



## Filing Receipt

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<b>PETITION OF ROSE HILL SPECIAL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITY DISTRICT FOR CEASE AND</b>	<b>§</b>	
<b>DESIST ORDER AGAINST THE CITY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF TERRELL FOR UNAUTHORIZED</b>	<b>§</b>	
<b>WATER SERVICE</b>	<b>§</b>	

**ORDER NO. 14**  
**GRANTING MOTION TO COMPEL AND RULING ON OBJECTIONS**

This Order addresses the April 21, 2022 motion to compel responses to its first set of requests for information (RFIs) to the City of Terrell filed by Rose Hill Special Utility District. On April 28, 2022, the City filed a response to the motion compel.

**I. Background**

On April 4, 2022, Rose Hill SUD filed its first RFIs to the City. On April 14, 2022, the City filed objections to RFIs 1-2 and 1-3.<sup>1</sup> On April 18, 2022, the City filed its responses to Rose Hill SUD's first RFIs, but maintained its objections to RFIs 1-2 and 1-3.

On April 21, 2022, Rose Hill SUD filed a motion to compel, asking that the objections to RFIs 1-2 and 1-3 be overruled and the City be ordered to provide responses. On April 28, 2022, the City filed a response to the motion to compel.

**II. Objections, Motion to Compel, and Response**

RFI 1-2 reads as follows:

Please provide the following information for each customer not listed on pages 2-4 of Rose Hill's First Amended Petition but which is being provided with water service by the City and is located within the area indicated in blue on the map provided as Exhibit B to Rose Hill's First Amended Petition:

- a. name of business or person receiving water service;
- b. physical address;
- c. mailing address; and
- d. date (or, if not available, approximate date) when the customer began receiving water service from the City in that location.<sup>2</sup>

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<sup>1</sup> The City also objected to other RFIs, but the parties have resolved their disputes as to those other objections.

<sup>2</sup> Emphasis in original.

RFI 1-3 reads as follows:

Please provide the following information for each customer that is being provided with water service by the City and is located within any portion of Rose Hill's certificated service area (under Certificate of Convenience and Necessity (CCN) No. 10849), and not referred to or identified in connection with Rose Hill's Request for Information Rose Hill 1-1 and 1-2 above:

- a. name of business or person receiving water service;
- b. physical address;
- c. mailing address; and
- d. date (or, if not available, approximate date) when the customer began receiving water service from the City in that location.<sup>3</sup>

The City objects to RFIs 1-2 and 1-3, claiming that they are not relevant to the subject matter of the pending action, as required by 16 Texas Administrative Code (TAC) § 22.141(a). The City argues that the subject matter of this proceeding is defined by 16 TAC § 24.255(a)(3) and (4) which require that the petition contain a description and map of the alleged unlawful provision of service, limiting the subject matter of the petition to the 30 customers specifically identified by Rose Hill SUD in its first amended petition. The City also asserts that RFIs 1-2 and 1-3 are abuses of the discovery process as they seek information that is not relevant to Rose Hill SUD's ability to meet its burden of proof under 16 TAC § 24.255. Finally, the City argues that RFI 1-3 is overly broad.

In its motion to compel, Rose Hill SUD states that, under 16 TAC §§ 22.102(b) and 22.141(a), the scope of discovery in a Commission proceeding is intended to be broad. Rose Hill SUD also argues that the information it is seeking in RFIs 1-2 and 1-3 is relevant to the proceeding and that the term "relevant" is intended to be liberally construed as has been repeatedly held by the Texas Supreme Court.<sup>4</sup> Rose Hill SUD states that the discovery of the information of customers to whom the City is providing retail water services and who were not specifically identified in its first amended petition is relevant and reasonably calculated to lead to the discovery of admissible evidence.

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<sup>3</sup> Emphasis in original.

<sup>4</sup> *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009) citing *Axelsson, Inc. v. McIlhenny*, 798 S.W.2d 550, 553 (Tex. 1990).

### III. Analysis

Under 16 TAC § 22.144(a), a party may “obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or any other law or rule, that is relevant to the subject matter in the proceeding.” As stated by Rose Hill SUD, the Texas Supreme Court has provided that the determination of relevancy should be broadly construed.

The City has not claimed or argued that the information sought by Rose Hill SUD in RFIs 1-2 and 1-3 is privileged or exempted under any law or rule. The information that is the subject of RFIs 1-2 and 1-3 is directly relevant to the relief sought by the petition. The administrative law judge (ALJ) disagrees with the City’s argument that 16 TAC § 24.255(a)(3) and (4) limit Rose Hill SUD’s petition to those customers specifically identified in its first amended petition. The City has not identified, and the ALJ is not aware of, any statute or rule that would prohibit Rose Hill SUD from amending its petition if relevant information is acquired during the discovery process.

Rose Hill SUD’s petition is brought under 16 TAC § 24.255 and alleges that the City is improperly providing retail water service to consumers within the boundaries of Rose Hill SUD’s CCN. The petition alleges and identifies: (1) a specific area of its CCN within which the City is providing water service; and (2) specific consumers within the specific area to which the City is providing service. In RFI 1-2, Rose Hill SUD is attempting to discover whether there are more consumers within the specific area (*i.e.*, beyond those already identified in the petition) to whom the City is providing service. In RFI 1-3, Rose Hill SUD is attempting to discover whether there are more areas within its CCN (*i.e.*, beyond the specific area identified in the petition) in which the City is providing service to consumers.

Rose Hill SUD seeks information that complies with 16 TAC 22.144(a) and the RFIs are narrowly tailored to address matters at issue in this case and aid in the resolution of the dispute. Therefore, the City’s objections to RFIs 1-2 and 1-3 are overruled and Rose Hill SUD’s motion to compel the City to respond to RFIs 1-2 and 1-3 is granted, with the following modification to RFI 1-3.

As written, RFI 1-3 requires the City to provide information about customers being provided with water service by the City “within any portion of Rose Hill’s certificated service area.” The parties may disagree as to the boundaries of Rose Hill SUD’s certificated service area.

Rose Hill SUD asserts that its service area is demarcated by the red lines on the map provided as Exhibit B to Rose Hill SUD's first amended petition. The City may, or may not, agree with the accuracy of the red lines. However, it is reasonable for Rose Hill SUD to request information about customers being served within the red lines. Therefore, the City is order to respond to RFI 1-3 as modified below:

Provide the following information for each customer that is being provided with water service by the City and is located within any portion of the red lines on the map provided as Exhibit B to Rose Hill SUD's first amended petition, and not referred to or identified in connection with Rose Hill's Request for Information Rose Hill 1-1 and 1-2:

- a. name of business or person receiving water service;
- b. physical address;
- c. mailing address; and
- d. date (or, if not available, approximate date) when the customer began receiving water service from the City in that location.

The City's responses to RFIs 1-2 and 1-3 are due by June 13, 2022.

**Signed at Austin, Texas the 23rd day of May 2022.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**KATIE MOORE MARX**  
**ADMINISTRATIVE LAW JUDGE**