



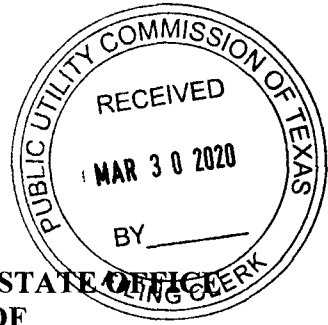
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SOAH DOCKET NO. 473-20-1554.WS  
PUC DOCKET NO. 49225



PETITION BY OUTSIDE CITY § BEFORE THE STATE OFFICE  
RATEPAYERS APPEALING THE § OF  
WATER RATES ESTABLISHED BY §  
THE CITY OF CELINA § ADMINISTRATIVE HEARINGS

**CITY OF CELINA’S RESPONSE TO  
RATEPAYERS’ MOTION TO COMPEL RESPONSES TO  
RATEPAYERS’ REQUEST FOR INFORMATION 1-1 THROUGH 1-24**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES the CITY OF CELINA (“CELINA”) and files this its Response to RATEPAYERS’ Motion to Compel Responses to Ratepayers’ First Request for Information 1-1 through 1-24 and shows the following:

Ratepayers’ Motion to Compel was filed on Monday, March 23, 2020. In accordance with 16 Texas Administrative Code (TAC) § 22.78 (a), this response is timely filed.<sup>1</sup>

**I. Responses Have Been Filed**

On Thursday, March 26, 2020, City of Celina timely filed responses to Ratepayers’ First Request for Information 1-1 through 1-24.<sup>2</sup> Specifically, in response to the sweeping requests, the City of Celina has provided over 24,000 pages of documents and has provided a CD with the

<sup>1</sup> The City of Celina timely filed the responses even though the deadline for responses to requests for information may not currently apply pursuant to the Commission’s order suspending rules in Docket No. 50664 issued March 16, 2020. Specifically suspending:

Any provision in chapters 22, 24, 25, and 26 of title 16 of the Texas Administrative Code requiring that filings be made in a certain amount of time or that the presiding office act by a certain date, unless that requirement is also found in statute.

The deadline to file responses to motions to compel is set by rule, not statute.

<sup>2</sup> *Id.*

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spreadsheets sought. The City of Celina's responses may have rendered most, if not all, of all of Ratepayers' motion to compel moot.

## **II. Preliminary Statement**

Ratepayers filed the Ratepayers' first set of RFIs on March 6, 2020 so that the City of Celina was required to file its objections on Monday, March 16, the day before the filing deadline for the City of Celina's direct testimony. Ratepayers could have filed this RFI after their petition was filed February 14, 2019<sup>3</sup> and SOAH order no. 1, issued December 13, 2019, said that "Discovery may begin immediately. . ." By the time SOAH Order No. 1 was issued, the City of Celina had responded to five sets of RFIs issued by PUCT staff. Ratepayers waited three months after SOAH Order No. 1 before filing the first RFI on March 6, 2020, in order to disrupt the City of Celina's preparation and filing of its direct case. Despite the pandemic, the City of Celina timely filed its objections, direct case, responses, and now, response to motion to compel.

## **III. Argument**

### **A. Conference: Counsel for the City of Celina attempted to confer with counsel for the Ratepayers regarding the information sought by the Ratepayers'.**

In their motion to compel, the Ratepayers assert that "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."<sup>4</sup> Based upon phone and email communications between counsel for

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<sup>3</sup>At any time after an application is filed, and subject to the provisions of §22.141 of this title (relating to Forms and Scope of Discovery), any party may serve upon any other party written requests for information and requests for admission of fact.

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<sup>4</sup> Petitioners' Motion to Compel City of Celina to Respond to Ratepayers' Frist Request for Information at 2 (March 23, 2020) (Petitioners' Motion to Compel).

the Ratepayers and counsel for the City of Celina, it was clear to counsel for the City of Celina that an impasse had been reached regarding the information sought by the Ratepayers' counsel. No further conversations on this subject would have been fruitful, especially considering counsel's need to focus attention on the direct testimony and not attempting to persuade Ratepayers to narrow their RFIs.

