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Filing Date - 2024-02-07 02:50:11 PM

Control Number - 52310

Item Number - 113

**PUC DOCKET NO. 52310
SOAH DOCKET NO. 473-23-02390.WS**

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| PETITION OF ROSE HILL SPECIAL | § | |
| UTILITY DISTRICT FOR CEASE AND | § | BEFORE THE STATE OFFICE OF |
| DESIST ORDER AGAINST THE CITY | § | |
| OF TERRELL FOR UNAUTHORIZED | § | ADMINISTRATIVE HEARINGS |
| WATER SERVICE | § | |

**ROSE HILL SPECIAL UTILITY DISTRICT’S RESPONSE TO CITY OF TERRELL’S
MOTION TO COMPEL ROSE HILL SPECIAL UTILITY DISTRICT’S RESPONSES
TO THE CITY’S FIRST REQUESTS FOR ADMISSION, FIRST REQUESTS FOR
INFORMATION, SECOND REQUESTS FOR ADMISSION, AND SECOND REQUESTS
FOR INFORMATION**

COMES NOW, Rose Hill Special Utility District (“District”), by and through its attorneys of record, files this Response to City of Terrell’s Motion to Compel the District’s Responses to the City’s First Requests for Admission, First Requests for Information, Second Requests for Admission, and Second Requests for Information (“Responses to Motion to Compel”).

I. BACKGROUND AND PROCEDURAL HISTORY

On December 15, 2023, the City of Terrell (“City”) filed its First Requests for Admissions (“RFAs”) and First Requests for Information (“RFIs”) at the Public Utility Commission of Texas (“Commission”). The City then filed its Second RFAs and RFIs on December 19, 2023. From January 22 to 24, 2024, the District and the City conferred in good faith negotiations to address the District’s initial objections. As a result of these negotiations, the District and the City resolved several of the District’s objections. On January 24, 2024, the City filed Amended and Restated First RFAs and RFIs and Amended and Restated Second RFAs and RFIs and the District filed its objections to the Amended and Restated First and Second RFAs and RFIs. On January 31, 2024, the City filed its Motion to Compel the District’s Responses City’s First RFAs, First RFIs, Second

RFAs, and Second RFIs (“Motion to Compel”). The District has five working days to respond to the City’s Motion to Compel.¹ Therefore, this Response is timely filed.²

II. THE DISTRICT’S RESPONSE TO THE CITY’S MOTION TO COMPEL

After further review and consideration, the District has chosen to withdraw its objections to the following requests: City RFA 1-3; City RFA 1-4; City RFA 1-8; City RFA 1-9; City RFI 1-15; City RFI 1-17; City RFA 2-2; City RFA 2-3; City RFA 2-9; City RFA 2-10; City RFA 2-11; City RFI 2-3; City RFI 2-4; City RFI 2-10; City RFI 2-13; and City RFI 2-14. The District will respond to these requests by the deadline set by the parties’ Fourth Amended Rule 11 Agreement.

However, the District continues to object to the following requests: City RFA 1-16; City RFA 2-6; City RFA 2-7; City RFA 2-8; and City RFI 2-11. The City argues that the District’s objections are conclusory and do not provide any explanation or evidence to support its objections. The District disagrees with the City’s rationale, and respectfully requests that the District’s remaining objections be granted and that the City’s Motion to Compel be denied as supported by the reasoning below:

City RFA 1-16

The District maintains its objections to the entirety of City RFA 1-16. The requests listed in City RFA 1-16 are overly broad, vague, burdensome, harassing, compound, and call for speculation. These requests are not relevant nor likely to lead to the discovery of admissible evidence. City RFA 1-6 also violates the Texas Rules of Civil Procedure (“TRCP”) 198.1, which requires that “each matter for which an admission is requested should be stated separately.” This

¹ 16 Tex. Admin. Code § 22.144(f).

² Working days are the days the Public Utility Commission (“Commission”) is open for the conduct of business. 16 Tex. Admin. Code § 22.2(48). Five working days from January 31, 2024, is February 7, 2024.

request seeks two or more admissions from the District. City RFA 1-16 are nothing more than an improper fishing expedition.

In its response to District's objections, the City correctly states that the relevant time period in a cease-and-desist proceeding is the date the petition is filed and the 180 days prior to the filing of the petition.³ However, City RFA 1-16 is not reasonably limited to reflect the relevant time period.

