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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

**PETITIONERS' MOTION TO COMPEL CITY OF CELINA TO
RESPOND TO RATEPAYERS' FIRST REQUEST FOR INFORMATION**

TO THE HONORABLE JUDGES SIANO AND QUINN:

COME NOW, the Outside City Ratepayers of the City of Celina ("Petitioners" or "Ratepayers") and file this Motion to Compel in response to the City of Celina's Objections to Ratepayers' First Set of Requests for Information and, in support thereof, respectfully show as follows:

I. BACKGROUND

On March 6, 2020, Petitioners filed and served their first set of requests for information ("RFIs") on the City of Celina (the "City"). On March 16, 2020, the City filed general objections to all the RFIs and specific objections to Petitioners' RFIs 1-1, 1-2, 1-3, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17, 1-18, 1-19, 1-20, 1-21, and 1-22. Pursuant to 16 Tex. Admin. Code § 22.144(e), the party seeking discovery must file a motion to compel no later than five working days after an objection is received. Five working days after Monday, March 16, 2020 is Monday, March 23, 2020; therefore, Petitioners filed this motion timely.

II. FAILURE TO NEGOTIATE

In its Objections to the Ratepayers' RFIs, the City states that, "[c]ounsel for the City and Ratepayers have negotiated diligently and in good faith, but were unable to reach agreement

regarding the requests.”¹ The Commission’s Procedural Rules require parties to negotiate diligently and in good faith prior to filing an objection.² However, counsel for the City did **NOT** confer, much less negotiate, with counsel for Ratepayers prior to filing its objections, regardless of the City’s statement otherwise. Counsel for Petitioners attempted to contact City’s counsel by email on March 9 and March 16 to discuss Petitioners RFIs and City’s objections and has yet to receive any response from City. Due to the City’s failure to comply with Commission rules that are prerequisite to filing any objection, the Administrative Law Judge (“ALJ”) should dismiss the City’s objections in their entirety, declare the objections waived, and order the City to respond to each and every discovery request in full.

III. ARGUMENT

The City objected in general to all of Petitioners’ RFIs and asserted specific objections to twenty of Petitioner’s twenty-four RFIs, including 1-1, 1-2, 1-3, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17, 1-18, 1-19, 1-20, 1-21, and 1-22. A party’s duty to respond to discovery requests has long been settled. Commission Rule 22.141(a) allows the following:

. . . discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.³

In addition, Texas Rule of Civil Procedure 192.3(a) governs, generally, the scope of discovery, which states:

In general, a party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. *It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*⁴

¹ City of Celina’s Objections to Outside City Ratepayers’ First Set of Requests for Information at 1 (Mar. 16, 2020) (City of Celina’s Objections).

² 16 Tex. Admin. Code § 22.144(d) (TAC).

³ *Id.* § 22.141(a).

⁴ Tex. R. Civ. Proc. 192.3(a) (emphasis added).

Further, the Preliminary Order issued on January 17, 2020 established the issues to be considered in this proceeding. Petitioners' RFIs directly related to the discovery of information that addressed the Commission's Preliminary Order, which encouraged a broad inquiry itself.⁵

A. City's General Objections

The City argued the following general objections, which are unrelated to any specific RFI:

1. The Ratepayers' RFIs "prematurely seek information constituting the City's direct case before the City had reasonable opportunity to prepare its direct case in this matter."⁶ The City wrongly insists that the filing of RFIs circumvents the procedural schedule.
2. Responsive documents may include confidential communications "made for the purpose of facilitating the rendition of legal services to the CITY and are or were made: (a) between the CITY and its representatives and the CITY's lawyers; (b) between the CITY's lawyers and the lawyers' representatives; and (c) between lawyers when representing the CITY."⁷

General objections that are not tied to a specific RFI are no objection at all. The Rules of Civil Procedure require a party to "state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request."⁸ In addition, "[t]he responding party's answers, objections, and other responses must be preceded by the request to which they apply."⁹ Consequently, the City's general objections to discovery requests are improper and should be overruled.

B. City's Specific Objections

The City responded with the same cookie-cutter objections to Petitioners RFI 1-1 through 1-7. Notably, RFIs 1-1 through 1-5 are simply verbatim restatements of the relevant Requests for

⁵ Preliminary Order at 5 (Jan. 17, 2020).

⁶ City of Celina's Objections at 2.

⁷ *Id.*

⁸ Tex. R. Civ. Proc. 193.2(a).

⁹ *Id.*

Disclosure that parties are required to respond under Tex. R. Civ. Proc. 194.1. “Failure to respond fully to a request for disclosure would be an abuse of the discovery process.”¹⁰

The City also responded with the repetitive cookie-cutter objections to Petitioners RFI 1-8 through 1-18. Objections that are not tied to a specific RFI are no objection at all. The Rules of Civil Procedure require a party to “state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request.”¹¹ In addition, “[t]he responding party’s answers, objections, and other responses must be preceded by the request to which they apply.”¹² Consequently, the City’s cookie-cutter objections to Petitioners RFI 1-8 through RFI 1-18 without any specificity to the each discovery request are improper and should be overruled.

The City also responded with repetitive cookie-cutter objections to Petitioners RFI 1-19 through 1-22 and added an additional repetitive cookie-cutter objection to Petitioners RFI 1-20 through 1-22 in an effort to hide the details of its rate model from the parties.