**B. The City's general objections to RFI 1-1 through 1-24 comply with all requirements of the Texas Rules of Civil Procedure.**

Ratepayers, without support, assert that, "General objections that are not tied to a specific RFI are no objection at all."<sup>5</sup> 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."<sup>6</sup> The City of Celina specifically asserts the basis for its "general" objections. Ratepayers appear to misinterpret the rule by believing that an individual objection is required for every single RFI, even if that objection and the basis of that objection applies to multiple requests. While the rules do state that the "responding party's answers, objections, and other responses must be preceded by the request to which they apply," the rule does not require the objection to precede each individual request. Under the section labeled "General Objections," the City has stated which RFIs the objections will apply to and goes on to assert the basis of the objections. Ratepayers stated that they "wish to avoid repetitive arguments in an effort to conserve the ALJs limited resources,"<sup>7</sup> but at the same time are attempting to argue that the City's general objections should be overruled because the objection does not, individually, precede each individual RFI. For the

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City to do this, when the same objection applies to all of the Ratepayers' RFIs, would most definitely constitute a waste of the ALJs time and effort.

**C. A privilege log was not required under these circumstances.**

Ratepayers additionally argue that that the City of Celina, in response to RFIs 1-1, through 1-3, 1-6, and 1-8 through 1-18 “has offered no specific knowledge of confidential information in its objection and did not include any documents in the privilege log.”<sup>8</sup> The PUC’s procedural rules provide that:

A party raising objections on the grounds of relevance as well as grounds of privilege or exemption is NOT required to file an index to the privileged or exempt documents at the time the objections are filed. A party may instead include an objection to the filing of the index. The objections shall show good cause for postponement of the filing index.<sup>9</sup>

In each of the its responses to the aforementioned RFIs, the City of Celina specifically cited the aforementioned provision and stated that “because of the sweeping scope of the request, prior attorney-client communications or attorney work product may exist and must be protected as privileged.”<sup>10</sup> Additionally, as a result of the timing of the RFI, at the time the objections were due, counsel for the City of Celina did not know the extent or the specifics of the documents that Celina possessed and was required to produce in response to a request for “all information.” All of this was taking place amidst the reactions by the City of Celina to the epidemic when the Governor officially declared as disaster on Monday, March 16. Prior to declaration, the City of Celina’s management had instructed non-essential staff to work from home and closed city hall to

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the public. The sweeping scope of the requests, coupled with the unfortunate timing, is enough to demonstrate good cause for not providing a privilege log.

Ratepayers further assert that because RFI 1-1 through 1-5 are verbatim restatements of the Requests for Disclosure listed under Tex. R. Civ. Proc. 194.1, the City's failure to respond would be an abuse of the discovery process. While the Rules state that, "No objection or assertion of work product is permitted to a request under this rule,"<sup>11</sup> the Ratepayers did not make these requests under Tex. R. Civ. Proc. 194. The PUC's procedural rules specifically allow for objections to be made to requests for information.<sup>12</sup>

**D. RFI nos. 1-8 through 1-18 are overly broad, cause the City of Celina an undue burden to produce, and could potentially threaten confidential and protected information.**

Ratepayers' RFI 1-8 requests "all information" and RFIs 1-9 through 1-18 request "all documents." While couched in the statutory text, the Administrative Law Judge should recognize the breadth of the documents that may be responsive to this request. Since filing its Objections and Direct Testimony, the City of Celina has filed responses to these RFIs and provided copies of documents responsive to these requests.

The requests, as written, would require countless staff hours by the City of Celina to not only retrieve but also to review each document that could potentially be responsive to the Ratepayers' overbroad requests. Ratepayers assert, repeatedly and without explanation, that the information sought is "relevant to the questions posed in the Commission's Preliminary Order."<sup>13</sup> The Ratepayers go on to cite and quote *In re National Lloyds Insurance* and assert that "what is

