



## Filing Receipt

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**DOCKET NO. 51933**

<b>PETITION OF MONTGOMERY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ESTATES, LLC TO AMEND CC</b>	<b>§</b>	
<b>WATER WORKS, INC.’S WATER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY NO. 13038 IN</b>	<b>§</b>	
<b>CHAMBERS COUNTY BY</b>	<b>§</b>	
<b>STREAMLINED EXPEDITED</b>	<b>§</b>	
<b>RELEASE UNDER TEXAS WATER</b>	<b>§</b>	
<b>CODE § 13.2541 AND 16</b>	<b>§</b>	
<b>TAC § 24.245(h)</b>	<b>§</b>	

**MONTGOMERY ESTATES, LLC’S MOTION TO COMPEL CC WATER WORKS,  
INC.’S RESPONSES TO FIRST REQUESTS FOR INFORMATION**

COMES NOW Montgomery Estates, LLC (Montgomery Estates) and files this Motion to Compel CC Water Works, Inc.’s (CCWW) Responses to First Requests for Information (RFI) (Motion). In support thereof, Montgomery Estates shows as follows:

**I. BACKGROUND**

Montgomery Estates filed its First RFI at the Public Utility Commission (Commission) on December 10, 2021, before 3:00 p.m., and it also served CCWW with such discovery requests before 3:00 p.m. on such date. The general purpose of Montgomery Estates’ First RFI was to obtain information from CCWW necessary to prepare and submit an informed appraisal concerning its approved petition for streamlined expedited CCN release from CCWW’s water CCN boundaries under Texas Water Code (TWC) § 13.2541 and 16 Tex. Admin. Code § 24.245(h).

According to 16 TAC § 22.144(c)(1), the applicable Commission rule regarding RFIs, “[t]he party upon whom a request is served shall serve a full written response to the request within 20 days after receipt of the request.” As to objecting to an RFI, 16 TAC § 22.144(d) provides that:

Parties shall negotiate diligently and in good faith concerning any discovery dispute prior to filing an objection. The objections shall include a statement that negotiations were conducted diligently and in good faith. If negotiation fails,

objections to requests for information, if any, shall be filed within ten calendar days of receipt of the request for information. The objections shall state the date the request for information was received.

Accordingly, the deadline for CCWW to file any objections to the RFIs, following attempts to negotiate with Montgomery Estates, was December 20, 2021, and the deadline for CCWW to respond to Montgomery Estates' First RFIs was December 30, 2021.

At approximately 10:00 a.m. on January 4, 2022, counsel for Montgomery Estates called counsel for CCWW regarding settlement negotiations and the overdue responses to its First RFIs. Counsel for CCWW indicated, for the first time, that CCWW believed that Montgomery Estates could not propound discovery requests on CCWW and that CCWW did not intend to respond to the First RFIs and that was why no objections were filed. Despite counsel for Montgomery Estates' willingness to discuss those objections, CCWW did not engage in discussions regarding any of the specific RFIs. Rather, CCWW filed official objections to the First RFI, with a time/date stamp of 10:33 a.m. on January 4, 2022. Pursuant to 16 TAC § 22.144(e), this Motion is timely filed. In support of its Motion, Montgomery Estates provides the following arguments for why CCWW should be compelled to answer the discovery requests immediately.

## **II. MOTION TO COMPEL**

### **A. CCWW's Objection is Untimely**

CCWW's objection to the First RFIs should be set aside as untimely or, in the alternative, overruled for failure to comply with 16 TAC § 22.144(d). CCWW did not negotiate with Montgomery Estates diligently or in good faith regarding CCWW's opinion that it is not obligated to respond to discovery. CCWW did not communicate with Montgomery Estates concerning its objections and refusal to respond to the First RFIs. Further, CCWW filed its general objection to the First RFIs two weeks after the December 20, 2021 deadline. Again,

counsel for Montgomery Estates attempted to communicate with counsel for CCWW to resolve the discovery dispute, but counsel for CCWW responded by insisting that the First RFIs was improper. CCWW should be compelled to respond to all of Montgomery Estates First RFIs, immediately.

### **B. Response to CCWW's Objection**

Montgomery Estates is authorized by Chapter 22 of the Commission's rules to propound discovery requests on CCWW, and CCWW is obligated to respond within 20 days. Commission rule 16 TAC § 22.144(a) simply states:

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.