While Petitioners wish to avoid repetitive arguments in an effort to conserve the ALJs limited resources, Petitioners are required to address each RFI’s objections, just as the City should have made specific objections to each of Petitioners’ RFIs. As such, Petitioners’ responses to are set forth below in detail for each of Petitioners’ RFIs and are repetitive in nature.

1. City’s Objection to Petitioners’ RFI 1-1

Petitioners RFI 1-1 stated, “Please provide the legal theories and, in general, the factual bases of your claims or defenses.” This is a restatement of the Request for Disclosure found in Tex. R. Civ. Proc. 194.2(c).

The City responded to the RFI, stating: “The City objects to this question on the grounds that some of the information responsive to this request may contain privileged information.”¹³ The

¹⁰ Tex. R. Civ. Proc. 194, Comment 1 (1999).

¹¹ Tex. R. Civ. Proc. 193.2(a).

¹² Tex. R. Civ. Proc. 193.2(a).

¹³ City of Celina’s Objections at 2.

City offered no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.¹⁴

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”¹⁵ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”¹⁶ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.¹⁷

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “some of the information responsive to this request *may* contain privileged information.”¹⁸ To date, the City has not identified any such information it wishes to withhold based upon any privilege.¹⁹ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

¹⁴ *Id.*; see also City of Celina’s Privilege Log for Responses to Outside City Ratepayers’ First Set of Requests for Information at 2 (Mar. 20, 2020) (City of Celina’s Privilege Log).

¹⁵ See 16 TAC § 22.141.

¹⁶ Tex. R. Civ. Evid. 501.

¹⁷ Tex. R. Civ. Proc. 193.3.

¹⁸ City of Celina’s Objections at 3 (emphasis added).

¹⁹ See City of Celina’s Privilege Log at 2.

The ALJ should overrule the City's general and specific objections and order the City to produce the requested information.

2. City's Objection to Petitioners' RFI 1-2

Petitioners RFI 1-2 stated, "Please provide the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the Application."²⁰ This is a restatement of the Request for Disclosure found in Tex. R. Civ. Proc. 194.2(e).

The City responded to the RFI, stating: "The City objects to this question on the grounds that some of the information responsive to this request may contain privileged information." The City offered no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.²¹

Petitioners sought to obtain discovery, "not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding."²² According to the Texas Rules of Evidence, unless provided otherwise, "no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing."²³ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.²⁴

²⁰ City of Celina's Objections at 3.

²¹ *Id.*; City of Celina's Privilege Log at 2.

²² See 16 TAC § 22.141.

²³ Tex. R. Civ. Evid. 501.

²⁴ Tex. R. Civ. Proc. 193.3.

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”²⁵ To date, the City has not identified any such information it wishes to withhold based upon any privilege.²⁶ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

3. City’s Objection to Petitioners’ RFI 1-3

Petitioners RFI 1-3 asked the following:

Please provide the following information for any testifying expert:

- (1) the expert’s name, address, and telephone number;
- (2) the subject matter on which the expert will testify;
- (3) the general substance of the expert’s mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) 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; and
 - B) the expert’s current résumé and bibliography.

This is a restatement of the Request for Disclosure found in Tex. R. Civ. Proc. 194.2(f).

²⁵ City of Celina’s Objections at 3 (emphasis added).

²⁶ See City of Celina’s Privilege Log at 2.

The City responded that “the City objects to this question on the grounds that some of the information responsive to this request may contain privileged information.”²⁷ The City offered it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.²⁸

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”²⁹ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”³⁰ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.³¹

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”³² To date, the City has not identified any such information it wishes to withhold based upon any privilege.³³ Without having the information required to identify a document and specifically assert “the privilege or privileges

²⁷ City of Celina’s Objections at 4.

²⁸ *Id.*; City of Celina’s Privilege Log at 2.

²⁹ See 16 TAC § 22.141.

³⁰ Tex. R. Civ. Evid. 501.

³¹ Tex. R. Civ. Proc. 193.3.

³² City of Celina’s Objections at 4 (emphasis added).

³³ See City of Celina’s Privilege Log at 2.

asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

4. City’s Objection to Petitioners’ RFI 1-6

Petitioners RFI 1-6 stated: “Please produce all documents relevant to this matter that were provided, reviewed, or created by or relied upon by any consulting witness.”

The City responded to the RFI, stating “The City objects to this question on the grounds that *some* of the information responsive to this request *may* contain privileged information.”³⁴ The City offered it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.³⁵

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”³⁶ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”³⁷ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.³⁸

³⁴ City of Celina’s Objections at 4 (emphasis added).

³⁵ *Id.*; City of Celina’s Privilege Log at 2.

³⁶ See 16 TAC § 22.141.

³⁷ Tex. R. Civ. Evid. 501.

³⁸ Tex. R. Civ. Proc. 193.3.

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”³⁹ To date, the City has not identified any such information it wishes to withhold based upon any privilege.⁴⁰ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

5. City’s Objection to Petitioners’ RFI 1-7

Petitioners RFI 1-7 asked, “Please produce any résumés or *curriculum vitae*, if any, for any persons you intend to call as fact witnesses.”

