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COMPLAINT OF JOHN BLALOCK §
AGAINST MERCY WATER SUPPLY §
CORPORATION §

PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

**MERCY WATER SUPPLY CORPORATION'S REQUEST FOR
RECONSIDERATION of ORDER NO. 10 IN PART**

COMES NOW Mercy Water Supply Corporation ("Mercy") and files this Request for Reconsideration of Order No. 10 in Part. In support thereof, Mercy respectfully shows as follows:

I. PROCEDURAL HISTORY

On August 27, 2020, John Blalock (Complainant or Mr. Blalock) filed a complaint against Mercy under 16 Texas Administrative Code (TAC) Section 22.242 regarding water service.

On October 1, 2020, Commission Staff (Staff) filed a Statement of Position, recommending additional discovery and an extension to file a Supplemental Statement of Position. Mercy replied to the Staff's Statement of Position on October 6, 2020, recommending against additional discovery and an extension. On October 8, the Administrative Law Judge (ALJ) issued Order No. 6, granting Staff's extension and requiring the Parties to propose a discovery schedule by October 23, 2020. On October 23, 2020, the Parties filed an Agreed Proposed Discovery Schedule and Limits, which the ALJ adopted on October 26, 2020 in Order No. 7.

On November 18, 2020, Mercy filed its First Request for Information to Complainant (First RFIs). On November 30, 2020, Mr. Blalock filed answers to Mercy's First RFI, and included his itemized objections within those answers. On December 7, 2020, Mercy filed an amended motion to compel on December 7, 2020. On December 11, 2020, the ALJ issued Order No. 8, granting in part, and denying in part, Mercy's motion to compel; denying Mr. Blalock's motion to compel; and granting Mercy's motion to quash. On December 28 and 29, 2020, Mr. Blalock filed his compelled responses. On January 5, 2021, Mercy filed its second motion to compel and on January 6, 2021, Mr. Blalock filed his reply to Mercy's second motion to compel. On January 12, 2021, the ALJ issued Order No. 10, Granting in Part, and Denying in Part, Mercy Water Supply Corporation's Second Motion to Compel; Granting in Part, and Denying in Part, Complainant's

Motion to Quash; Denying Complainant's Motion for Special Counsel; and Adopting Revised Procedural Schedule.

II. COMMISSION RULES CONTROL OBJECTIONS TO REQUESTS FOR INFORMATION IN THIS PROCEEDING.

Mercy respectfully requests that the ALJ reconsider Order No. 10, denying in part Mercy's second motion to compel, with respect to Request 1-4. The Texas Rule of Civil Procedure referenced in Order No. 10 do not apply in this proceeding except as specifically referenced by Commission Rules or as guidance.¹ Instead, this proceeding and discovery is controlled by Commission Rule 22.144.²

The Commission has stated in Docket No. 49831, "The Texas Rules of Civil Procedure regarding discovery are not incorporated into the Commission's procedural rules. The Commission has previously ruled that the Texas Rules of Civil Procedure regarding discovery are not controlling in Commission proceedings; discovery is controlled by the Commission's rules"³ Specifically, in Docket No. 32070:

The Texas Rules of Civil Procedure regarding discovery are not controlling in Commission proceedings; rather, the Commission's procedural rules govern such proceedings. The Commission's rules provide for forms of discovery and a scope of discovery that differ in some respects from those provided by the Texas civil rules. While the Commission may look to the Texas civil rules for guidance, those rules are not controlling.⁴

¹ See, e.g., *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 49831, Order on Appeal of SOAH Order No. 5 at 2 (Dec. 18, 2019); *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County Texas*, Docket No. 32070, Order on Appeal of Order No. 9 at 1–2 (Nov. 1, 2006). Both orders are attached in Exhibit A.

² Compare 30 Tex. Admin. Code § 22.144(d) with Tex. R. Civ. P. 193.2, 193.33 (Rule 193.2, governing objections to written discovery, and, Rule 193.3, governing assertions of privilege, bifurcate the rules for objections and assertions of privilege where Commission Rules combine them).

³ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 49831, Order on Appeal of SOAH Order No. 5 at 2 (Dec. 18, 2019).

⁴ *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County Texas*, Docket No. 32070, Order on Appeal of Order No. 9 at 1–2 (Nov. 1, 2006).

Accordingly, when resolving discovery disputes, parties must first look to Commission Rules before turning to the Texas Rules of Civil Procedure.