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relevant to subject matter is to be broadly construed.”<sup>14</sup> However, Ratepayers willfully neglect to include the portion of the Texas Supreme Court’s assertion which qualifies this statement. While the Court does state that, “What is ‘relevant to the subject matter’ is to be broadly construed,” the Court further states that, “These liberal bounds, however, have limits, and ‘discovery requests must not be overbroad.’”<sup>15</sup> Additionally, the Texas Supreme Court has repeatedly emphasized that discovery is to be conducted with reasonable limits, is not to be used as a fishing expedition, and must be reasonably tailored to include only matters relevant to the case.<sup>16</sup> As written, these requests seeking “all information” or “all documents,” exceed the bounds of discovery. Further, the timing of service of these overbroad requests by the Ratepayers is questionable, if not outright calculated. As previously mentioned, Ratepayers filed their original petition in February of 2019. Ratepayers waited over a year to serve their first set of Requests for Information. All the while, the City of Celina had already received and responded to five sets of Requests for Information from PUCT staff. Additionally, the Ratepayers waited to serve these requests until just shortly before the City of Celina’s direct testimony was due. Instead of requesting targeted and direct RFIs, the Ratepayers chose to serve these overbroad requests which, if not already difficult to respond to due to the thousands of documents which could potentially be responsive, cornered the City of Celina into this harassing and unduly burdensome situation.

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Furthermore, because of the overbreadth of these requests, an attempt to respond to the requests could lead to the release of confidential and protected information. Section 552.022 of the Public Information Act provides that certain specific information may be excepted from disclosure if made confidential under “other law.”<sup>17</sup> The Texas Supreme Court has specifically held that the “Texas Rules of Civil Procedure and the Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.”<sup>18</sup> This includes the discovery privileges found in these Rules. Specifically, the Texas Rules of Civil Procedure protect against the invasion of personal and constitutionally protected information.<sup>19</sup> Documents responsive to these broad requests may contain this type of protected personal information, including but not limited to, personal information in the City of Celina’s customer’s account records,<sup>20</sup> credit card debit card, charge card, and access device numbers,<sup>21</sup> information consisting of trade secrets and commercial or financial information,<sup>22</sup> and social security numbers and taxpayer ID numbers.<sup>23</sup> Responding to these requests would undoubtedly place private and protected information at risk.

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**E. RFI nos. 1-19 through 1-22 seek some information protected as a trade secret.**

Ratepayers' RFIs 1-19 through 1-22 all relate to a spreadsheet prepared by the City of Celina's expert witness in this case, Dan Jackson. The Ratepayers assert that, "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."<sup>24</sup> The Ratepayers misinterpret the City of Celina's objection. The City of Celina seeks to protect the intellectual property of Mr. Jackson, specifically, the model Mr. Jackson has created and which was used to develop the water and wastewater rates at issue in this case. As a general rule, a person has a privilege to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, unless the court finds that nondisclosure will tend to conceal fraud or otherwise work injustice.<sup>25</sup> Mr. Jackson has worked for years to develop and perfect his method. It would be an injustice to Mr. Jackson to unqualifiedly provide his highly sought method to the Ratepayers, whom happen to employ as a consultant a direct competitor of Mr. Jackson. As stated by the Supreme Court of Texas, "A public disclosure of trade secrets should not be required . . . except 'in such cases and to the extent as may appear indispensable for the ascertainment of truth.'"<sup>26</sup> Here, the City of Celina specifically asserts in its objections that it plans to produce the Excel spreadsheet with the ability to edit in order for the Ratepayers to be able to check Mr. Jackson's work for cross-examination purposes. Further, to date, the City has provided the excel spreadsheets in native format with the formulae and links intact and in compliance with the

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Commission's Procedural Rules.<sup>27</sup> The spreadsheets can be found as part of the direct testimony of Dan Jackson. Specifically, two Excel spreadsheets, one for each scenario discussed by Mr Jackson in his testimony, have been provided. Additionally, the Ratepayers may also trace the origin of all calculations used by Mr. Jackson in the development of his rate recommendations.

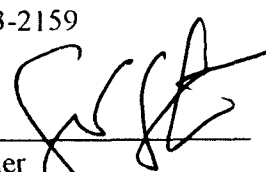
#### IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the City of Celina requests that Ratepayers' Motion to Compel be denied and for such other and further relief to which the City of Celina may be justly entitled.

Respectfully submitted,

**DAVIDSON TROILO REAM & GARZA, P.C.**  
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**ATTORNEYS FOR CITY OF CELINA**

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<sup>27</sup> 16 TAC § 27.72(i)(2) ("Microsoft Excel Spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet.")


**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been served on all parties of record on this 30th day of March, 2020, in accordance with 16 Tex. Admin. Code § 22.74

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