The City responded with two objections to the RFI, stating the City objected to this question because:

1. “[T]he information, is neither relevant nor reasonably calculated to lead to the discovery of admissible information... [and f]act witnesses by definition are witnesses as to facts, they are not presented as experts, and therefore need no resume or curriculum vitae as a fact witness. Ratepayers have failed to show how a fact witnesses' resume is in any way related to their testimony regarding facts. Resumes are used to establish the probative value of the testimony of expert witnesses, not fact witnesses;”⁴¹ and
2. “The City further object to this question to the extent that it seeks information that is outside the City's possession, custody, or control.... If the City presents a fact witness, the City may have no knowledge of that fact witnesses' resume or curriculum vitae.”⁴²

³⁹ City of Celina’s Objections at 4 (emphasis added).

⁴⁰ See City of Celina’s Privilege Log at 2.

⁴¹ City of Celina’s Objections at 5.

⁴² *Id.*

Petitioners sought information relevant to questions posed in the Commission's Preliminary Order. The question of "what is relevant to the subject matter" is to be broadly construed.⁴³ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

According to 16 TAC § 22.141(a), "a person is not required to produce a document or tangible thing [during discovery] unless it is within that person's constructive or actual possession, custody, or control."⁴⁴ Possession, custody, or control of a document or tangible thing occurs when "the person has a superior right to compel the production from a third party and can obtain possession of the document or tangible thing with reasonable effort."⁴⁵

Here, the City argued it "*may* have no knowledge of [a] fact witnesses' resume or curriculum vitae."⁴⁶ However, it has access to and has not objected to disclosing its fact witnesses' "title, employer, address, [and] telephone number," in accordance with Petitioners RFI 1-5. Accordingly, the resume and *curriculum vitae* are within the City's constructive or actual possession, custody, or control.

The ALJ should overrule the City's general and specific objections and order the City to produce the requested information.

6. City's Objection to Petitioners' RFI 1-8

Petitioners RFI 1-8 asked "Please describe in detail all information available to the City Council regarding the rates that are the subject of the Petition." The City responded with five objections to the RFI, stating the City objected to the question on the grounds as follows:

⁴³ *In re Nat'l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

⁴⁴ 16 TAC § 22.141(a).

⁴⁵ *Id.*

⁴⁶ City of Celina's Objections at 5 (emphasis added).

1. [I]t is vague and ambiguous in its use of the phrase ‘all information available... regarding the rates’ which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended.”⁴⁷
2. “[I]t is overly broad and unduly burdensome.... This request for all information ‘available’ to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome.”⁴⁸
3. “[T]he information requested is neither relevant nor reasonably calculated to lead to the discovery of admissible information.” The City argues what was “available” to the City Council is not relevant to setting rates in this proceeding and “[a]t most, the rate study relied on by the City Council might be relevant.”⁴⁹
4. “[S]ome of the information responsive to this request may contain privileged information.”⁵⁰ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.⁵¹
5. “[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information ... requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, ... confidential customer-specific information relating to rights of personal privacy[, and] [t]he sweeping nature of this request lacks sufficient specificity and therefore constitutes a prohibited ‘fishing expedition.’”⁵²

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering “any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

⁴⁷ City of Celina’s Objections at 5.

⁴⁸ *Id.* at 5-6.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.*

⁵¹ *Id.*; City of Celina’s Privilege Log at 2.

⁵² City of Celina’s Objections at 6-7.

‘reasonably calculated to lead to the discovery of admissible evidence.’”⁵³ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”⁵⁴

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.⁵⁵ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.⁵⁶ Further, the Commission listed issues in the Preliminary Order⁵⁷ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.⁵⁸ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

⁵³ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

⁵⁴ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

⁵⁵ See City of Celina’s Objections.

⁵⁶ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

⁵⁷ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

⁵⁸ *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”⁵⁹ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to . . . (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”⁶⁰ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.⁶¹

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”⁶² To date, the City has not identified any such information it wishes to withhold based upon any privilege.⁶³ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

⁵⁹ See 16 TAC § 22.141.

⁶⁰ Tex. R. Civ. Evid. 501.

⁶¹ Tex. R. Civ. Proc. 193.3.

⁶² City of Celina’s Objections at 6 (emphasis added).

⁶³ See City of Celina’s Privilege Log at 2.

7. City's Objection to Petitioners' RFI 1-9

Petitioners RFI 1-9 states: "Please identify and produce all documents available to the City Council regarding the rates that are the subject of the Petition."

The City responded with five objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available ... regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."⁶⁴
2. "[I]t is overly broad and unduly burdensome This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."⁶⁵
3. "[T]he information requested is neither relevant nor reasonably calculated to lead to the discovery of admissible information."⁶⁶ The City argues what was "available" to the City Council is not relevant to setting rates in this proceeding and "[a]t most, the rate study relied on by the City Council might be relevant."⁶⁷
4. "[S]ome of the information responsive to this request may contain privileged information."⁶⁸ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.⁶⁹
5. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information ... requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, ... confidential customer-specific information relating to rights of personal privacy[, and] [t]he

⁶⁴ City of Celina's Objections at 7.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 7-8.