Relevant here, Commission Rule 22.144(d) states that objections shall be filed:

1. Within 10 calendar days of receipt of the request for information,⁵
2. “If the **objection is founded upon a claim of privilege or exemption** under the Texas Rules of Civil Procedure, the objecting party shall file within two working days of the filing of the objections, an index . . .”⁶ and
3. “A full and complete explanation of the claimed privilege or exemption shall be provided.”⁷

Additionally, under Commission Rule 22.144(d)(2), an objecting party shall state “[a]ll arguments upon which the objecting party relies.”⁸ This would include all claims of privilege.⁹ Any failure to plead privilege within the time limit set by the Commission amounts to a waiver of the privilege.

For this reason, Mercy respectfully requests the ALJ reconsider denying Mercy’s Second Motion to Compel with respect to Request 1-4 and grant Mercy’s motion.

III. CONCLUSION AND PRAYER

Mercy respectfully requests the ALJ reconsider Order No. 10’s denial of Mercy’s motion to compel with respect to Request 1-4 because Commission Rule 22.144(d) controls this discovery dispute. Mercy additionally respectfully requests the ALJ grant Mercy’s motion, overruling Mr. Blalock’s untimely objection and compel him to completely respond to Request 1-4 by describing the communications he had with Kim Sanders.

⁵ 30 Tex. Admin. Code § 22.144(d) (TAC).

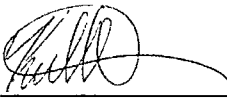
⁶ *Id.* § 22.144(d)(2).

⁷ *Id.* § 22.144(d)(2).

⁸ *Id.* § 22.144(d)(1) (TAC).

⁹ *See id.* § 22.144(d)(2).

Respectfully submitted,

By: _____

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ATTORNEYS FOR MERCY WATER SUPPLY
CORPORATION

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 13th day of January, 2021.

_____

Katelyn A. Hammes

Exhibit A

**PUC DOCKET NO. 49831
SOAH DOCKET NO. 473-19-6677**

2019 DEC 13 PM 4:04

**APPLICATION OF SOUTHWESTERN § PUBLIC UTILITY COMMISSION
PUBLIC SERVICE COMPANY FOR §
AUTHORITY TO CHANGE RATES § OF TEXAS
§**

ORDER ON APPEAL OF SOAH ORDER NO. 5

This order addresses the appeal by Southwestern Public Service Company (SPS) of State Office of Administrative Hearings Order No. 5.¹ In that order the administrative law judge denied SPS' motion to compel discovery and alternative request for a subpoena. The Commission grants the appeal to clarify the proper basis for denying SPS's request for a subpoena. The Commission otherwise denies SPS's appeal of SOAH Order No. 5.

On November 1, 2019, SPS filed a motion to compel TIEC to respond to SPS's requests for information (RFIs) 1-1 through 1-4 requesting information regarding OPL. TIEC responded to each of these RFIs that it did not have the requisite knowledge to confirm or deny the requested information and that it did not have the requested documentation in its possession, custody, or control. The SOAH ALJ denied SPS's motion to compel based on TIEC's lack of possession, custody, or control over the requested information.²

SPS's motion to compel included, as an alternative, a request for a subpoena to be served on OPL requiring OPL to produce documents responsive to SPS's first set of RFI's to TIEC. The SOAH ALJ denied SPS's request for a subpoena because SPS failed to comply with applicable requirements for the issuance of a subpoena. The SOAH ALJ stated that the Commission's subpoena rule and the Administrative Procedure Act³ require a deposit sufficient to ensure payment of the expenses incident to the subpoena. The SOAH ALJ also denied SPS's subpoena request because SPS did not comply with the notice and distance requirements for a subpoena

¹ SOAH Order No. 5 (Nov. 19, 2019).

² *Id.* at 2

³ Tex. Gov. Code §§ 2001.001-.902.

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under the Texas Rules of Civil Procedure, which the SOAH ALJ stated were incorporated by reference in the Commission's rules.⁴ SPS subsequently filed its appeal.⁵

The Commission grants SPS's appeal only to provide the proper basis for denying SPS's request for a subpoena. The Texas Rules of Civil Procedure regarding discovery are not incorporated into the Commission's procedural rules. The Commission has previously ruled that the Texas Rules of Civil Procedure regarding discovery are not controlling in Commission proceedings; discovery is controlled by the Commission's rules.⁶ Thus, the denial of this request cannot be based on failure to meet the substantive requirements of the Texas rules.