Title 16 TAC § 22.2(6) defines "application" as a "written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding." Additionally, 16 TAC § 22.141(a) states that parties "may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule that is relevant to the subject matter in the proceeding," and 16 TAC § 22.2(35) defines "proceeding" as "[a]ny hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint, conducted by the commission or the utility division of SOAH." Neither 16 TAC § 22.141 nor 16 TAC § 22.144 limit discovery to contested cases or dockets with opportunity for a hearing. Rather, these above-referenced Commission rules clearly and unambiguously define "applications" and "proceedings," as broad terms that include petitions and are not conditioned upon whether the matter is governed by the Texas Administrative Procedures Act. Here, Montgomery Estates'

petition for streamlined expedited release from CCWW's water CCN is an "application" according to 16 TAC § 22.2(6). Further, the Commission issued an Order with findings of fact, conclusions of law, and ordering paragraphs in this Docket, meaning this Docket is a proceeding under 16 TAC § 22.2(35).<sup>1</sup> Thus, the plain language of 16 TAC § 22.141(a) and 16 TAC § 22.144(a) permit discovery in this Docket.

Denying Montgomery Estates' First RFIs in this Docket would also contravene the Commission's practice in many other proceedings for streamlined expedited water/sewer CCN releases under TWC § 13.2541 and 16 TAC § 24.245(h). CCN holders and petitioners have propounded discovery in proceedings under TWC § 13.2541 multiple times and the opposing parties have responded to such requests.<sup>2</sup> Further, Commission Staff often submit requests for information under 16 TAC § 22.144 in TWC § 13.2541 proceedings.<sup>3</sup> Therefore, CCWW should be compelled to respond to all of Montgomery Estates' First RFIs, immediately.

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<sup>1</sup> Order (Nov. 2, 2021).

<sup>2</sup> See, e.g., *Petition of Compass Datacenters DFW III, LLC to Amend Rockett Special Utility District's Certificate of Convenience and Necessity in Ellis County by Expedited Release*, Docket No. 51545, First Request for Information to Rockett Special Utility District (Nov. 2, 2021); Docket No. 51545, Rockett Special Utility District's Responses to Compass Datacenters DFW, III, LLC's First Request for Information (Nov. 19, 2021); *Petition of Colorado River Project, LLC to Amend SWWC Utilities, Inc. DBA Hornsby Bend Utility's Certificate of Convenience and Necessity by Expedited Release*, Docket No. 51166, SWWC Utilities, Inc. DBA Hornsby Bend Utility's First Redacted Request for Information to Colorado River Project, LLC (Sept. 16, 2020); Docket No. 51166, CRP's Partially Redacted Responses and Objections to HBUC's First Set of RFIs (Oct. 6, 2020); *Petition of FCS Lancaster, Ltd to Amend Rockett Special Utility District's Certificate of Convenience and Necessity in Dallas County by Expedited Release*, Docket No. 51044, First Request for Information to Rockett Special Utility District (Mar. 8, 2021); Docket No. 51044, Rockett Special Utility District's Responses to FCS Lancaster, Ltd's First Request for Information (Mar. 30, 2021).

<sup>3</sup> See, e.g., *Petition of Charles D. Carter to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Streamlined Expedited Release*, Docket No. 52916, Commission Staff's First Request for Information to Marilee Special Utility District Question Nos. Staff 1-1 Through Staff 1-11 (Dec. 29, 2021); *Petition of Atlantic Urbana Acquisition Company, LLC on Behalf of Marilyn L. Smith et al., to Amend Manville Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release*, Docket No. 52363, Commission Staff's First Request for Information to Atlantic Urbana Acquisition Company, LLC Question No. Staff 1-1 Through 1-2 (Aug. 31, 2021); *Petition of Crown Ranch Development, Ltd to Amend MSEC Enterprises, Inc.'s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 52288, Commission Staff's First Request for Information to MSEC

### III. CONCLUSION AND PRAYER

For the foregoing reasons, Montgomery Estates requests the Administrative Law Judge: (i) deem CCWW's objection untimely; (ii) overrule CCWW's objection; (iii) compel CCWW to respond to Montgomery Estates' First RFIs, immediately; and (iv) grant all other and further relief to which Montgomery Estates may be entitled.

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Enterprises, Inc. Question Nos. Staff 1-1 Through 1-10 (Jul. 28, 2021); *Petition of Redbird Development, LLC to Amend Dobbin Plantersville Water Supply Corporation's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 52090, Commission Staff's First Request for Information (Jun. 18, 2021).

Respectfully submitted,

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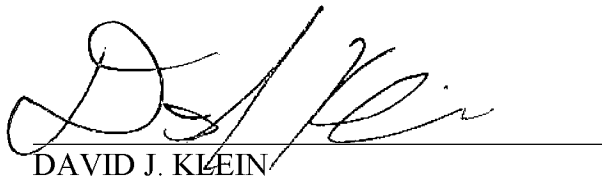
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**ATTORNEYS FOR MONTGOMERY  
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**CERTIFICATE OF CONFERENCE**

I certify that I conferred with counsel for CCWW on January 4, 2022, regarding CCWW's failure to respond to Montgomery Estates' First RFIs. The parties negotiated but were unable to resolve their dispute regarding discovery before submitting it to the ALJ for resolution.

  
DAVID J. KLEIN

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 5, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
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DAVID J. KLEIN