



Filing Receipt

Filing Date - 2023-12-21 04:43:35 PM

Control Number - 52310

Item Number - 100

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**PETITION OF ROSE HILL SPECIAL UTILITY DISTRICT FOR
CEASE AND DESIST ORDER AGAINST THE CITY OF
TERRELL FOR UNAUTHORIZED WATER SERVICE**

ORDER GRANTING MOTION TO COMPEL

Rose Hill Special Utility District (Rose Hill) filed a Motion to Compel Responses to Rose Hill's Second Set of Requests for Information (RFI) Nos. 2-1 through 2-9 to the City of Terrell (City) on October 14, 2022.

The City objected to Rose Hill's RFIs 2-1, 2-2, 2-3, 2-4, and 2-5 on the grounds of relevance and overbreadth. It also objects to Rose Hill's RFI 2-1 and 2-2 as vague. Finally, the City objects to Rose Hill's RFIs 2-6, 2-7, 2-8,¹ and 2-9 as duplicative of RFI 1-1.

¹ Rose Hill conceded that RFI 2-6, 2-7, 2-8 were duplicative and withdrew those requests.

The relevant requests are as follows:

DISTRICT 2-1 Please produce all documents relating to the City providing, furnishing, making available, or rendering retail water service to the planned mixed-use development on 1098.59 acres that currently lies within the City of Terrell's extraterritorial jurisdiction, located southeast of Interstate 20, south of CR 305, west of FM 2578 and north of FM 987, including but not limited to any development agreement(s).

DISTRICT 2-2 Please produce all documents relating to the City providing, furnishing, making available, or rendering retail water service, to the Champion Road Area. For the purposes of this Request for Information, the term "Champion Road Area" shall mean the approximately 190-acre area between Champion Road and CR 305 (also known as Las Lomas Pkwy or Sage Hill Rd) and bounded by 1-20 to the South and CR 305 to the East.

DISTRICT 2-3 Please produce all documents relating to the City providing, furnishing, making available, or rendering retail water service to any location, residence, business, property or development within the boundaries of Rose Hill's CCN area.

DISTRICT 2-4 Please produce all documents relating to the City's plans to construct a water line or lines within Rose Hill's CCN area.

DISTRICT 2-5 Please produce all documents relating to the City's plans to construct a water line or lines directly adjacent (or which run alongside of) Rose Hill's CCN area.

DISTRICT 2-9 For each of the Listed Customers in Rose Hill's First Amended Petition, admit that the City is providing water service to those customers.

The basis for the City's relevance and overbreadth objections to Rose Hill's RFIs 2-1, 2-2, 2-3, 2-4, and 2-5 is, at bottom, the same—that these RFIs seek information about areas beyond the 232-acre area (the Area) described in Rose Hill's First Amended Petition (Petition) and customers beyond the thirty already-identified customers located within the Area.

First, the City argues that the information sought by these RFIs are not relevant because they are not of consequence in determining whether the Commission should issue a cease and desist order in this proceeding to stop the City from providing retail water service within the Area, which is the second requirement of Texas Rule of Evidence 401 regarding relevance. The City also maintains that because Rose Hill has not alleged that the City is providing retail water service or interfering with Rose Hill's system within the areas outside the Area and described in 2-1, 2-2, 2-3, 2-4 and 2-5, those requests are irrelevant to Rose Hill's Petition.

Rose Hill responds by explaining that it sought to obtain information about the City's provision (or offering to provide) retail water utility service within Rose Hill's certificated service area and the City's interference (or attempted interference) with Rose Hill's water system. It maintains that these requests are relevant and narrowly tailored to this proceeding.

Rose Hill also contends that the Commission's Preliminary Order (Order) of October 6, 2022, confirms that Rose Hill's discovery requests are not overly broad and are relevant because that order includes issues that expressly concern areas outside of the 232-acre area and customers other than the thirty already identified (namely, Questions 7, 11, 12, and 13). The City contends that Question 7 is inaccurately worded and that the sub-questions to Question 11 tie that question to the Area, demonstrating a limited scope of the proceeding. The City also argues that the Order's Questions 12 and 13 are standard questions that should not be broadly interpreted.

