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DOCKET NO. 51933

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

**MONTGOMERY ESTATES, LLC'S REPLY TO CC WATER WORKS, INC.'S
RESPONSE TO MOTION TO COMPEL**

COMES NOW Montgomery Estates, LLC (Montgomery Estates) and files this Reply to CC Water Works, Inc.'s (CCWW) Response to Motion to Compel (Reply). In support thereof, Montgomery Estates shows as follows:

I. BACKGROUND

Montgomery Estates filed its First RFI to CCWW at the Public Utility Commission (Commission) on December 10, 2021. On January 4, 2022, CCWW filed its response to the First RFI, objecting to Montgomery Estates' authority to conduct discovery in this Docket. Montgomery Estates filed its Motion to Compel CCWW's Responses to First RFIs (Motion to Compel) on January 5, 2022. The same day, CCWW filed a Response to Montgomery Estates' Motion to Compel. This Reply is therefore timely filed.

II. REPLY TO RESPONSE TO MOTION TO COMPEL

As stated in Montgomery Estates' Motion to Compel, the plain language of 16 Tex. Admin. Code (TAC) § 22.141 and 22.144 authorize Montgomery Estates 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.

“Application” is defined as a “written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.”¹ Therefore, a petition for streamlined expedited release under Texas Water Code (TWC) § 13.2541 is an “application” for purposes of 16 TAC § 22.144(a) and discovery was permitted once Montgomery Estates filed its petition in Docket No. 51933.

Further, 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.” Similar to the term “application,” “proceeding” is broadly defined 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.”² The Commission issues an Order or Notice of Approval with findings of fact, conclusions of law, and ordering paragraphs in dockets for streamlined expedited releases under TWC § 13.2431, just as it did in this Docket.³ Therefore, this Docket No. 51933 is a “proceeding” under the Commission rules and Montgomery Estates is authorized to conduct discovery under 16 TAC § 22.141(a) and 22.144(a).

CCWW artificially limits and convolutes contested cases and matters with opportunity for a hearing with Commission “proceedings.” Simply put, while a contested case is a

¹ 16 TAC § 22.2(6).

² 16 TAC § 22.2(35).

³ *See*, Order (Nov. 2, 2021).

proceeding, not all proceedings under the Commission rules must be contested cases. The Administrative Procedure Act (APA), applicable to state agencies such as the Commission, authorizes parties to a “contested case” to engage in discovery.⁴ The APA does not explicitly authorize or prohibit the use of discovery outside the context of a contested case.⁵ TWC § 13.041 authorizes the Texas Commission on Environmental Quality and the Commission to “adopt and enforce rules reasonably required in the exercise of powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.” Although the Commission’s discovery rules allow discovery in more matters than the APA because it uses the broader term “proceeding” rather than “contested case,” the Commission has the authority to do so because the APA does not explicitly address discovery outside the context of contested cases and the TWC authorizes the Commission to adopt necessary procedural rules, which would include rules of discovery.

CCWW also inaccurately states that Commission precedent confirms that discovery is not applicable in petitions for streamlined expedited release. This clearly contradicts the Commission’s current practice. Discovery has been conducted in dockets for petitions filed under TWC § 13.2541 by petitioners, certificate of convenience and necessity holders, and Commission Staff.⁶ An order finding that parties cannot conduct discovery in such proceedings

⁴ The APA defines “contested case” as “a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.” Tex. Gov’t Code § 2001.003. *See also*, Tex. Gov’t Code §2001.091 (authorizing a state agency in which a contested case is pending to order a party to produce documents); Tex. Gov’t Code § 2001.092 (allowing parties to discover the identity of witnesses in a contested case); and Tex. Gov’t Code § 2001.094-.102 (authorizing depositions in contested cases).

⁵ *See generally*, Tex. Gov’t Code § 2001.001-.903.

⁶ *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*

would significantly impair a party's ability to conduct informed appraisals and Commission Staff's ability to ensure a petition is administratively complete.

III. CONCLUSION AND PRAYER

For the foregoing reasons, Montgomery Estates requests the Administrative Law Judge grant its Motion to Compel and all other and further relief to which it may be entitled.

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, Rocket Special Utility District's Responses to FCS Lancaster, Ltd's First Request for Information (Mar. 30, 2021); 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 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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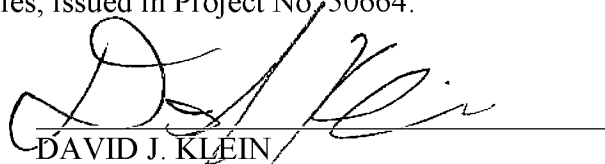
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**ATTORNEYS FOR MONTGOMERY
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CERTIFICATE OF SERVICE

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 6, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.



DAVID J. KLEIN