In addition, the Commission's rules allow for the issuance of a subpoena pursuant to § 2001.089 of the Administrative Procedure Act for the attendance of a witness or for the production of records. Motions for subpoenas to compel production must describe with reasonable particularity the objects desired and the material and relevant facts sought to be proved by them.⁷ Seeking to confirm Occidental Petroleum Corporation's views on various subjects does not meet this requirement.⁸ Likewise, stating that information is related to other matters or evidences relevance of unspecified requests also does not meet this standard.

For the reasons discussed in this Order, the Commission grants in part and denies in part SPS's appeal of SOAH Order No. 5.

⁴ SOAH Order No. 5 at 2.

⁵ SPS's Appeal of SOAH Order NO. 5 (Dec. 2, 2019).

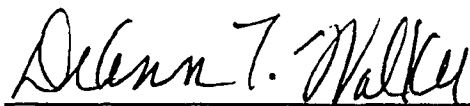
⁶ *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, Docket No. 32070, Order on Appeal of Order No. 9 at 1 (Nov. 1, 2006)

⁷ 16 TAC § 22.145(a).

⁸ SPS's Motion to Compel and, in the Alternative, Request for Issuance of a Subpoena at 4 (Nov. 1, 2019).

SIGNED AT AUSTIN, TEXAS the 18th day of December 2019.


PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER

SOAH DOCKET NO. 473-06-2341
PUC DOCKET NO. 32070

APPLICATION OF WOOD COUNTY	§	
ELECTRIC COOPERATIVE, INC.	§	PUBLIC UTILITY COMMISSION
FOR A CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY	§	OF TEXAS
FOR A PROPOSED TRANSMISSION	§	
LINE IN WOOD COUNTY, TEXAS.	§	

ORDER ON APPEAL OF ORDER NO. 9

This Order addresses the appeal of Dan L. Stricklin of Order No. 9,¹ which denied Mr. Stricklin's motion to compel Wood County Electric Cooperative, Inc. to reply to certain questions in Mr. Stricklin's second set of requests for information. The Commission affirms the administrative law judge's (ALJ's) ruling in Order No. 9 and clarifies its authority to require the production of certain information.

In Order No. 9, the ALJ ruled that Mr. Stricklin's requests for information were "properly objected to by [Wood County],"² which had asserted that it did not possess the data requested and that it could not generate the requested data without undue burden. In support of its claim of undue burden, Wood County stated that Mr. Stricklin's request "far exceeds the type of discovery allowed under Texas law,"³ and that Texas courts have found that a party cannot be forced to provide a document not in existence, as by making lists or reducing information to a tangible form.⁴

The Texas Rules of Civil Procedure regarding discovery are not controlling in Commission proceedings;⁵ rather, the Commission's procedural rules govern such proceedings.⁶

¹ Order No. 9 Denying Intervenor Dan Stricklin's Motion to Compel (Sept. 27, 2006).

² *Id.*

³ Wood County Electric Cooperative, Inc.'s Response to Dan Stricklin's Appeal of Order No. 9 at 10 (Oct. 17, 2006).

⁴ *Id.*

⁵ See TEX. R. CIV. P. 2.

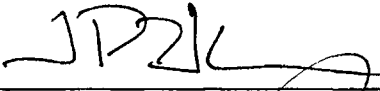
⁶ P.U.C. PROC. R. 22.1(b)(1).

The Commission's rules provide for forms of discovery and a scope of discovery that differ in some respects from those provided by the Texas civil rules. While the Commission may look to the Texas civil rules for guidance, those rules are not controlling.

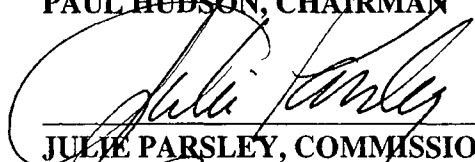
In this instance, however, the Commission is not persuaded that producing the requested information would not constitute an undue burden on Wood County. Therefore, the Commission affirms the ALJ's Order No. 9, denying Mr. Stricklin's motion to compel.

SIGNED AT AUSTIN, TEXAS the 31st day of October 2006.

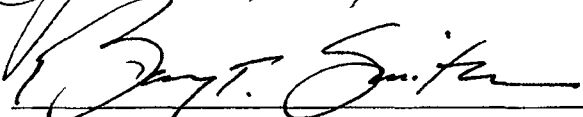
PUBLIC UTILITY COMMISSION OF TEXAS



PAUL HUDSON, CHAIRMAN



JULIE PARSLEY, COMMISSIONER



BARRY T. SMITHERMAN, COMMISSIONER