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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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**PUBLIC UTILITY COMMISSION: 44
OF TEXAS**

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FILED

**COMMISSION STAFF'S MOTION TO COMPEL RESPONSES TO STAFF'S FIFTH
REQUESTS FOR INFORMATION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Motion to Compel. 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 September 3, 2019, Staff filed its Fifth Requests for Information Question Nos. 5-1 Through 5-3. On September 23, 2019, City filed Objections to Staff's Third Set of Requests for Information. Under Texas Administrative Code 22.144(e), "a party seeking discovery shall file a motion to compel no later than five working days after the objection is received." Therefore, this pleading is timely filed.

II. MOTION TO COMPEL

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.¹ Additionally, to the extent a party has an objection to a discovery request, a party must state specifically the legal or factual

¹ Tex. R. Civ. Proc. 192.3; 16 TAC § 22.141(a).

basis for its objection and the extent to which the party is refusing to comply with the discovery request.² The Commission's Procedural Rules also require a party objecting to discovery to object specifically to a particular RFI.³ Additionally, the Commission's procedural rules also require that "[a]ll argument upon which the objecting party relies shall be presented in full in the objection."⁴

The City made a "outside the City's possession, custody, or control" objection to each of Staff's Fifth Requests for Information. "Possession, custody, or control" does not only include documents that are within the actual physical possession of the City, but also documents within the City's constructive possession or documents that the City has a right to obtain from a third party.⁵ "The right to obtain possession is a legal right based on the relationship between the party responding to the discovery and the person or entity that has actual possession."⁶ In making its objection, City stated that "[t]he City has not contracted to with its consultant to obtain the spreadsheets in any other format than PDF."⁷ However, City continues stating that "if and when the City is given an opportunity to provide its direct testimony in this case, the City would plan to enter into an agreement with the consultant to obtain access to such highly sensitive confidential spreadsheets."⁸ Here, the City has the ability to contract with its consultants in order to provide these spreadsheets. It is also clear that this evidence is relevant to the subject matter of the pending action. It appears that the City believes it should only have an obligation to provide the native spreadsheets once this case is referred to SOAH. However, as stated in 16 TAC § 22.144(a), "[a]t any time after an application is filed ... any party may serve upon any other

² Tex. R. Civ. Proc. 193.2(a).

³ *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)).

⁴ 16 TAC § 22.144(d)(1).

⁵ *In re James Summersett III*, 438 S.W.3d 74, 81 (Tex. App.—Corpus Christi – Edinburg) (citing *GTE Commc'ns Sys. Corp. v. Tanner*, 856 S.W.2d 725, 729 (Tex. 1993)).

⁶ *In re James Summersett III*, 438 S.W.3d 74, 81 (Tex. App.—Corpus Christi – Edinburg).

⁷ City of Celina's Response to Commission Staff's Fifth Requests for Information Nos. 5-1 through 5-3 at 3-5 (Sept. 23, 2019).

⁸ *Id.*

party written requests for information and requests for admission of fact.”⁹ Therefore, it should not matter that this case has not yet been referred to SOAH. Furthermore, as a practical matter the increased rates for water and wastewater services were effective on March 19, 2019. The City should have access to the spreadsheets for the 2018 Water and Wastewater Rate Study and the Comprehensive Financial Annual Report used to develop these rates.

III.CONCLUSION

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

⁹ 16 TAC § 22.144(a).

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on September 26, 2019 in accordance with 16 TAC § 22.74.



Rashmin J. Asher