



Control Number: 49225



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DOCKET NO. 49225

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

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**COMMISSION STAFF'S AGREED MODIFICATIONS TO STAFF'S THIRD  
REQUESTS FOR INFORMATION TO CITY OF CELINA AND MOTION TO COMPEL**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Motion to Compel pursuant to 16 Texas Administrative Code (TAC) § 22.144(e). In support thereof, Staff shows the following:

**I. BACKGROUND**

On February 14, 2019, outside city ratepayers of the City of Celina (Ratepayers) filed a petition appealing the decision of the City of Celina (City) to increase rates for water and wastewater services, effective January 1, 2019. Ratepayers filed an amended petition on March 15, 2019. Additionally, on April 5, 2019, City filed a Notice of Corrected Effective Date. The Ratepayers filed Petitioners' Response to City's Notice of Corrected Effective Date on April 12, 2019.

On April 26, 2019, Staff filed its Third Requests for Information Question Nos. 3-1 Through 3-16 and Staff's Third Request for Admission Question No. 3-1. On May 10, 2019, City filed Objections to Staff's Third Set of Requests for Information. On May 16, 2019, Staff filed a letter notifying the ALJ that Staff and City had come to agreement under Rule 11 of the Texas Rules of Civil Procedure to extend Staff's deadline for filing a motion to compel from May 10, 2019 to May 24, 2019. Therefore, this motion is timely filed.

**II. AGREED MODIFICATIONS**

Staff has conferred with counsel for City with regard to City's objections to Staff's Third Requests for Information. Staff and City have come to an agreement on Staff's RFI questions and City has agreed to waive all of its objections to Staff's Third Set of RFIs with the exception of the general objection to Staff's RFIs 3-1 through 3-16 and City's privilege objections to

Staff's RFIs 3-1 through 3-9. After negotiations, Staff's RFIs 3-1, 3-2, 3-3, 3-4, 3-7, 3-8, 3-9, and 3-16 have been altered as follows.

Staff 3-1: Provide any and all rate studies for the past 5 years, including methodologies, best practice references, and calculations, and assumptions used to support the rate changes subject to this appeal.

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 that the City has in its possession or that was prepared by or prepared at the direction of the City.

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 for the past 5 years.

Staff 3-4: Provide all documentation and information for the last 5 years used by the City to set the rates which went into effect January 01, 2019 and March 19, 2019 subject to this appeal.

Staff 3-7: For debt outstanding by the City regarding the rates which went into effect January 1, 2019 and March 19, 2019, please provide documents in possession of the City or directed or prepared by the City showing:

- a. Total annual interest
- b. Principal payments
- c. Amortization schedule
- d. Allocation of debt between water and wastewater services for outside 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.

Staff 3-8: Provide copies of all debt agreements for the past 5 years, in possession of the City or prepared by the City or at the direction of the City, including but not limited to bond agreements and loan agreements for any debt service used to provide water and wastewater service.

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 for the past 5 years made with entities that shared in payment for such infrastructure.

Staff 3-16: Provide a copy of the notice sent to each affected customer for the rate change that went into effect on March 19, 2019, and a signed copy of the affidavit indicating when notice was provided.

The City did not object to Staff's RFIs 3-10 through 3-15 other than its general objection to Staff's third set of RFIs. Staff notes that City did not make any objection to Staff's Request for Admission 3-1.

### **III.MOTION TO COMPEL**

#### **Overall Legal Standard**

A party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, and may obtain discovery of information that is reasonably calculated to lead to the discovery of admissible evidence.<sup>1</sup> Additionally, to the extent a party has an objection to a discovery request, a party must state specifically the legal or factual basis for its objection and the extent to which the party is refusing to comply with the discovery request.<sup>2</sup> The Commission's Procedural Rules also require a party objecting to discovery to object specifically to a particular RFI.<sup>3</sup> Additionally, the Commission's procedural rules also

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<sup>1</sup> Tex. R. Civ. Proc. 192.3; 16 TAC § 22.141(a).

<sup>2</sup> Tex. R. Civ. Proc. 193.2(a).