⁶⁹ *Id.*; City of Celina's Privilege Log at 2.

sweeping nature of this request lacks sufficient specificity and therefore constitutes a prohibited ‘fishing expedition.’”⁷⁰

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering “any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is ‘reasonably calculated to lead to the discovery of admissible evidence.’”⁷¹ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”⁷²

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.⁷³ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.⁷⁴ Further, the Commission listed issues in the Preliminary Order⁷⁵ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

⁷⁰ City of Celina’s Objections at 8.

⁷¹ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

⁷² *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

⁷³ See City of Celina’s Objections.

⁷⁴ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

⁷⁵ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

Petitioners sought information relevant to questions posed in the Commission's Preliminary Order. The question of "what is relevant to the subject matter" is to be broadly construed.⁷⁶ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

Petitioners sought to obtain discovery, "not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding."⁷⁷ According to the Texas Rules of Evidence, unless provided otherwise, "no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing."⁷⁸ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.⁷⁹

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because "*some* of the information responsive to this request *may* contain privileged information."⁸⁰ To date, the City has not identified any such information it wishes to withhold based upon any privilege.⁸¹ Without having the information required to identify a document and specifically assert "the privilege or privileges asserted," the

⁷⁶ *In re Nat'l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

⁷⁷ See 16 TAC § 22.141.

⁷⁸ Tex. R. Civ. Evid. 501.

⁷⁹ Tex. R. Civ. Proc. 193.3.

⁸⁰ City of Celina's Objections at 7-8 (emphasis added).

⁸¹ See City of Celina's Privilege Log at 2.

Petitioners are unfairly prejudiced in their ability to adequately respond to City's assertions of privilege.

The ALJ should overrule the City's general and specific objections and order the City to produce the requested information.

8. City's Objection to Petitioners' RFI 1-10

Petitioners RFI 1-10 states: "Please produce all recordings of and documents related to the recordings for any portion of any of City's meetings of its City Council related to the Petition."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available ... regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."⁸²
2. "[I]t is overly broad and unduly burdensome This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."⁸³
3. "[S]ome of the information responsive to this request may contain privileged information."⁸⁴ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.⁸⁵
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information[,] ... requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."⁸⁶

⁸² City of Celina's Objections at 9.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*; City of Celina's Privilege Log at 2.

⁸⁶ City of Celina's Objections at 9-10.

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering “any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is ‘reasonably calculated to lead to the discovery of admissible evidence.’”⁸⁷ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”⁸⁸

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.⁸⁹ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.⁹⁰ Further, the Commission listed issues in the Preliminary Order⁹¹ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.⁹² The City may not refuse to produce relevant information simply because the City

⁸⁷ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

⁸⁸ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

⁸⁹ See City of Celina’s Objections.

⁹⁰ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

⁹¹ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

⁹² *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”⁹³ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”⁹⁴ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.⁹⁵

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”⁹⁶ To date, the City has not identified any such information it wishes to withhold based upon any privilege.⁹⁷ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

⁹³ See 16 TAC § 22.141.

⁹⁴ Tex. R. Civ. Evid. 501.

⁹⁵ Tex. R. Civ. Proc. 193.3.

⁹⁶ City of Celina’s Objections at 9 (emphasis added).

⁹⁷ See City of Celina’s Privilege Log at 2.

9. City's Objection to Petitioners' RFI 1-11

Petitioners RFI 1-11 states: "Please identify and produce all documents discussed at any City Council meetings related to the Petition."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available ... regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."⁹⁸
2. "[I]t is overly broad and unduly burdensome This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."⁹⁹
3. "[S]ome of the information responsive to this request may contain privileged information."¹⁰⁰ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.¹⁰¹
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information[,] ... requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."¹⁰²

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

⁹⁸ City of Celina's Objections at 10.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 10-11.

¹⁰¹ *Id.*; City of Celina's Privilege Log at 2.

¹⁰² City of Celina's Objections at 11.

‘reasonably calculated to lead to the discovery of admissible evidence.’”¹⁰³ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”¹⁰⁴

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.¹⁰⁵ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.¹⁰⁶ Further, the Commission listed issues in the Preliminary Order¹⁰⁷ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.¹⁰⁸ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

¹⁰³ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting TEX. R. CIV. PROC. 192.3(a)).

¹⁰⁴ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

¹⁰⁵ See City of Celina’s Objections.

¹⁰⁶ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

¹⁰⁷ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

¹⁰⁸ *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”¹⁰⁹ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”¹¹⁰ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.¹¹¹

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”¹¹² To date, the City has not identified any such information it wishes to withhold based upon any privilege.¹¹³ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

¹⁰⁹ See 16 TAC § 22.141.

¹¹⁰ Tex. R. Civ. Evid. 501.

¹¹¹ Tex. R. Civ. Proc. 193.3.

¹¹² City of Celina’s Objections at 10-11 (emphasis added).

¹¹³ See City of Celina’s Privilege Log at 2.

10. City's Objection to Petitioners' RFI 1-12

Petitioners RFI 1-12 states: "Please identify and produce all documents discussed at any meetings between or among City staff or any consultants related to the Petition."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available ... regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."¹¹⁴
2. "[I]t is overly broad and unduly burdensome This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."¹¹⁵
3. "[S]ome of the information responsive to this request may contain privileged information."¹¹⁶ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.¹¹⁷
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information[.] . . . requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."¹¹⁸

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

¹¹⁴ City of Celina's Objections at 11.