Moreover, the City maintains that Rose Hill's requests are overly broad because 16 Texas Administrative Code section 24.255 (setting forth the contents of a request for a cease and desist order) states that the petition must be filed after the petitioner becomes aware that another retail public utility is *providing* retail water within its service area.² The City also contends that Rose Hill is improperly trying to equate interference with a line, plant, or system to the unlawful provision of service in order to broaden the scope of permitted discovery.

Rose Hill responds that the subsection relied upon by the City incorporates language that includes awareness that another utility is interfering or attempting to interfere with the operation of line, plant, or system. Moreover, Rose Hill points out that subsection (a) of that section also includes conduct that "interferes or attempts to interfere with the operation of a line, plan, or system of any other retail public utility, or . . . makes available, or extends retail water . . . utility service to any

² 16 Tex. Admin. Code § 24.255(a) (emphasis added).

portion of the service area of another retail public utility . . . the commission may issue an order that prohibits the construction or extension . . . or the provision of service”³ Rose Hill also cites to Texas Water Code section 13.252 in support of the same concept. It argues that these statutes make it clear that the requirement is not limited to the illegal provision of water utility service, but includes interfering, attempting to interfere, and making service available, and Rose Hill alleges that the City is unlawfully providing retail water service, interfering with Rose Hill’s water system, and making water service available to other customers and serving other customers within the Area. Rose Hill further claims it has learned the City has taken additional actions to make water service available to additional areas within Rose Hill’s CCN and outside the Area; Rose Hill maintains that RFI 2-1 and 2-2 are inquiries regarding these actions.

Finally, Rose Hill points out that the Commission’s Administrative Law Judge granted a motion to compel responses to RFIs 1-2 and 1-3 over similar objections. The City responds that at the time of this ruling, the Commission had not yet issued its Order listing the issues for SOAH to address, which, the City argues, limit the subject matter of the contested case hearing to the Area.

The City also asserts that the descriptions provided in RFIs 2-1 and 2-2 are too vague for the City to discern which exact 1098.59-acre and 190-acre areas the District is referring to. Rose Hill responds that the descriptions are not vague—they used roads as boundary descriptions for convenience.

³ 16 Tex. Admin. Code § 24.255(a).

The ALJ agrees with Rose Hill that Rose Hill's RFIs 2-1, 2-2, 2-3, 2-4, and 2-5 are relevant and not overly broad. The ALJ finds that these requests are reasonably calculated to lead to the discovery of admissible evidence. The scope of this proceeding is not necessarily limited to the Area, and RFIs 2-1, 2-2, 2-3, 2-4, and 2-5 are narrowly tailored to the issues in this proceeding. For the same reason, these requests are not overly broad. Therefore, the City's relevance and breadth objections to Rose Hill's RFIs 2-1, 2-2, 2-3, 2-4, and 2-5 are **OVERRULED**.

The ALJ also finds that RFIs 2-1 and 2-2 are not vague, and that objection is **OVERRULED**.

Regarding the City's objection to RFI 2-9 as being duplicative to RFI 1-1, Rose Hill argues that, unlike RFI 1-1, this request seeks the City's admission that it is providing water service to each of the customers specifically identified and listed in RH's First Amended Petition. The City maintains that this request is duplicative and that the answer has been provided by the City's production of documents in response to 1-1 and 2-10. The City explains that it provided for each Listed Customer the name of the customer, the physical address, the mailing address, and the date when the customer began receiving water service at that location. The City also provided service requests and billing records in its possession relating to the City's provision of water service to the Listed Customers.

The ALJ finds that RFI 2-9 is not duplicative of RFI 1-1. Accordingly, the City's objection to RFI 2-9 is **OVERRULED**.

Signed December 21, 2023.

ALJ Signature(s):

A handwritten signature in black ink, appearing to read "Megan Johnson", is positioned above a horizontal line.

Megan Johnson,

Presiding Administrative Law Judge