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**APPLICATION OF THE CITY OF
MCLENDON-CHISHOLM FOR A
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN ROCKWALL
COUNTY**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

RCH WATER SUPPLY CORPORATION'S MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

RCH Water Supply Corporation ("RCH") files this Motion for Protective Order regarding the City of McLendon-Chisholm's First Request for Information to RCH Water Supply Corporation and respectfully shows as follows:

I. INTRODUCTION

RCH is the holder of Certificate of Convenience and Necessity ("CCN") No. 10087, which authorizes RCH to provide retail water service within Rockwall County, Texas. Since the City of McLendon-Chisholm (the "City") filed its incomplete and deficient application to decertify portions of RCH's approved CCN on September 29, 2023 (the "Application"), the City is currently working under its **Third Request for Extension** of time to provide the basic information and documentation requested by the Staff of the Public Utility Commission (the "Commission Staff"). At this time, the City's Application "is not considered filed with the Commission." *See* Order No. 2.

The City filed its Application seeking to take over portions of RCH's water system with no existing water system in place, no experience operating a water system, and no source of water to serve the area. The Commission Staff have identified numerous deficiencies in the Application and have not had a chance to make further findings regarding the status of the Application because of the City's persistent delays. Despite the status of its Application and its ongoing deficiencies, on January 18, 2024, the City served its First Request for Information to RCH (the "RFI"). Among

the eighteen broad categories of information sought in the RFI, many relate to information that the Public Utility Commission (the “Commission”) has requested from the City. Indeed, the City’s RFI to RCH further demonstrates that the City is wholly unable and unprepared to take over or operate any water system. Through its repeated delays and the significant deficiencies contained in its Application, the City has shown that it cannot provide the required information for its Application. Now, the City improperly seeks to shift its burden to RCH. Neither Tex. Water Code § 13.255 nor 16 Tex. Admin. Code § 24.259 require RCH to do the City’s work for it or to otherwise assist the City in its hostile takeover. At most, RCH is required to advise whether an agreement can be reached as to single certification, and if not, RCH is required to identify its property that would be rendered useless, valueless or impaired by the City’s takeover. *See* 16 Tex. Admin. Code § 24.259(g).

Because RCH (1) is not yet a party to this proceeding, and (2) is not obligated or required to do the City’s homework in demonstrating how the City will operate a water system, RCH requests that the Honorable Administrative Law Judge (“ALJ”) issue a Protective Order and preclude the City from seeking any discovery from RCH unless and until the Commission determines the City’s Application is administratively complete.

II. MOTION FOR PROTECTION

Because RCH (1) is not yet a party to this proceeding, and (2) is not required help the City decertify or certificate portions of RCH’s approved CCN, RCH requests that the ALJ issue a Protective Order and preclude the City from seeking any discovery from RCH unless and until the Commission determines the City’s deficient Application is administratively complete.

A. RCH is not yet a Party to the Proceeding.

PUC Rules dictate that only Applicants, complainants, and respondents, as defined in § 22.2 of PUC Rules, are necessary parties to proceedings which they have initiated or have been initiated against them. 16 Tex. Admin. Code § 22.104(a). Any other person or entity must intervene to become a party at the Commission. An entity that has not intervened in a Commission proceeding, therefore, is not a party. *See City of Port Arthur v. Sw. Bell Tel. Co.*, 13 S.W.3d 841, 844 (Tex. App.—Austin 2000, no pet.).

Moreover, by its Order No. 3, filed November 1, 2023, the ALJ ordered that “at this stage in this proceeding, **the only parties are the City of McLendon-Chisholm and Commission Staff because RCH WSC is not a necessary party to the application, as filed.**” *See* Order No. 3 (emphasis added). The Order went on to state that “[a] deadline for intervention will be established after notice is complete. If any person wishes to participate in this proceeding, that person must file a motion to intervene, in accordance with 16 Texas Administrative Code § 22.104, before the deadline for intervention elapses and be admitted as an intervenor.” *Id.* To date, RCH has not filed a motion to intervene in this proceeding because the ALJ has ordered that the Application is considered not filed with the Commission and has not yet set a deadline for intervention; therefore, RCH is not a party to the proceeding.

B. The City cannot serve written discovery on a Non-Party.

The City’s attempt to serve discovery on a non-party has no authority or basis under the Commission’s Procedural Rules. Under the Commission's Procedural Rules, “... any party may serve **upon any other party** written requests for information and requests for admission of fact.” 16 Tex. Admin. Code § 22.144(a) (emphasis added). The term “party” is defined as applicants or complainants, respondents, intervenors, and commission staff representing the public interest. 16

Tex. Admin. Code §§ 22.2(30), 22.102(a). Further, “any person that has not intervened in a proceeding, or who has been denied permission to intervene, shall not be considered a party.” § 22.102(c). As detailed above, because RCH is not yet a party to this proceeding, the City has no authority or basis for serving written discovery on RCH. Accordingly, the ALJ should enter a protective order precluding the City’s discovery against RCH until after RCH has intervened as a party in this proceeding.

C. RCH should not be forced to bear the burden of assisting the City with remedying its deficient Application.

The City has been aggressive and unwieldy in its tactics to take over a portion of RCH’s CCN, undermining RCH’s operations, disrupting RCH board meetings, sowing disinformation among RCH members, and interfering with RCH vendors and suppliers. These tactics have continued since the City’s filing with the Commission, as evidenced by the City’s deficient Application, the fact that it has sought three extensions of time to supply the information required regarding its plans to operate a water system (information which it clearly lacks), and that the City now seeks to use the Commission’s discovery procedures to require RCH to supply this information for the City. RCH should not be required to bear the City’s burden in this proceeding.

D. The City’s RFI’s are Not Relevant to its Application.

Moreover, in serving its premature written discovery, the City seeks burdensome and irrelevant information from the entity it seeks to take over. Most, if not all, of the City’s requests seek information about RCH or its water system that are wholly outside the scope of the single certification proceeding sought by the City and have no relevance to the determination of whether and how the City will provide water service to the areas in which it seeks single certification. The City’s requests are outside of the scope of permissible discovery in this proceeding.

For the reasons discussed herein, RCH respectfully requests that the ALJ issue a Protective Order and preclude the City from seeking any discovery from RCH unless and until the Commission determines the City's Application is administratively complete and RCH intervenes as a party in this proceeding.

III. PRAYER

WHEREFORE, RCH Water Supply Corporation respectfully prays that the ALJ issue a Protective Order and preclude the City from seeking any discovery from RCH unless and until the Commission determines the City's Application is administratively complete. RCH respectfully requests such other and further relief to which RCH may be justly entitled.

Respectfully submitted,

/s/ James D. Bradbury

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**ATTORNEYS FOR RCH WATER SUPPLY
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CERTIFICATE OF SERVICE

I hereby certify that notice of the filing of this document will be provided to all parties of record via electronic mail on January 29, 2024 in accordance with PUC Order No. 2 and the Second Order Suspending Rules, issued in Project No. 50664.

/s/ James D. Bradbury

James D. Bradbury