¹¹⁵ *Id.* at 12.

¹¹⁶ *Id.*

¹¹⁷ *Id.*; City of Celina's Privilege Log at 2.

¹¹⁸ City of Celina's Objections at 12-13.

‘reasonably calculated to lead to the discovery of admissible evidence.’”¹¹⁹ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”¹²⁰

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.¹²¹ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.¹²² Further, the Commission listed issues in the Preliminary Order¹²³ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.¹²⁴ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

¹¹⁹ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

¹²⁰ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

¹²¹ See City of Celina’s Objections.

¹²² See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

¹²³ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

¹²⁴ *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”¹²⁵ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”¹²⁶ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.¹²⁷

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”¹²⁸ To date, the City has not identified any such information it wishes to withhold based upon any privilege.¹²⁹ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

¹²⁵ See 16 TAC § 22.141.

¹²⁶ Tex. R. Civ. Evid. 501.

¹²⁷ Tex. R. Civ. Proc. 193.3.

¹²⁸ City of Celina’s Objections at 12 (emphasis added).

¹²⁹ See City of Celina’s Privilege Log at 2.

11. City's Objection to Petitioners' RFI 1-13

Petitioners RFI 1-13 states: "Please produce all recordings of and documents related to the recordings for any portion of any City Council meetings related to the water rates effective March 19, 2019."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available . . . regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."¹³⁰
2. "[I]t is overly broad and unduly burdensome This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."¹³¹
3. "[S]ome of the information responsive to this request may contain privileged information."¹³² The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.¹³³
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information[,] . . . requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."¹³⁴

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

¹³⁰ City of Celina's Objections at 13.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*; City of Celina's Privilege Log at 2.

¹³⁴ City of Celina's Objections at 13-14.

‘reasonably calculated to lead to the discovery of admissible evidence.’”¹³⁵ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”¹³⁶

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.¹³⁷ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.¹³⁸ Further, the Commission listed issues in the Preliminary Order¹³⁹ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.¹⁴⁰ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

¹³⁵ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

¹³⁶ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

¹³⁷ See City of Celina’s Objections.

¹³⁸ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

¹³⁹ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

¹⁴⁰ *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”¹⁴¹ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”¹⁴² To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.¹⁴³

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”¹⁴⁴ To date, the City has not identified any such information it wishes to withhold based upon any privilege.¹⁴⁵ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

¹⁴¹ See 16 TAC § 22.141.

¹⁴² Tex. R. Civ. Evid. 501.

¹⁴³ Tex. R. Civ. Proc. 193.3.

¹⁴⁴ City of Celina’s Objections at 13 (emphasis added).

¹⁴⁵ See City of Celina’s Privilege Log at 2.

12. City's Objection to Petitioners' RFI 1-14

Petitioners RFI 1-14 states: "Please identify and produce all documents discussed at any City Council meetings related to the water rates effective March 19, 2019."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available . . . regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."¹⁴⁶
2. "[I]t is overly broad and unduly burdensome.... This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."¹⁴⁷
3. "[S]ome of the information responsive to this request may contain privileged information."¹⁴⁸ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.¹⁴⁹
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information ... requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."¹⁵⁰

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

¹⁴⁶ City of Celina's Objections at 14.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 15.

¹⁴⁹ *Id.*; City of Celina's Privilege Log at 2.

¹⁵⁰ City of Celina's Objections at 15.

‘reasonably calculated to lead to the discovery of admissible evidence.’”¹⁵¹ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”¹⁵²

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.¹⁵³ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.¹⁵⁴ Further, the Commission listed issues in the Preliminary Order¹⁵⁵ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.¹⁵⁶ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

¹⁵¹ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

¹⁵² *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

¹⁵³ See City of Celina’s Objections.

¹⁵⁴ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

¹⁵⁵ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

¹⁵⁶ *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”¹⁵⁷ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”¹⁵⁸ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.¹⁵⁹

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”¹⁶⁰ To date, the City has not identified any such information it wishes to withhold based upon any privilege.¹⁶¹ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

¹⁵⁷ See 16 TAC § 22.141.

¹⁵⁸ Tex. R. Civ. Evid. 501.

¹⁵⁹ Tex. R. Civ. Proc. 193.3.

¹⁶⁰ City of Celina’s Objections at 15 (emphasis added).

¹⁶¹ See City of Celina’s Privilege Log at 2.

13. City's Objection to Petitioners' RFI 1-15

Petitioners RFI 1-15 states: "Please identify and produce all documents discussed at any meetings between or among City staff or any consultants related to the water rates effective March 19, 2019."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available... regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."¹⁶²
2. "[I]t is overly broad and unduly burdensome.... This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."¹⁶³
3. "[S]ome of the information responsive to this request may contain privileged information."¹⁶⁴ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.¹⁶⁵
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information... requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."¹⁶⁶

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

¹⁶² City of Celina's Objections at 16.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*; City of Celina's Privilege Log at 2.

¹⁶⁶ City of Celina's Objections at 16-17.

‘reasonably calculated to lead to the discovery of admissible evidence.’”¹⁶⁷ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”¹⁶⁸

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.¹⁶⁹ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.¹⁷⁰ Further, the Commission listed issues in the Preliminary Order¹⁷¹ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.¹⁷² The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

¹⁶⁷ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

¹⁶⁸ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

¹⁶⁹ See City of Celina’s Objections.