<sup>3</sup> *In re Exmark Mfg. Co.*, 299 S.W.3d 519, 524 (Tex. App. – Corpus Christi 2009) (citing *In re CI Host, Inc.*, 92 S.W.3d 514, 516-17) (Tex. 2002)).

require that “[a]ll argument upon which the objecting party relies shall be presented in full in the objection.”<sup>4</sup>

**Response to “overly broad and unduly burdensome” objections**

As discussed in Section II, City has waived these objections for Staff’s RFIs 3-1 through 3-4 and 3-7 through 3-8.

**Response to “outside the City’s possession, custody, or control” objections**

As discussed in the Section II, City has waived these objections for Staff’s RFIs 3-2, 3-3, 3-7, 3-8, and 3-9.

**Response to “documents may or may not yet exist” objection**

As discussed in Section II, City has waived this objection for Staff’s RFI 3-16.

**Response to General Objection**

The City made a general objection to Staff’s RFIs 3-1 through 3-16 “because [Staff] prematurely seek[s] 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.”<sup>5</sup>

First, as stated in 16 TAC § 22.144(a), “[a]t any time after an application is filed ... any party may serve upon any other party written requests for information and requests for admission of fact.”<sup>6</sup> Therefore, Staff is not required to wait until a procedural schedule has been established in this case. Furthermore, Staff’s RFIs are directly related to the cost of service and is reasonably calculated to lead to the discovery of admissible evidence. Without a ruling allowing Staff’s discovery, the City’s general objection gives it license to exercise its own discretion as to what is relevant at this phase of the proceeding and withhold whatever production it may choose.

Furthermore, a ruling on the City’s general objection is necessary because the City does not identify what specific information is objectionable but rather contains a blanket statement that all the requests for information in Staff’s third requests for information are objectionable because it seeks the City’s direct case piecemeal before a procedural schedule has been set. An objection to a discovery request must “state specifically . . . the extent to which the party is

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<sup>4</sup> 16 TAC § 22.144(d)(1).

<sup>5</sup> City of Celina’s Objections to Commission Staff’s Third Set of Requests for Information and Motion for Extension of Time, at 2.

<sup>6</sup> 16 TAC § 22.144(a).

refusing to comply with the request.”<sup>7</sup> The City has failed to explain specifically how each of Staff’s request for discovery would lead to the discovery of admissible evidence in its direct case.

### **Response to “Privilege” Objections**

The City objected to Staff’s RFIs 3-1 through 3-9 “on the grounds that some of the information responsive to Staff’s requests may contain privileged information.”<sup>8</sup> To the extent that the City believes any of Staff’s RFIs seek privileged information, the City needs to follow the requirements of 16 TAC § 22.144(d)(2), which requires the City:

[To] file within two working days of filing [its] objections, an index that lists, for each document: the date and title of the document, the preparer or custodian of the information; to whom the document was sent and from whom it was received; and the privilege(s) or exemptions that is claimed. A full and complete explanation of the claimed privilege or exemption shall be provided.<sup>9</sup>

City filed its objections on May 10, 2019; therefore, its privilege log was due on May 12, 2019.

### **IV. CONCLUSION**

Staff respectfully requests the entry of an order consistent with this pleading and overruling the City’s general objections and privilege objections to Staff’s third set of RFIs to the City.

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<sup>7</sup> Tex. R. Civ. Proc. 193.2(a); *In re CI Host, Inc.*, 92 S.W.3d 514, 516 (Tex. 2002).

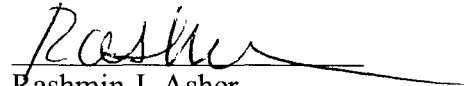
<sup>8</sup> City of Celina’s Objections to Commission Staff’s Third Set of Requests for Information and Motion for Extension of Time, at 4-9.

<sup>9</sup> 16 TAC § 22.144(d)(2).

**PUBLIC UTILITY COMMISSION OF  
TEXAS LEGAL DIVISION**

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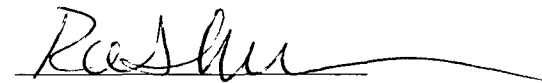


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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on May 24, 2019 in accordance with 16 TAC § 22.74.



Rashmin J. Asher