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PETITION OF TRAVIS COUNTY §
MUNICIPAL UTILITY DISTRICT NO. §
12 APPEALING CHANGE OF §
WHOLESALE WATER RATES §
IMPLEMENTED BY WEST TRAVIS §
COUNTY PUBLIC UTILITY AGENCY, §
CITY OF BEE CAVE, TEXAS, HAYS §
COUNTY AND WEST TRAVIS COUNTY §
MUNICIPAL UTILITY DISTRICT NO. 5 §

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12
OBJECTIONS AND MOTION TO STRIKE PORTIONS OF
WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S
AND COMMISSION STAFF'S DIRECT TESTIMONY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW the Travis County Municipal Utility District No. 12 ("TCMUD No. 12"), and pursuant to P.U.C. PROC. R. 22.221 and 22.225, files these Objections and Motion to Strike Portions of the prefiled Direct Testimony filed by West Travis County Public Utility Agency ("WTCPUA") and by the Staff of the Public Utility Commission of Texas ("Commission Staff") and in support thereof would respectfully show as follows:

I. BACKGROUND

The West Travis County Public Utility Agency ("WTCPUA") filed Direct Testimony on December 19, 2014. The Commission Staff filed Direct Testimony on February 6, 2015. In accordance with SOAH Order No. 1, the deadline for filing objections to all parties' prefiled direct testimony was March 13, 2015. However, by agreement of all parties, the deadline was extended to March 17, 2015, and that change to the procedural schedule was adopted in SOAH Order No. 12 (Mar. 12, 2015). TCMUD No. 12 timely files these objections and motions to strike portions of the prefiled direct testimony as follows:

II. OBJECTIONS AND MOTION TO STRIKE PORTIONS OF JACK STOWE'S DIRECT TESTIMONY

- A. Page 19, Line 3 – Line 12. Objections: Lack of personal knowledge, testimony is speculative (TRE 602); and not the type of facts or data relied upon by experts (TRE 703).**

In this portion of Mr. Stowe's testimony he is discussing his interpretation of emails authored by Ms. Nelissa Heddin that are discussed by and attached to the testimony of TCMUD 12 witness, Dr. Zarnikau.¹ Mr. Stowe's testimony does not contain any basis for his statement concerning the meaning of the express wording in Ms. Heddin's email. His statement rests on a presumption by Mr. Stowe and therefore is speculative or mere conjecture. In the absence of any evidence that Mr. Stowe has personal knowledge of the matter asserted, he may not testify to what Ms. Heddin's email means.

TRE 703 allows for an expert in a particular field to form an opinion or inference based on facts or data not admissible in evidence so long as those facts or data are the type reasonably relied upon by experts in that particular field. Ms. Heddin's references to "proposed new methodology" "proposed approach" or "proposed methodology" in the emails cited by Dr. Zarnikau, have not been shown to be the type of facts or data reasonably relied upon by experts in the field of utility rates in forming opinions or inferences upon the subject of change of revenue requirement or rate methodology, and accordingly cannot properly form the basis of Mr. Stowe's opinion at lines 10 – 12.

- B. Page 24, Line 8 – 12; and Page 25, Line 8 – 14. Objection: Improper opinion testimony (TRE 701, 702).**

Mr. Stowe is not testifying as a legal expert. TRE 701 states that if a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to opinions or inferences which are: 1) rationally based on the perception of the witness and 2) helpful to a clear understanding of the witness' testimony or the determination of a fact issue. Mr. Stowe has not been shown to be qualified on the basis of his knowledge, skill, experience, training, or education to offer his opinion on legal matters. In the first portion of his testimony identified above, he is offering his interpretation of a particular regulation based on regulatory

¹ Dr. J. Zarnikau at 17, lines 6 – 14, and JZ Exhibit 5 (Ms. Heddin's email is an Admission by party-opponent (TRE 801(e)).

construction arguments, which is an improper legal opinion. In the second portion of his testimony identified above, Mr. Stowe provides a legal opinion that Mr. Joyce's testimony is "outside the boundaries of the Public Interest Rule." Mr. Stowe is not qualified as a legal expert by knowledge, skill, experience, training or education to opine on whether Mr. Joyce's testimony is relevant or not. That is an improper legal opinion. In both cases, Mr. Stowe's opinions are not rationally based on the perception of the witness. For these reasons, these portions of Mr. Stowe's testimony should be struck.