¹⁷⁰ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

¹⁷¹ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

¹⁷² *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”¹⁷³ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”¹⁷⁴ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.¹⁷⁵

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”¹⁷⁶ To date, the City has not identified any such information it wishes to withhold based upon any privilege.¹⁷⁷ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

¹⁷³ See 16 TAC § 22.141.

¹⁷⁴ Tex. R. Civ. Evid. 501.

¹⁷⁵ Tex. R. Civ. Proc. 193.3.

¹⁷⁶ City of Celina’s Objections at 16 (emphasis added).

¹⁷⁷ See City of Celina’s Privilege Log at 2.

14. City's Objection to Petitioners' RFI 1-16

Petitioners RFI 1-16 states: "Please produce all recordings of and documents related to the recordings for any portion of any City Council meetings related to the wastewater rates effective March 19, 2019."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available ... regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."¹⁷⁸
2. "[I]t is overly broad and unduly burdensome.... This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."¹⁷⁹
3. "[S]ome of the information responsive to this request may contain privileged information."¹⁸⁰ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.¹⁸¹
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information ... requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."¹⁸²

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

¹⁷⁸ City of Celina's Objections at 17.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*; City of Celina's Privilege Log at 2.

¹⁸² City of Celina's Objections at 18.

‘reasonably calculated to lead to the discovery of admissible evidence.’”¹⁸³ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”¹⁸⁴

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.¹⁸⁵ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.¹⁸⁶ Further, the Commission listed issues in the Preliminary Order¹⁸⁷ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.¹⁸⁸ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

¹⁸³ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

¹⁸⁴ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

¹⁸⁵ See City of Celina’s Objections.

¹⁸⁶ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

¹⁸⁷ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

¹⁸⁸ *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”¹⁸⁹ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”¹⁹⁰ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.¹⁹¹

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”¹⁹² To date, the City has not identified any such information it wishes to withhold based upon any privilege.¹⁹³ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

¹⁸⁹ See 16 TAC § 22.141.

¹⁹⁰ Tex. R. Civ. Evid. 501.

¹⁹¹ Tex. R. Civ. Proc. 193.3.

¹⁹² City of Celina’s Objections at 17 (emphasis added).

¹⁹³ See City of Celina’s Privilege Log at 2.

15. City's Objection to Petitioners' RFI 1-17

Petitioners RFI 1-17 states: "Please identify and produce all documents discussed at any City Council meetings related to the wastewater rates effective March 19, 2019."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available ... regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."¹⁹⁴
2. "[I]t is overly broad and unduly burdensome.... This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."¹⁹⁵
3. "[S]ome of the information responsive to this request may contain privileged information."¹⁹⁶ The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.¹⁹⁷
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information ... requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."¹⁹⁸

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

¹⁹⁴ City of Celina's Objections at 18.

¹⁹⁵ *Id.* at 19.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*; City of Celina's Privilege Log at 2.

¹⁹⁸ City of Celina's Objections at 19-20.

‘reasonably calculated to lead to the discovery of admissible evidence.’”¹⁹⁹ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”²⁰⁰

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.²⁰¹ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.²⁰² Further, the Commission listed issues in the Preliminary Order²⁰³ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.²⁰⁴ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

¹⁹⁹ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

²⁰⁰ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

²⁰¹ *See* City of Celina’s Objections.

²⁰² *See Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

²⁰³ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

²⁰⁴ *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”²⁰⁵ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”²⁰⁶ To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.²⁰⁷

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”²⁰⁸ To date, the City has not identified any such information it wishes to withhold based upon any privilege.²⁰⁹ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

²⁰⁵ See 16 TAC § 22.141.

²⁰⁶ Tex. R. Civ. Evid. 501.

²⁰⁷ Tex. R. Civ. Proc. 193.3.

²⁰⁸ City of Celina’s Objections at 19 (emphasis added).

²⁰⁹ See City of Celina’s Privilege Log at 2.

16. City's Objection to Petitioners' RFI 1-18

Petitioners RFI 1-18 states: "Please identify and produce all documents discussed at any meetings between or among City staff or any consultants related to the wastewater rates effective March 19, 2019."

The City responded with four objections to the RFI, stating the City objects to the question on the grounds that:

1. "[I]t is vague and ambiguous in its use of the phrase 'all information available . . . regarding the rates' which is readily susceptible of more than one interpretation, calling for speculation as to the meaning intended."²¹⁰
2. "[I]t is overly broad and unduly burdensome This request for all information 'available' to City Council bears no reasonable relationship to what the City Council actually relied on to make its decision. In addition, providing such sweeping information is unduly burdensome."²¹¹
3. "[S]ome of the information responsive to this request may contain privileged information."²¹² The City offers it has no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.²¹³
4. "[T]he request is not reasonably tailored to seek relevant information or information reasonably calculated to lead to the discovery of admissible information[,] . . . requests statutorily protected information under the Texas Open Meetings Act and the Texas Public Information Act, and confidential customer-specific information relating to rights of personal privacy."²¹⁴

The request was narrowly tailored and tracked the queries posed in the Preliminary Order; therefore, the request was not vague, broad, or overburdensome. The procedural rules define the general scope of discovery as covering "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is

²¹⁰ City of Celina's Objections at 20.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*; City of Celina's Privilege Log at 2.

