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SOAH DOCKET NO. 473-19-5674.WS
PUC DOCKET NO. 49351



**RATEPAYERS APPEAL OF THE
DECISION BY BEAR CREEK SPECIAL
UTILITY DISTRICT TO CHANGE
RATES**

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

**BEAR CREEK SPECIAL UTILITY DISTRICT’S RESPONSE TO RATEPAYERS’
REPRESENTATIVES’ MOTION TO COMPEL RESPONSES TO
RATEPAYERS’ FIRST REQUEST FOR INFORMATION**

COMES NOW, Bear Creek Special Utility District (“Bear Creek” or the “District”) and files this, its Response to Ratepayers’ Representatives’ Motion to Compel Bear Creek’s Responses to Ratepayers’ First Requests for Information, and in support thereof would show the following:

I. INTRODUCTION

The Representatives of the Ratepayers (“Ratepayers”) filed their Motion to Compel Responses to Ratepayers’ Representatives’ First Request for Information (“Motion to Compel”) on September 21, 2020, at 3:29 p.m.¹ Pursuant to Title 16 of the Texas Administrative Code (“TAC”), Section 22.71(h), “all documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.” An alternate time by which filings should be made has not been set forth by the Administrative Law Judge (“ALJ”); therefore, Section 22.71(h) governs Ratepayers’ filing deadline and Ratepayers’ Motion was filed late.

Pursuant to Title 16 of the TAC, Section 22.144(f), “responses to a motion to compel shall be filed within five working days after receipt of the motion.” Five working days from Monday, September 21, 2020, is Monday, September 28, 2020. Bear Creek’s Response is timely filed.

II. RESPONSE TO MOTION COMPEL

Ratepayers’ late-filed Motion to Compel should be disregarded. Should SOAH decide to forgive the late filing, the Motion to Compel should still be denied because Ratepayers’ requests

¹ Ratepayers’ Representatives’ Motion to Compel Bear Creek Special Utility District’s Responses to Ratepayers’ First Request for Information (Sep. 21, 2020).

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for information will not lead to evidence that is relevant to the facts to be determined and are outside of the scope of proceedings. Responding to these fifty-eight RFIs would be a needless burden on Bear Creek that would distract from the issues to be determined.

A. Bear Creek’s Response Regarding Ratepayers’ RFIs 1-1 to 1-9.

Ratepayers’ RFIs 1-1 to 1-9 all relate to the issue of Bear Creek’s exemption from refunding deposit monies.² Ratepayers argue that Bear Creek has made a claim of exemption from a requirement to refund deposit monies, and Bear Creek has objected that the issue is irrelevant to this proceeding. Ratepayers claim in the Motion to Compel that Bear Creek is wrong. Whether Bear County is exempt from refunding deposits, Ratepayers argue, is “relevant to these rate hike proceedings” because it shows a “mindset” that Bear Creek is “above the law.”³

Bear Creek does not have an “above the law” mindset. Bear Creek is focused on having a full and fair hearing on the issues relevant to this rate appeal. As Bear Creek described in its Response to the Public Utility Commission’s Staff’s Second Set of RFIs, financial assistance from the Greater Texoma Utility Authority was used to construct improvements to the District’s water system.⁴ The costs associated resulted in issuance of bonds through the Texas Water Development Board in the amount of \$7,490,000. Bear Creek set the rates necessary to service the debt for this bond issue based on the current number of customers (2,301) in the District. Bear Creek used revenues and operations and maintenance expenses from the most current audit and subtracted operations and maintenance expenses, current debt on the system, required reserve and administrative payments from revenue to determine the amount necessary to repay the debt. Bear Creek has been transparent about its rate-setting methodology.

Ratepayers concede that deposit refund moneys are “not considered in [BCUSD’s] rate hike calculations for the October 2018 rate increase.”⁵ Nevertheless, Ratepayers argue that Bear Creek should “answer the question as to where [BCUSD] get[s] the authority to claim being

² See Motion to Compel at 3-4 (listing RFIS 1-1 to 1-9).

³ Motion to Compel at 5-6.

⁴ See Bear Creek Special Utility District’s Responses to Commission’s Staff’s Second Request for Information, Question Nos. Staff 2-1 to Staff 2-13, at 2 (May 9, 2019).