C. Page 20, Line 12 to Line 22; and Page 21, Line 1 to Line 17. Objection: Relevance (TRE 401, 402).

Mr. Stowe presents a hypothetical scenario in this portion of his testimony. Under TRE 402, evidence which is not relevant is inadmissible. The rule states that "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Mr. Stowe's hypothetical does not tend to make the existence of a material fact related to this case more or less probable because TCMUD 12 is not alleging that WTCPUA changed from the Cash to the Utility Basis. Similarly, Mr. Stowe's testimony as to whether a particular situation has ever occurred or that he was a witness in a particular proceeding does not make the existence of any fact that is of consequence to the determination of this action more probable or less probable. Finally, Mr. Stowe's testimony characterization of the TCEQ's decision making process in the *Arlington v. Ft. Worth* case as "a struggle" is not only irrelevant, but also speculative. The identified testimony does not have any tendency to make the existence of any fact that is of consequence to the determination of this action more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced evidence as irrelevant under TRE 402.

**III. OBJECTIONS AND MOTION TO STRIKE
PORTIONS OF DONALD G. RAUSCHUBER'S DIRECT TESTIMONY**

A. Page 10, Line 1 – Page 11, Line 6; Page 11, Line 21 – Page 12, Line 5. Objection: Relevance (TRE 401 and 402).

In this portion of his prefiled testimony, Mr. Rauschuber testifies concerning the "goal of WTCPUA", WTCPUA's purchase of the LCRA System, the terms and provisions of the Utilities Installment Purchase Agreement (but does not attach same to his testimony), the number of

WTCPUA employees on March 19, 2012, the number of WTCPUA retail water customers, and the number of WTCPUA retail sewer customers. TCMUD 12 objects that this testimony is not relevant under TRE 401 and moves to strike it pursuant to TRE 402.

Under TRE 401 “relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The issues to be addressed in this case are established by P.U.C. Subst. R. 24.133. Nothing in the testimony identified herein concerning the history of WTCPUA, the terms of the installment purchase agreement between LCRA and WTCPUA, the number of employees at WTCPUA in 2012, or the number of WTPUA’s retail customers has any tendency to make the existence of any fact that is of consequence to the determination of this action more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced evidence as irrelevant under TRE 402.

B. Objections: Best Evidence, TRE Article X; and Hearsay TRE 801 and 802:

Page 14, Lines 1 – 5 (interpreting Wholesale Water Services Agreement § 3.01)

Page 14, Lines 16 – 22 (interpreting Wholesale Water Services Agreement)

Page 15, Lines 1 – 5 (interpreting Wholesale Water Services Agreement § 4.01.d. and e.)

Page 15, Lines 13 – 17 (interpreting Wholesale Water Services Agreement)

Page 17, Line 5 beginning with the words “The 2012 Amendment”– Line 7 (ending with the words “effective on March 19, 2012”) (interpreting the Transfer Agreement);

Page 17, Lines 9 – 15; Page 17, Line 19 (“with several additional terms, as discussed above”); Page 17 Lines 20- 23 (ending with “by the Board”); Page 18, Line 2 (beginning with “For example”) through Line 8 (ending with “the TCMUD 12 Agreement.”); Page 18, Line 9 (beginning with “The Board of Directors”) through Line 10 (ending with “meeting.”) interpreting the Transfer Agreement;

Page 18, Lines 15 – 16 (“as amended by the 2012 Amendment”) interpreting the Transfer Agreement as an amendment to the Wholesale Water Services Agreement;

Page 26, line 12 (“as amended by the 2012 Amendment”) interpreting the Transfer Agreement as an amendment to the Wholesale Water Services Agreement;

Page 32, lines 14 – 15 (“as amended by the 2012 Amendment”) interpreting the Transfer Agreement as an amendment to the Wholesale Water Services Agreement;

In the referenced portions of Mr. Rauschuber’s testimony he is attempting to prove the contents of legal documents (contracts) by summarizing them (with varying degrees of inaccuracy). The contracts in question are available, and attached to his testimony, and his testimony concerning the contents does not assist the trier of fact to understand the documents.

This is not a case where the contracts are voluminous and cannot be conveniently examined by the trier of fact and therefore there is no basis or justification for allowing this witness to describe or summarize the contents. TCMUD 12 does not object to the admissibility of the copies of the contracts, or to those portions of Mr. Rauschuber's testimony where he quotes a provision of a contract accurately and in full. TCMUD 12 objects to Mr. Rauschuber's repeated attempts to prove the content of the contracts on the basis that his testimony is not the best evidence of the contracts, is hearsay under TRE 801 and 802, and is not qualified under any exception to the hearsay rule (TRE 803), and should be struck. *Ramsey v. Jones Enters.* 810 S.W. 2d 902, 905 (Tex. App. – Beaumont 1991, writ denied).

