



Control Number: 51249



Item Number: 25

Addendum StartPage: 0

PUC DOCKET NO. 51249

RECEIVED

2021 MAR -1 PM 4:56
PUBLIC UTILITY COMMISSION
FILING CLERK

**PETITION OF CROOK ROSE, INC. TO § PUBLIC UTILITY COMMISSION
AMEND LINDALE RURAL WATER §
SUPPLY CORPORATION'S § OF TEXAS
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN SMITH COUNTY §
BY EXPEDITED RELEASE §**

**CROOK ROSE, INC.'S MOTION TO COMPEL AND
RESPONSE TO LINDALE RURAL WSC'S MOTION TO ABATE**

Crook Rose, Inc. ("Crook Rose") hereby responds to Lindale Rural Water Supply Corporation's ("Lindale Rural") motion to abate this proceeding, and files this motion to compel Lindale Rural to respond to Crook Rose's discovery requests. Crook Rose would respectfully show as follows:

I. INTRODUCTION

Crook Rose propounded its first requests for information ("First RFI") on Lindale Rural on February 12, 2021. Lindale filed objections on February 22, 2021. Commission procedural rules¹ provide that motions to compel must be filed within five working days after objections are received. Five working days from February 22 is Monday, March 1, 2021—thus, this motion is timely filed.

II. RESPONSE TO MOTION TO ABATE

Lindale Rural moved to abate this proceeding based on a temporary restraining order it has received from federal court that enjoins the Commission from granting Crook Rose's petition. Crook Rose opposes abatement of this proceeding and requests that discovery be allowed to continue. Lindale Rural's application for a temporary restraining order did not seek to prevent discovery in this docket: "The purpose of the [temporary restraining] order would merely be to stop PUC officials from granting Cook Rose's application at their public meeting scheduled for January 29, 2021."² Lindale Rural did not assert that was being harmed by the proceeding remaining before the Commission, or by having to respond to discovery requests.

¹ 16 TAC § 22.144(e).

² *Plaintiff's Application for TRO* at 5, Civil Action No. 1:21-CV-0073-LY (January 27, 2021).

Moreover, the Commission has not been permanently enjoined by the federal court and will, hopefully, be allowed to finish this proceeding once the Commission's authority to proceed has been determined. Lindale Rural has repeatedly asserted in this proceeding that the Crook Rose tract receives water service from Lindale Rural, and has alleged numerous contested facts (*e.g.*, the size and location of mains and tanks and the "commitment" of facilities to serve the tract). Lindale Rural will undoubtedly raise these arguments again when the matter is presented to the Commission. Crook Rose is thus entitled to conduct discovery regarding those facts. Abating until the lifting of the restraining order is also unfair to Crook Rose. Crook Rose's petition was deemed administratively complete on October 6, 2020, and pursuant to Texas law, the Commission had until December 7, 2020, to grant the petition.³ The Commission's delay from December 7, 2020, to January 29, 2021, was contrary to the statutory requirement and harmed Crook Rose. The Commission should not delay this proceeding further by forcing Crook Rose to wait until the restraining order is lifted to conduct discovery.

III. MOTION TO COMPEL RESPONSES TO REQUESTS FOR INFORMATION

A. Lindale Rural's Objection to All Requests

Lindale Rural objects to Crook Rose's *entire* First RFI based on an assertion that this discovery is being conducted in contravention of the federal TRO. But nothing in the federal court's order granting the TRO, nor Lindale Rural's application for the TRO, requests or provides protections against discovery. Lindale Rural sought and received "a temporary restraining order against the PUC's Officials' grant of Crook Rose's petition for expedited release." That's what Lindale Rural asked for, and that's what it received. It is not a contravention of the TRO for Crook Rose to propound RFIs on the defenses Lindale Rural has raised before the Commission, and Lindale's assertion that Crook Rose should "voluntarily comply with the TRO" is meaningless, because the TRO applies narrowly to the Commission's granting of the petition. This objection should be overruled.

³ Order No. 2 (Oct. 6, 2020).

B. Lindale Rural's Nondescript Relevance and Burdensome Objections

Lindale Rural summarily and vaguely objects to RFIs 1-1 through 1-11 as not relevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence, and to RFIs 1-15 through 1-16 as not relevant. General objections not tied to an actual RFI are no objection at all. Pursuant to the Rules of Civil Procedure, a party must “state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request.” Tex. R. Civ. P. 193.2(a). Furthermore, “the responding party’s answers, objections, and other responses must be preceded by the request to which they apply.” Tex. R. Civ. P. 193.2(a). Consequently, Lindale Rural’s wholesale objections to RFIs 1-1 through 1-11 as not relevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence, and to RFIs 1-15 through 1-16 as not relevant, are improper and should be overruled.

It is hard to imagine more relevant discovery requests than those contained in Crook Rose’s First Request for Information. Crook Rose’s petition states that it “is not receiving water utility service from Lindale Rural.” Lindale Rural’s response to the petition states “the Property receives water service from LRWSC under any interpretation or application of the term ‘service’ as the TWC defines it.” Thus, a factual and legal issue has arisen as to whether the tract is “receiving water service,” and each request in Crook Rose’s First RFI is narrowly tailored to a specific and relevant issue regarding this statutorily-required determination that must be made by the Commission.

What is “relevant to the subject matter is to be broadly construed.” *In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016). A request is not overbroad “so long as it is ‘reasonably tailored to include only matters relevant to the case.’” *Id.* at 223–24 (internal citation omitted). Furthermore, Texas Rule of Civil Procedure 192.3(a) provides the general scope of discovery:

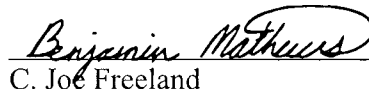
“[A] party may obtain discovery regarding *any matter that is not privileged and is relevant* to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. It is not a ground for objection that the information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

Crook Rose's RFIs 1-1 through 1-11 and 1-15 and 1-16 are simply seeking information relevant to whether the tract is receiving water service. As the courts have instructed, the determination of whether a tract is receiving water service is "a fact-based inquiry requiring the [Commission] to consider whether [Lindale Rural] has facilities or lines committed to providing water to the [Crook Rose] tract or has performed acts or supplied anything to the particular tract in furtherance of its obligation to provide water to that tract pursuant to its CCN." *Tex. General Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied). These RFIs are not overly broad, unduly burdensome, or unreasonably calculated to lead to the discovery of relevant evidence. Lindale Rural's red-herring argument that these requests seek information regarding existence of the incumbent utility's federal loan and that the incumbent utility's ability to provide water service within a reasonable time after a request were made are misplaced and should be overruled.

IV. CONCLUSION AND PRAYER

For the reasons set out above, Petitioner Crook Rose, Inc. requests the ALJ and the Commission deny Lindale Rural's motion to abate, and enter an order granting this motion to compel and directing Lindale Rural Water Supply Corporation to provide a full and complete response to Crook Rose's RFIs. Crook Rose prays for all additional relief to which it is entitled.

Respectfully submitted,



C. Joe Freeland
State Bar No. 07417500

Benjamin Mathews
State Bar No. 24086987

Mathews & Freeland, LLP
8140 N. MoPac Expy, Ste 4-200
Austin, Texas 78759
Telephone (512) 404-7800
Email: bmathews@mandf.com

CERTIFICATE OF SERVICE

I certify that a copy of this document was served via email on March 1, 2021, in accordance with the requirements of 16 Tex. Admin. Code § 22.74, Order No. 1 in PUC Docket No. 50946, and Order No. 1 in PUC Docket No. 50664.


Benjamin Mathews