⁵ Motion to Compel at 7.

‘exempt’ from having to refund deposits, and include those funds in its revenue calculations.” Ratepayers are on a fishing expedition. Ratepayers have instituted a rate appeal not because they have grounds on which to argue that Bear Creek’s rates are unjust or unreasonable, which they are not, but because they wish to dig through Bear Creek’s operations. Discovery of irrelevant or out-of-scope information is not permitted under Rule of Evidence 402. Ratepayers argue that it is not “overly burdensome” for Bear Creek to respond to RFIs 1-1 to 1-9, but it is overly burdensome to produce irrelevant information because it unnecessarily raises the cost of litigation and forces Bear Creek staff to spend time on irrelevant issues at the expense of their regular full-time duties. Ratepayers’ Motion to Compel regarding RFIs 1-1 to 1-9 should be denied.

Ratepayers make multiple aspersions against Bear Creek unrelated to this proceeding and also unrelated to deposit refunds. They argue that Bear Creek placed locks on fire hydrants in its district during 2007-2015, and that its General Manager litigated an allegedly wrongfully terminated lease.⁶ But these allegations, even if they were founded, which they are not, are not grounds to compel Bear Creek to produce information that is not relevant to this rate appeal. Ratepayers’ multi-page litany of complaints fails to show why RFIs 1-1 to 1-9 are relevant to this proceeding. Bear Creek’s prior discovery responses to PUC Staff show that issues regarding refunding deposits is irrelevant to whether Bear Creek’s rates and rate-setting methodology are just and reasonable. Those issues are the basis of this action; accordingly, Bear Creek respectfully requests that Ratepayers’ Motion to Compel be denied with regard to RFIs 1-1 to 1-9.

B. Bear Creek’s Response Regarding Ratepayers’ RFIs 1-10 to 1-13.

Ratepayers’ RFIs 1-10 to 1-13, like the RFIs 1-1 to 1-9, all relate to the irrelevant issue of issue of exemption from refunding deposit monies.⁷ Ratepayers concede, as noted above, that deposit refund moneys are “not considered in [BCUSD’s] rate hike calculations for the October 2018 rate increase.”⁸ Ratepayers reiterate, however, that Bear Creek should be compelled to

⁶ *Id.* at 6-7.

⁷ *See* Motion to Compel at 8 (listing RFIS 1-10 to 1-13).

⁸ Motion to Compel at 7.

provide additional information on ratepayer deposits and to argue that the District is “attempt[ing] to hide a source of revenue[.]”⁹

Ratepayers are on a fishing expedition. Ratepayers have instituted a rate appeal not because they have grounds on which to argue that Bear Creek’s rates are unjust or unreasonable, which they are not, but because they wish to dig through Bear Creek’s operations. Discovery of irrelevant or out-of-scope information is not permitted under Rule of Evidence 402. Ratepayers argue that it is not “overly burdensome” for Bear Creek to respond to RFIs 1-10 to 1-13, but it is overly burdensome to produce irrelevant information because it unnecessarily raises the cost of litigation and forces Bear Creek staff to spend time on irrelevant issues at the expense of their regular full-time duties. Ratepayers’ Motion to Compel regarding RFIs 1-10 to 1-13 should be denied.

C. Bear Creek’s Response Regarding Ratepayers’ RFIs 1-14 to 1-30.

In RFIs 1-14 to 1-30, Ratepayers continue to press for more information on refunded deposits and amounts forfeited and sent to the Texas State Comptroller.¹⁰ Ratepayers request that Bear Creek provide the following information for fifteen calendar years:

- 1) How many ratepayer accounts were closed,
- 2) How many ratepayers received a refund of some or all of their deposit,
- 3) How many ratepayers did not receive a refund; and
- 4) How many forfeited deposits were sent to the Texas State Comptroller.¹¹

Ratepayers allege that Bear Creek is wrongfully withholding this information shows revenue that is “not truly accounted for properly[.]”¹² Ratepayers are incorrect—the reason that Bear Creek has objected to RFIs 1-14 to 1-30 is that, like the other RFIs on deposit refunds, they are irrelevant to the facts at issue and outside the scope of this proceeding. Moreover, fifteen years of information is clearly excessive to a determination of whether the rates at issue are just and reasonable. Discovery of irrelevant or out-of-scope information is not permitted under Rule of Evidence 402. Ratepayers argue that it is not “overly burdensome” for Bear Creek to respond to

⁹ *Id.* at 9.

