [sic] individual customer and a signed and a copy of the affidavit indicating when notice was provided.

Objections:

The City objects to this request to the extent it requests information or documents that may or may not yet exist, specifically an affidavit. Discovery cannot be used to compel a party to create a document that does not exist.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the City of Celina requests that these Objections be sustained, that the City be relieved of responding to the objectionable RFIs, that the deadline for the City to respond to these RFIs be extended to 20 days after the City has had an opportunity to file its direct case in this matter, and that the City be granted such other relief to which it may show itself justly entitled.

Respectfully submitted,

DAVIDSON TROILO REAM & GARZA, P.C.

919 Congress Avenue, Suite 810

Austin, Texas 78701

Telephone: (512) 469-6006

Facsimile: (512) 473-2159

By: _____

Scott Smyth

State Bar No. 18779450

ssmyth@dtrglaw.com

Patrick W. Lindner

State Bar No. 12367850

plindner@dtrglaw.com

ATTORNEYS FOR CITY OF CELINA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on all parties of record on this 10th day of May, 2019, in accordance with 16 Tex. Admin. Code § 22.74.

Randall B. Wilburn
Helen S. Gilbert
Gilbert Wilburn, PLLC
7000 N. MoPac Expressway, Suite 200
Austin, TX 78731
rbw@gwtxlaw.com
hgilbert@gwtxlaw.com

Rashmin J. Asher
Staff Attorney
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, TX 78711
Rashmin.asher@puc.texas.gov

Scott Smyth