The testimony that is the subject of this line of objections addresses the following contracts: the Wholesale Water Services Agreement between LCRA and TCMUD 12 (the "Wholesale Water Services Agreement") (Attachment G of Mr. Rauschuber's testimony); and the Agreement Regarding Transfer of Operations of the West Travis County Water System from the LCRA to WTCPUA to which TCMUD 12 is a party (the "Transfer Agreement") (Attachment J of Mr. Rauschuber's testimony). The referenced portions of Mr. Rauschuber's testimony are not the best evidence of the content of the contracts, and his descriptions of that content is hearsay. Accordingly, the testimony should be struck, and TCMUD 12 so moves.

C. Opinion Evidence – Not Designated as Expert (TRE 702) and Inappropriate Lay Opinion Testimony (TRE 701)

Page 15, lines 16 – 17 ("These costs are based upon the cash needs methodology.")

Page 19, Line 9 ("utilizing the cash needs methodology")

Page 21, Line 3 – 10 (addressing rate methodology)

Page 27, line 3, the word "methodology", Line 8 (beginning with "This is the same rate methodology") through the end of Line 10.

Page 32, Lines 6 – 15 (Question asks for opinion on bargaining power)

Page 33, Lines 1 – Page 34, Line 13 – Opinions concerning abuse of monopoly power, and change of revenue requirement and rate methodology.

WTCPUA has not designated Mr. Rauschuber as an expert in its responses to the Request for Disclosure (attached), and accordingly, the identified portions of his testimony are

objectionable under TRE 702 and TCMUD 12 moves to strike them. As the Texas Supreme Court stated in *Reid Rd. MUD v. Speedy Stop Food Stores*:²

The line between who is a [TRE] 702 expert witness and who is a [TRE] 701 witness is not always bright. But when the main substance of the witness's testimony is based on application of the witness's specialized knowledge, skill, experience, training, or education . . . then the testimony will generally be expert testimony within the scope of Rule 702. A witness giving such testimony must be properly disclosed and designated as an expert and the witness's testimony is subject to scrutiny under rules regarding experts and expert opinion. Any other principle would allow parties to conceal expert testimony by claiming the witness is one whose opinions are merely for the purpose of explaining the witness's perceptions and testimony.³

WTCPUA has designated two experts: Mr. Jack Stowe and Mr. Richard Baudino, and has chosen not to call its rate analyst, Ms. Nelissa Heddin. Mr. Rauschuber is identified as a fact witness and WTCPUA should not be allowed to offer through his testimony expert opinions concerning the work performed by Ms. Heddin, and matters such as changes to revenue requirement and rate methodology, which are addressed by its designated expert Mr. Stowe, because Mr. Rauschuber has not been properly disclosed and identified as an expert.

Mr. Rauschuber is also not an economist and his opinions concerning monopolies, and abuse of monopoly power are objectionable and should not be admitted because it is expert opinion testimony from a fact witness. WTCPUA has identified Mr. Baudino as an expert witness to address this issue, not Mr. Rauschuber. His testimony which contains opinions concerning economic matters should not be admitted because he was not disclosed as an expert witness to testify about these matters.

In addition, Mr. Rauschuber has not demonstrated in his testimony that he is opining on the matters listed above based upon his perceptions (TRE 701), but instead he describes his qualifications by detailing his experience, knowledge and expertise in water and wastewater rate matters, and acknowledges that he has "been qualified as an expert witness in numerous contested hearings on behalf of public and private entities before the TCEQ, the Public Utility Commission and the State Office of Administrative Hearings."⁴ Mr. Rauschuber also attaches to

² 337 S.W.3d 846, 851-52 (Tex. 2011).

³ *Id.*, at 851 (citations omitted).

⁴ D. Rauschuber at page 7, lines 17 – 24.

his testimony as Attachment A, the Position Description for the General Manager, and testifies this is a “detailed listing of my responsibilities.”⁵ Nothing in his Position Description indicates that he is responsible as General Manager for determining the revenue requirement or rate methodology utilized for establishing wholesale water service rates or if WTCPUA is a monopoly and has exercised monopoly power. Accordingly, the opinion testimony identified herein must be viewed as based upon the expertise which he claims in his testimony, and not as lay opinion testimony based upon his perceptions.⁶ TCMUD 12 objects that this is not appropriate lay opinion testimony under TRE 701 and moves to strike the testimony identified above.

- D. Page 19, Line 18 – Page 20, Line 2; Page 20, Line 7 – Page 21, Line 10 (including Attachment L); Page 28, Lines 2 – 9, including Attachment T; Page 32, Line 2 (beginning with “These November 21, 2013 rates ...”) and ending on Line 3 with “TCMUD 12 Agreement.”; Table 1, Columns 2 (Rates per TCMUD 12 Agreement with LCRA) and 3 (Rates Adopted 3/19/2012): Relevance Objection TRE 401 and 402.**

This testimony goes into details about WTCPUA’s change of rates in 2012 that were effective in 2013. TCMUD 12’s rate appeal concerns the change in rates that occurred in 2013, which were effective in 2014. Under TRE 401 “relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The issues to be addressed in this case are established by P.U.C. SUBST. R. 24.133 and specifically address WTCPUA’s actions in changing rates effective in 2014. Nothing in the testimony identified herein concerning the 2013 Rate change implemented by WTCPUA’s Board in 2012 has any tendency to make the existence of any fact that is of consequence to the determination of this appeal more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced evidence as irrelevant under TRE 402.