¹⁰ *See id.* at 10-12 (listing RFIs 1-14 to 1-30).

¹¹ *Id.*

¹² *Id.* at 13.

RFIs 1-14 to 1-30, but it is overly burdensome to produce irrelevant information because it unnecessarily raises the cost of litigation and forces Bear Creek staff to spend time on irrelevant issues at the expense of their regular full-time duties. Ratepayers’ Motion to Compel regarding RFIs 1-14 to 1-30 should be denied.

D. Bear Creek’s Response Regarding Ratepayers’ RFIs 1-31 to 1-54.

Ratepayers’ RFIs 1-31 to 1-54 all relate to anticipated future collections from projects that are still under development.¹³ For example, RFI 1-31 and 1-32 ask how much deposit money and meter sales Bear Creek anticipates collecting once 6,000 connections in Abston Hills are established.¹⁴ Bear Creek objected to these twenty-three requests as out of scope and irrelevant because they all deal with anticipated future events, not anything relevant to the rates under review.

Ratepayers seem to acknowledge that RFIs 1-31 to 1-54 are not relevant to analyzing the rates at issue in this proceeding, instead claiming that they seek to determine “the amount of money the BCUSD *will eventually collect* in revenues as the city . . . and its surrounding areas . . . grow.”¹⁵ Ratepayers express precisely why RFIs 1-31 to 1-54 are irrelevant to this proceeding, as Bear Creek argued in its objections. Information about what Bear Creek anticipates collecting *in the future* has nothing to do with Bear Creek’s rates that are at issue or with the District’s past rate-setting methodology, or whether the rates at issue are just and reasonable. Ratepayers are on a fishing expedition that will not lead to relevant evidence. Moreover, providing full responses to these twenty-three requests would overly burden Bear Creek because it would unnecessarily raise the cost of litigation and force Bear Creek staff to spend time on irrelevant issues at the expense of their regular full-time duties. Ratepayers’ Motion to Compel regarding RFIs 1-31 to 1-54 should be denied.

E. Bear Creek’s Response Regarding Ratepayers’ RFIs 1-55 to 1-58.

Ratepayers’ RFIs 1-55 to 1-58 are similar to the previous set because they also ask for information about future events—namely, the amount in total meter sales that will be paid to

¹³ See Motion to Compel at 8 (listing RFIS 1-10 to 1-13).

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 13-16 (listing RFIs 1-31 to 1-54) (emphasis added).

establish connections at President Boulevard Extension, O'Reilly's Auto Store, and a 7-Eleven store. Bear Creek objected to these requests as irrelevant and out of the scope of issues to be determined in this proceeding.

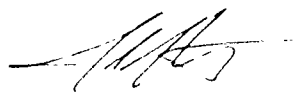
Ratepayers include RFIs 1-55 to 1-58 in their Motion to Compel, but provide no argument as to why Bear Creek should be compelled to respond.¹⁶ As Bear Creek has already argued in its objections, RFIs 1-55 to 1-58 are irrelevant to any fact to be determined in this action. Since Ratepayers do not provide any argument to the contrary, Bear Creek respectfully requests that Ratepayers' Motion to Compel responses to RFIs 1-55 to 1-58 be denied.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Bear Creek Special Utility District prays that the Ratepayers' Representatives' Motion to Compel Bear Creek Special Utility District's Responses to Ratepayers' First Request for Information be DENIED, that Bear Creek's Objections to the Ratepayers' First Request for Information be SUSTAINED, and that Bear Creek be granted any such further relief to which it may show itself to be entitled.

¹⁶ *See id.* at 18-19 (listing RFIs 1-55 to 1-58 with no accompanying argument).

Respectfully submitted,



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ATTORNEYS FOR BEAR CREEK SPECIAL
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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 28th day of September 2020.



John J. Carlton