



**STATE OF ALABAMA**  
PUBLIC SERVICE COMMISSION  
P.O. BOX 304260  
MONTGOMERY, ALABAMA 36130

TWINKLE ANDRESS CAVANAUGH, PRESIDENT

JOHN A. GARNER, EXECUTIVE DIRECTOR

JEREMY H. ODEN, ASSOCIATE COMMISSIONER

CHRIS "CHIP" BEEKER, JR., ASSOCIATE COMMISSIONER

**ECO-PRESERVATION SERVICES LLC,**

**Respondent/Petitioner,**

**OFFICE OF THE ATTORNEY GENERAL OF  
ALABAMA,**

**Intervenor,**

**D.R. HORTON, INC.-BIRMINGHAM,**

**Intervenor.**

**INVESTIGATION PROCEEDING TO  
CONSIDER THE ISSUANCE OF A  
CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY  
FOR ECO-PRESERVATION  
SERVICES LLC AND TO  
DETERMINE THE RATES, TERMS  
AND CONDITIONS OF SERVICE TO  
BE IMPLEMENTED BY ECO-  
PRESERVATION SERVICES, LLC**

**DOCKET 33335**

**PROCEDURAL RULING**

On April 10, 2024, Eco-Preservation Services, LLC ("Eco-Preservation" or "Respondent/Petitioner") filed a motion to exclude the City of Lake View ("Lake View") and D.R. Horton, Inc.-Birmingham ("DR Horton") from receiving information that it labels as "confidential." Eco-Preservation represents that Lake View and DR Horton are "presently engaged in actions and activities detrimental and harmful to Eco-Preservation Services, LLC," purportedly in violation of a franchise agreement related to sewer service.

In a response filed on April 30, 2024, DR Horton asserts that Eco-Preservation's motion should be denied. DR Horton argues that: 1) the information sought to be protected is not confidential; 2) the allegations of harm do not support the withholding of information; and 3) that DR Horton is directly affected by the proceedings. Regarding the last argument, DR Horton represents that it "is the owner of lots located within the City of Lake View against which [Eco-Preservation] has filed Utility Services Agreements which aver that the assessments, covenants,

and restrictions set forth in those Agreements are covenants that run with the land and bind the owner of the subject lots.”

Through a procedural ruling issued on May 1, 2024, Eco-Preservation was given until close of business on May 10, 2024 to file a rebuttal to DR Horton’s response. That procedural ruling also directed Respondent/Petitioner to include a draft nondisclosure agreement if one is appropriate in this proceeding. Eco-Preservation filed a timely rebuttal on May 10, 2024, but did not include a draft nondisclosure agreement.

Eco-Preservation’s rebuttal provides additional details regarding the allegation that DR Horton is violating a franchise agreement related to sewer service. Based on this alleged violation, Respondent/Petitioner asserts that DR Horton “cannot claim on the one hand it has the right to see confidential information submitted by Eco-Preservation Services... when there is the appearance of impropriety by [DR Horton] involving its violation of the franchise agreement.” Eco-Preservation goes on to argue that DR Horton does not have standing, while also recognizing that DR Horton owns lots within Lake View subject to Eco-Preservation’s Utility Services Agreement.

### Rulings

1. This Commission is not the proper forum to resolve disputed franchise agreement violations.

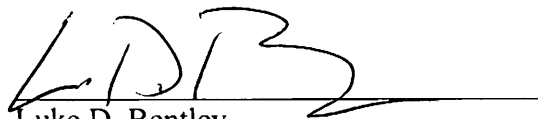
2. Pursuant to Ala. Code § 37-1-87, DR Horton (an owner of lots served by Eco-Preservation and subject to its tariff) is affected by this rate proceeding. Therefore, DR Horton remains an intervenor in this matter. As a party, DR Horton’s counsel shall have access to all documents submitted to Staff in response to data requests. Whether access to such documents is limited to “attorney eyes only” is a matter to be addressed in a nondisclosure agreement or protective order.

3. Eco-Preservation's motion and the related filings have failed to resolve issues related to the treatment of confidential information. **If Respondent/Petitioner seeks the protection of any information, Eco-Preservation shall file a draft nondisclosure agreement or proposed protective order by the close of business on May 24, 2024.** The parties are directed to confer on the drafting of these documents. Any nondisclosure agreement or protective order shall include:

- a) Criteria to determine what documents are "confidential;"
- b) Statement that the designation of material as confidential reflects a good faith determination by counsel (not by the client) that the material meets the criteria for confidential materials under the protective order or nondisclosure agreement;
- c) Explicit statement of the right of a party to challenge the confidential designation of particular documents, with the party asserting confidentiality having the burden of demonstrating the propriety of that designation;
- d) Listing of the persons who may have access to materials designated as confidential; and
- e) Procedures for treatment of confidential documents at the public hearing.

IT IS SO RULED.

Done at Montgomery, Alabama this 15th day of May 2024.

  
Luke D. Bentley  
Administrative Law Judge

c: All parties of record