Furthermore, in a cease-and-desist action, it is the violating entity's actions and omissions that are relevant to determining the action. Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.⁴ The information requested in City RFA 1-16 is not relevant to the determination of this cease-and-desist proceeding. Ultimately, however, this request is incurable due to its many defects.

City RFA 2-6

The District maintains its objections to City RFA 2-6. City RFA 2-6 is overly broad and vague in its use of the phrase "has purchased goods or services from a retail business" and does not reasonably limit the applicable period of the request. This RFA also violates TRCP 198.1, which requires that "each matter for which an admission is requested should be stated separately." City RFA 2-6 seeks multiple admissions pertaining to "purchases" made from "businesses."

In its response to the District's objections, the City correctly states that the relevant time period in a cease-and-desist proceeding is the date the petition is filed and the 180 days prior to the filing of the petition. However, City RFA 2-6 is not reasonably limited to reflect the relevant time period. Furthermore, the City attempts to justify the appropriateness of City RFA 2-6 by

³ See City of Terrell's Motion to Compel , Response to District's Objection to City's RFA 1-4 (Jan. 31, 2024).

⁴ *In re Nat'l Lloyds Ins. Co.*, 532 S.W.3d 794, 808 (Tex. 2017) (orig. proceeding).

claiming that the District's knowledge of the development of the Encroachment Area is a central issue in this Docket. That is incorrect. The central issue in this proceeding is whether the City violated state law and regulations by providing water service within the District's CCN area. In a cease-and-desist action, it is the violating entity's actions and omissions that are relevant to determining the action.

City RFA 2-7

The District maintains its objections to City RFA 2-7. City RFA 2-7 is overly broad and vague in its use of the phrase "has purchased goods or services from a retail business" and does not reasonably limit the applicable period of the request. In its response to the District's objections, the City correctly states that the relevant time period in a cease-and-desist proceeding is the date the petition is filed and the 180 days prior to the filing of the petition. However, City RFA 2-7 is not reasonably limited to reflect the relevant period. Furthermore, requesting that the District admit or deny purchasing "goods or services from any retail business located within the Second Encroachment Area" is overly broad because such a request is disproportionate to the case's needs. To determine whether or not the District has ever, purchased "goods or services" from "any retail business" located within the Second Encroachment Area prior to January 9, 2021 will require the District staff to devote a substantial amount time and resources to provide a response. Additionally, City RFA 2-7 also violates TRCP 198.1, which requires that "each matter for which an admission is requested should be stated separately." City RFA 2-7 seeks multiple admissions pertaining to "purchases" made from "businesses."

City RFA 2-8

The City argues that this RFA "is not compound," "is not a fishing expedition," and the is not "vague or ambiguous" because the term "communication" is defined. However, the District

did not, and still does not, raise objections to this RFA because it is compound. The City does not explain how this RFA is within the scope of “the issue of whether the District was aware of the City’s actions” more than 180 days before the District filed its Petition. A response to such a request is not determinable to the District’s knowledge 180 days before it filed the Petition.

City RFI 2-11

The District maintains its objection to City RFI 2-11. It is overly broad, vague, ambiguous, harassing, and burdensome as drafted. City RFI 2-11 seeks information that is not relevant nor likely to lead to the discovery of admissible evidence. Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.⁵ The information requested is not relevant to the determination of this cease-and-desist proceeding. The information requested by City RFI 2-11 may have been relevant to the City’s Application to Amend Its Certificate of Convenience and Necessity and To Decertify a Portion of Rose Hill’s Special Utility District’s Service Area, in Docket No. 54247, but the City has withdrawn that application. The City should not be allowed to use the discovery process in this cease-and-desist proceeding to obtain discovery that would be relevant to other matters, but not relevant to this proceeding.

CONCLUSION

For the reasons stated above, the District respectfully requests that the Administrative Law Judge deny the City of Terrell’s Motion to Compel Rose Hill Special Utility District’s Responses to City’s First RFAs, First RFIs, Second RFAs, and Second RFIs.

Respectfully submitted,

⁵ *In re Nat’l Lloyds Ins. Co.*, 532 S.W.3d 794, 808 (Tex. 2017) (orig. proceeding).

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**ATTORNEYS FOR ROSE HILL SPECIAL
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was transmitted to counsel of record in this proceeding via email on February 7, 2024.

Sergio Estrada