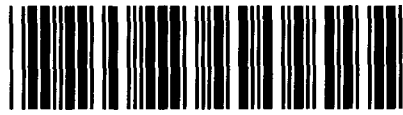


Control Number: 49367



Item Number: 24

Addendum StartPage: 0

PETITION BY OUT OF DISTRICT
RATEPAYERS APPEALING THE
WATER RATES ESTABLISHED BY
THE EL PASO WATER CONTROL
AND IMPROVEMENT DISTRICT NO.

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PUBLIC UTILITY COMMISSION
OF TEXAS

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**COMMISSION STAFF'S RESPONSE TO MOTION TO
ABATE DISCOVERY AND MOTION TO COMPEL**

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas, representing the public interest, and files this response to El Paso County Water Control and Improvement District No. 4's (District) Motion to Abate Discovery and Motion to Compel. Staff requests that the District's motion be denied and the District be required to produce all information responsive to Staff's Second Request for Information. In support thereof, Staff would show the following:

I. BACKGROUND

On March 22, 2019, out-of-district ratepayers (Ratepayers) of the District filed a petition contesting a rate action that was effective January 1, 2019. The petition was filed pursuant to 16 Tex. Admin Code (TAC) § 24.103 and Tex. Water Code (TWC) § 13.043.

On May 24, 2019, Staff filed its Second Request for Information (RFI) to the District. On June 3, 2019, the District filed a request for extension, to change the deadline to file responses to Staff's Second RFI to July 8, 2019. Thereafter, on June 17, 2019, the District filed an Objection to Staff's Second RFI. Staff and the District conferred and came to an agreement on modifications to those RFIs, filed on June 28, 2019.

On July 8, 2019, the District filed its Motion to Abate Discovery. Under 16 TAC § 22.144(e), motions to compel must be filed within five working days after the objection is received. This pleading, therefore, is timely filed.

II. RESPONSE AND MOTION

Staff's Second RFI to the District was filed on May 24, 2019. The District asserts that it received the RFIs after 3:00 PM CDT on that day. Therefore, pursuant to 16 Tex. Admin. Code (TAC) § 22.144(c)(1), responses were due from the District by June 17, 2019. The District

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subsequently filed an unopposed request for extension, moving that deadline to July 8, 2019. In total, 47 days have elapsed since the initial filing of this set of RFIs.

A party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, and may obtain discovery of information that is reasonably calculated to lead to the discovery of admissible evidence.¹ Additionally, to the extent a party has an objection to a discovery request, a party must state specifically the legal or factual basis for its objection and the extent to which the party is refusing to comply with the discovery request.² The Commission's Procedural Rules also require a party objecting to discovery to object specifically to a particular RFI.³ Additionally, the Commission's procedural rules also require that "[a]ll argument upon which the objecting party relies shall be presented in full in the objection."⁴

In its Motion to Abate Discovery, filed July 8, 2019, the District claims that having to respond to these RFIs would be "unfairly burdensome, unjust, and prejudicial." Staff respectfully disagrees and would request the grant of a Motion to Compel and denial of the Motion to Abate Discovery for the following three reasons.

A. The District's motion is without merit and amounts to a broad objection to existing discovery requests.

In filing this Motion to Abate, the District is making a general objection to all of Staff's Second RFIs. The District looks to the need for "the benefit of a prehearing conference," "the entry of a procedural schedule," and "identification of the issues on appeal" to first occur before responding to the discovery requests. These procedural milestones do not need to have been passed for discovery to be appropriate and these complaints amount to broad objections.

First, as stated in 16 TAC § 22.144(a), "[a]t any time after an application is filed . . . any party may serve upon any other party written requests for information and requests for admission of fact."⁵ Therefore, under Commission discovery procedures, Staff is not required to wait until a procedural schedule has been established, or the schedule of a prehearing conference, or the production of a list of issues in this case to serve RFIs.

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

² Tex. R. Civ. Proc. 193.2(a).

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

⁴ 16 TAC § 22.144(d)(1).