²¹⁴ City of Celina's Objections at 20-21.

‘reasonably calculated to lead to the discovery of admissible evidence.’”²¹⁵ A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’”²¹⁶

Here, the City argued, as it did in eleven of Petitioners’ twenty-four RFIs, that the request was so “vague and ambiguous” that it would have to speculate to provide discovery, so broad that it would be overburdensome to respond, and the requests were not narrowly tailored.²¹⁷ However, not every inquiry into the particulars of the pleading can be too vague or burdensome to answer.²¹⁸ Further, the Commission listed issues in the Preliminary Order²¹⁹ that were intentionally broad and encompassed many topics, including, among many other things, whether the rates were sufficient, equitable, and consistent in application to each customer class and were not unreasonably preferential, prejudicial, or discriminatory. Additionally, the Commission’s list of issues encompassed several topics related to the City’s actual costs to provide service, including the City’s cost to procure water, cost to maintain its systems, total water demand, and other issues including all information available to the City when the Council made its decision to raise Petitioners’ rates.

Petitioners sought information relevant to questions posed in the Commission’s Preliminary Order. The question of “what is relevant to the subject matter” is to be broadly construed.²²⁰ The City may not refuse to produce relevant information simply because the City itself deemed the information not relevant. Here, the requested factual information related directly to Items 1, 2, 4, 6, 7, and 8 of the Preliminary Order.

²¹⁵ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam) (quoting Tex. R. Civ. Proc. 192.3(a)).

²¹⁶ *Id.* at 223-24 (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam)).

²¹⁷ See City of Celina’s Objections.

²¹⁸ See *Braden v. Downey*, 811 S.W. 922, 827-928 (Tex. 1991).

²¹⁹ The Petitioners incorporate the Preliminary Order in this Motion in its entirety. For ease of reference, the portions referred to by Petitioners in this instance are Items numbered 1, 2, 4, and 6–8 in the Preliminary Order.

²²⁰ *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016).

Petitioners sought to obtain discovery, “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”²²¹ According to the Texas Rules of Evidence, unless provided otherwise, “no person has a privilege to ... (b) refuse to disclose any matter; (c) refuse to produce any object or writing; or (d) prevent another from being a witness, disclosing any matter, or producing any object or writing.”²²² To withhold privilege material or information from discovery, the responding party must state in the response, the amended or suspended response, or in a separate document that:

- (1) information or material responsive to the request has been withheld,
- (2) the request to which the information or material relates, and
- (3) the privilege or privileges asserted.²²³

Merely because some information requested may be privileged does not wholly negate the request. Here, the City objected to the question because “*some* of the information responsive to this request *may* contain privileged information.”²²⁴ To date, the City has not identified any such information it wishes to withhold based upon any privilege.²²⁵ Without having the information required to identify a document and specifically assert “the privilege or privileges asserted,” the Petitioners are unfairly prejudiced in their ability to adequately respond to City’s assertions of privilege.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

²²¹ See 16 TAC § 22.141.

²²² Tex. R. Civ. Evid. 501.

²²³ Tex. R. Civ. Proc. 193.3.

²²⁴ City of Celina’s Objections at 20 (emphasis added).

²²⁵ See City of Celina’s Privilege Log at 2.

17. City's Objection to Petitioners' RFI 1-19

Petitioners RFI 1-19 states: "Please produce the working Excel spreadsheets in unlocked, editable form, used to develop the water rates that went into effect March 19, 2019 with all formulae and links intact."

The City responded to the RFI, stating:

1. "The City plans to provide the Excel spreadsheet with the ability to edit in order to check the City's work," but "objects to providing the original intellectual property that serves the purpose of allowing the Ratepayers' consultant to effectively steal the 30 years of work that went into creating this internationally renowned model for the consultant's personal use."²²⁶
2. "[T]he City objects to this request to the extent it seeks information in violation of the following statutory protections for such material: information consisting of trade secrets and commercial or financial information . . . and information consisting of proprietary information . . ."²²⁷

While Excel may be the intellectual property of the Microsoft Corporation, the use of the licensed program to input costs, divided by utility consumption, and calculate a rate is not a trade secret. Furthermore, the City's costs and use data is public information under the Texas Public Information Act.

As such, Commission rules require electronic filings "be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the [C]ommission."²²⁸ Specifically, "Microsoft Excel spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet."²²⁹ Petitioners RFI merely requests Microsoft Excel spreadsheets in accordance with this requirement and not for some imagined nefarious purpose.

²²⁶ City of Celina's Objections at 21-22.

²²⁷ *Id.* at 22.

²²⁸ 16 TAC § 22.72(i).

²²⁹ *Id.*

The ALJ should overrule the City's general and specific objections and order the City to produce the requested information.

18. City's Objection to Petitioners' RFI 1-20

Petitioners RFI 1-20 states: "Please produce all Excel spreadsheets and other documents that are linked to the document described in Ratepayers' Request to City 1-19 with all formulae and links intact and in unlocked and editable form and any other linked spreadsheets and documents."

The City responded to the RFI, arguing the following:

1. "The City plans to provide the Excel spreadsheet with the ability to edit only to the extent necessary to check the City's work, subject to the prior entry of a fully executed confidentiality order agreeable to the City and City's Consultant."²³⁰
2. "The City objects to the extent this request seeks the ability for the consultant retained by the Ratepayers (a direct competitor to City's retained consultant) the ability to access, copy, or record the proprietary, trade secret, or intellectual property of the City's Consultant."²³¹
3. "[T]he City objects to this request to the extent it seeks information in violation of the following statutory protections for such material: information consisting of trade secrets and commercial or financial information . . . and information consisting of proprietary information"²³²

While Excel may be the intellectual property of the Microsoft Corporation, the use of the licensed program to input costs, divided by utility consumption, and calculate a rate is not a trade secret. Furthermore, the City's costs and use data is public information under the Texas Public Information Act.

As such, Commission rules require electronic filings "be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred

²³⁰ City of Celina's Objections at 22.

²³¹ *Id.*

²³² *Id.* at 22-23.

file formats maintained by the [C]ommission.”²³³ Specifically, “Microsoft Excel spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet.”²³⁴ Petitioners RFI merely requests Microsoft Excel spreadsheets in accordance with this requirement and not for some imagined nefarious purpose.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

19. City’s Objection to Petitioners’ RFI 1-21

Petitioners RFI 1-21 states: “Please produce the working Excel spreadsheets in unlocked, editable form, used to develop the wastewater rates that went into effect March 19, 2019 with all formulae and links intact.”

The City responded to the RFI, claiming the following:

1. “The City plans to provide the Excel spreadsheet with the ability to edit only to the extent necessary to check the City's work, subject to the prior entry of a fully executed confidentiality order agreeable to the City and City's Consultant.”²³⁵
2. “The City objects to the extent this request seeks the ability for the consultant retained by the Ratepayers (a direct competitor to City's retained consultant) the ability to access, copy, or record the proprietary, trade secret, or intellectual property of the City's Consultant.”²³⁶
3. [T]he City objects to this request to the extent it seeks information in violation of the following statutory protections for such material: information consisting of trade secrets and commercial or financial information... and information consisting of proprietary information....”²³⁷

While Excel may be the intellectual property of the Microsoft Corporation, the use of the licensed program to input costs, divided by utility consumption, and calculate a rate is not a trade

²³³ 16 TAC § 22.72(i).

²³⁴ *Id.*

²³⁵ City of Celina’s Objections at 23.

²³⁶ *Id.*

²³⁷ *Id.*

secret. Furthermore, the City's costs and use data is public information under the Texas Public Information Act.

As such, Commission rules require electronic filings "be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the [C]ommission."²³⁸ Specifically, "Microsoft Excel spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet."²³⁹ Petitioners RFI merely requests Microsoft Excel spreadsheets in accordance with this requirement and not for some imagined nefarious purpose.

The ALJ should overrule the City's general and specific objections and order the City to produce the requested information.

20. City's Objection to Petitioners' RFI 1-22

Petitioners RFI 1-22 states: "Please produce all Excel spreadsheets and other documents that are linked to the document described in Ratepayers' Request to City 1-21 with all formulae and links intact and in unlocked and editable form and any other linked spreadsheets and documents."

The City responded to the RFI, stating the following:

1. "The City plans to provide the Excel spreadsheet with the ability to edit only to the extent necessary to check the City's work, subject to the prior entry of a fully executed confidentiality order agreeable to the City and City's Consultant."²⁴⁰
2. "The City objects to the extent this request seeks the ability for the consultant retained by the Ratepayers (a direct competitor to City's retained consultant) the ability to access, copy, or record the proprietary, trade secret, or intellectual property of the City's Consultant."²⁴¹

²³⁸ 16 TAC § 22.72(i).

²³⁹ *Id.*

²⁴⁰ City of Celina's Objections at 24.

²⁴¹ *Id.*

3. [T]he City objects to this request to the extent it seeks information in violation of the following statutory protections for such material: information consisting of trade secrets and commercial or financial information . . . and information consisting of proprietary information”²⁴²

While Excel may be the intellectual property of the Microsoft Corporation, the use of the licensed program to input costs, divided by utility consumption, and calculate a rate is not a trade secret. Furthermore, the City’s costs and use data is public information under the Texas Public Information Act.

As such, Commission rules require electronic filings “be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the [C]ommission.”²⁴³ Specifically, “Microsoft Excel spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet.”²⁴⁴ Petitioners RFI merely requests Microsoft Excel spreadsheets in accordance with this requirement and not for some imagined nefarious purpose.

The ALJ should overrule the City’s general and specific objections and order the City to produce the requested information.

IV. CONCLUSION


WHEREFORE, PREMISES CONSIDERED, Petitioners Outside City Ratepayers of the City of Celina respectfully request the Administrative Law Judge compel the City of Celina to fully and adequately respond to Petitioners’ Requests to City 1-1, 1-2, 1-3, 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17, 1-18, 1-19, 1-20, 1-21, and 1-22; dismiss or overrule the City of Celina’s general and specific objections in their entirety; declare the objections waived; and for such other further relief to which Petitioners may be entitled.

²⁴² *Id.*

²⁴³ 16 TAC § 22.72(i).

²⁴⁴ *Id.*

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 23rd day of March 2020.



John J. Carlton