⁵ 16 TAC § 22.144(a)

Second, Commission precedent dictates that parties do not have to wait for further procedural steps before discovery may proceed. Innumerable applications and petitions have gone through extensive discovery processes before and during the period of referral to the State Office of Administrative Hearings. Specific to ratepayer protests, such as the one at present, Docket Nos. 49351, 49225, and 47998 are each examples of petitions where discovery requests were filed and timely answered before and during the referral period.⁶

Without a ruling allowing Staff's discovery, the District's broad objection gives it license to exercise its own discretion as to what is relevant at this phase of the proceeding and withhold whatever production it may choose.

B. The District has not negotiated these objections in good faith.

Staff and the District communicated many times in the course of attempting to amend Staff's Second RFIs. After diligent negotiations, an agreement was reached and the amended requests were filed on June 28, 2019.

Under the Commission's discovery procedures, "[p]arties shall negotiate diligently and in good faith concerning any discovery dispute prior to filing an objection."⁷ In its initial objection, filed June 17, 2019, the District objects to specific questions on the grounds of being outside of the scope of the appeal and for being vague. Nowhere in that pleading are objections raised on the grounds of the requests being "unduly burdensome" or "unjust" or "prejudicial."

Subsequent to filing those objections, the District and Staff have had further conversations via telephone and email. In those conversations, the parties came to an agreement over the initial objections of scope and vagueness. The agreed upon amended RFIs were filed on June 28, 2019. At no time in these conversations did the District raise objections regarding the burden, justness, or prejudice of Staff's requests.

These broad objections raised by the District in its Motion to Abate were not negotiated diligently and in good faith prior to being filed with the Commission and do not comply with Commission discovery procedures.

⁶ *Ratepayers' Appeal of the Decision by Bear Creek Special Utility District to Change Rates*, Docket No. 49351 (pending); *Petition of Outside City Ratepayers Appealing the Water Rates Established by the City of Celina*, Docket No. 49225 (pending); *Ratepayers' Appeal of the Decision by Galveston County Municipal Utility District No. 12 to Change Rates*, Docket No. 47998 (pending).

⁷ 16 TAC § 22.144(a).

C. The District's objections have not been filed in a timely manner.

Under Commission discovery procedures, "objections to requests for information . . . shall be filed within ten calendar days of receipt."⁸ The District timely requested an extension of the deadline to object to Staff's Second RFIs to the District to June 17, 2019. During that time, the District filed objections to Staff's 2-1, 2-3, 2-4, 2-5, 2-6, 2-7, 2-8, 2-9, 2-10. However, the eight remaining questions – Staff's 2-2, 2-11, 2-12, 2-13, 2-14, 2-15, 2-16, 2-17 – were not objected to at that time or in any subsequent filing. Regardless if the District's claims of burden or justice or prejudice are to be given merit, objections to these eight questions were not raised in a timely fashion. Pursuant to 16 TAC § 22.144(e), Staff respectfully requests that the District be required to respond to these eight questions, in addition to the reasons discussed above for the remaining questions.

Staff has attached Staff's Second RFIs that were amended and agreed upon. The requests are typical for a ratepayer protest and are directly related to the cost of service, the determination of rates, and are reasonably calculated to lead to the discovery of admissible evidence.

III. CONCLUSION

Staff respectfully requests that the ALJ deny the District's Motion to Abate Discovery and grant Staff's Motion to Compel the District's response to Staff's RFI's 2-1 through 2-17.

Dated: July 10, 2019

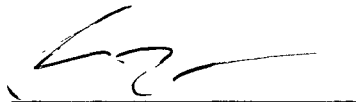
⁸ 16 TAC § 22.144(d).

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney

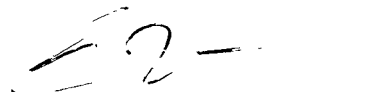


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DOCKET NO. 49367

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on this the 10th of July, 2019 in accordance with the requirements of 16 TAC § 22.74.



Creighton R. McMurray

DOCKET NO. 49367

**COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION
AND AGREED MODIFICATION TO EL PASO WATER CONTROL AND
IMPROVEMENT DISTRICT NO. 4
QUESTION NOS. STAFF 2-1 THROUGH STAFF 2-17**

- Staff 2-1 a. Please provide the WCID's financial and capital expenditures budget for the year 2015.
- b. Please provide any budgets created during or prior to 2015 that projected financial and capital expenditures for the years 2016, 2017, and 2018.
- Staff 2-2 Provide the organizational chart for WCID.
- Staff 2-3 a. Please provide the amount of regulatory assessment fees paid to the Texas Commission on Environmental Quality for the year 2015. If included in WCID's audited financial statements, please indicate the name of the expense account in which it is included on the statement of revenues, expenses and changes in net position.
- b. Please provide the amount of regulatory assessment fees that WCID projected to pay to the Texas Commission on Environmental Quality for the years 2016 through 2018. Specifically, projections that were created during or prior to 2015. If included in WCID's audited financial statements, please indicate the name of the expense account in which it is included on the statement of revenues, expenses and changes in net position.
- Staff 2-4 Please provide the general ledger for the years ending in 2015.
- Staff 2-5 Please provide contracts or agreements between the WCID and any service provider for both water and sewer for the year 2015. The contracts specifically pertain to any arrangement to purchase water, groundwater, sewer, and sewer treatment.
- Staff 2-6 a. Provide WCID's W-2 forms and 1099 forms for salaries and contract labor for the year 2015. *Please use the confidential filing process available through the Public Utility Commission's Central Records for confidential information including tax returns, wages and other confidential information. Please redact all social security numbers.*

b. Please provide any projected labor expenditures or costs created prior to or during 2015 for the years 2016, 2017, and 2018.

Staff 2-7 Please provide the existing monthly operations reports kept pursuant to 30 Tex. Admin. Code (TAC) § 290 for the year 2015.

Staff 2-8 a. Please provide the following information for the year 2015:

- i. Total number of gallons pumped and billed;
- ii. Number of connections and meter sizes;
- iii. Other income (tap fees, late fee, reconnect fee, etc.); and,
- iv. A breakdown of usage for the usage tiers (zero-3,000 gallons, 3,001-15,000, 15,001-34,000, 34,001-1,000,000 and over 1,000,000)

b. Please provide any projections that existed prior to or during 2015 for the years 2016, 2017, and 2018 for the following information:

- i. Total number of gallons pumped and billed;
- ii. Number of connections and meter sizes;
- iii. Other income (tap fees, late fee, reconnect fee, etc.); and,
- iv. A breakdown of usage for the usage tiers (zero-3,000 gallons, 3,001-15,000, 15,001-34,000, 34,001-1,000,000 and over 1,000,000).

Staff 2-9 a. Please provide the amount of revenue collected through the base or fixed charge for the year ending December 31, 2015 for both water and sewer.

b. Please provide any projected revenue collections through base or fixed charge that existed during or prior to the year ending December 31, 2015 for the years 2016, 2017, 2018 for both water and sewer.

Staff 2-10 a. Please provide the amount of revenue collected through the gallonage or usage charge for the year ending December 31, 2015 for both water and sewer.

b. Please provide the projected amount of revenue collected through the gallonage or usage charge that existed during or prior to 2015 for the years 2016, 2017, 2018 for both water and sewer.

Staff 2-11 Provide WCID's current rate design or rate schedule.

Staff 2-12 Provide any supporting documentation used to support both the water and sewer rate increase at the time the decision was made to increase rates including but not limited to rate studies, board of director's minutes and approvals, budgets, historical financial statements.

- Staff 2-13 Provide any supporting documentation and calculations used to support the rate differential between the in-district and out-of-district customers for both the water and sewer rates subject to this appeal.
- Staff 2-14 Provide any supporting documentation and calculations used to support the rate differential between levels of usage.
- Staff 2-15 Provide a copy of any capital improvement plan used by WCID to determine the rate increase for both water and sewer.
- Staff 2-16 Provide the tariff or rate schedule implementing WCID's current water and sewer contested rates, as well as the tariff or rate schedule in effect immediately before the current water and sewer contested rate increase.
- Staff 2-17 With regard to the *Water/Sewer Cost of Service Model* provided in response to Staff's first RFI at bates DIST000132-134, filed April 29, 2019, please provide the following:
- a) All updates of the models;
 - b) Any new models prepared since the Model; and,
 - c) All supporting documentation, including but not limited to assumptions, cost summaries, budget analysis, calculations, native Microsoft Excel spreadsheets for the Model.