- E. Page 23, Line 16 (“The summaries) through Page 24, Line 28 – Objection: Hearsay (TRE 801 and 802)**

In this portion of Mr. Rauschuber’s testimony, he summarizes statements made by other persons that are offered to prove the truth of the matter asserted which is hearsay under TRE 801,

⁵ D. Rauschuber at page 5, lines 8 -9 and Attachment A, *General Manager Position Description*.

⁶ *Reid Road MUD*, at 852.

and therefore not admissible under TRE 802. None of the statements fall within any of the exceptions to hearsay under TRE 803, and accordingly, should be struck. A sampling of the hearsay follows: "I received feedback that the proposed allocation of costs ..."; "WTCPUA again heard concerns from Committee members regarding ..."; "we heard and considered the Committee's recommendation for allocating ..."; "The changes in calculation ... were based upon this recommendation from the Committee." "I understood at this meeting that the Committee had concerns about ..."; "and I observed Nelissa Heddin ... recommend to the WTCPUA Board ..."

F. Page 26, Lines 1 – 5 (including Attachment R)- Relevance Objection TRE 401 and 402.

This portion of Mr. Rauschuber's testimony addresses other wholesale customers of WTCPUA accepting changes to their contracts with WTCPUA. The other wholesale customers are not parties to TCMUD 12's appeal, and their contracts, and amendments thereto, are not in issue in this appeal. Under TRE 401 "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The issues to be addressed in this case are established by P.U.C. SUBST. R. 24.133 and specifically address WTCPUA's actions in changing rates charged to TCMUD 12 effective in 2014. Nothing in the testimony identified herein concerning changes to other non-party wholesale customers' contracts has any tendency to make the existence of any fact that is of consequence to the determination of this appeal more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced evidence as irrelevant under TRE 402.

G. Attachment V, Exhibit B, Bates pages 274 – 304: Objection: Relevance TRE 401 and 402

Mr. Rauschuber refers to Attachment V at page 29, line 19 of his prefiled testimony. In his testimony on page 30, he relies on the CIP, which is Exhibit A of Attachment V (Bates pages 251-272) to respond to an issue raised in Mr. DiQuinzio's testimony. However, there is no mention in Mr. Rauschuber's testimony that relies on or references Exhibit B of Attachment V, which is a December 9, 2014 report from Nelisa Heddin concerning Maximum Allowable Impact Fees. While Exhibit A may have some marginal relevance to this docket, there is absolutely nothing in Mr. Rauschuber's testimony that relies upon Exhibit B of Attachment V,

and there is nothing about Exhibit B that has any tendency to make the existence of any fact that is of consequence to the determination of this action more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced Exhibit B to Attachment V as irrelevant under TRE 402.

**IV. OBJECTIONS AND MOTION TO STRIKE
PORTIONS OF RICHARD A. BAUDINO'S DIRECT TESTIMONY**

A. Objection: Relevance (TRE 401 and 402)

1. Page 5, Lines 1 – 9.

Mr. Baudino is opining in this part of his testimony about LCRA's relative bargaining power and ability to control prices in contracting with TCMUD 12 for wholesale water services. The issue of LCRA's monopoly power has no tendency to make the existence of any fact that is of consequence to the determination of this action more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced testimony as irrelevant under TRE 402.

2. Page 4, Lines 20 – 23 and Page 5, Lines 17 – 23; Page 22, Line 3 (beginning with "As noted above") through Line 6; Page 23, Line 18 through the end of that sentence on Line 20.

Mr. Baudino is testifying about his review of the historical background of the relationship between LCRA and TCMUD 12 and the alternatives that he believes may have existed at the time TCMUD 12 first contracted with LCRA for wholesale water services. At Pages 22 and 23, Mr. Baudino refers back to his testimony on this subject found at pages 4–5. TCMUD 12 is not complaining now, nor has it ever complained, about actions taken by LCRA and this portion of Mr. Baudino's testimony has no tendency to make the existence of any fact that is of consequence to the determination of TCMUD 12's Appeal of WTCPUA's decision to change the rates effective in 2014 more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced testimony as irrelevant under TRE 402.

3. Page 6, line 2 ("held by the LCRA") and Line 5 ("LCRA or the").

TCMUD 12 moves to strike these words from Mr. Baudino's testimony because they address his views of LCRA's market and bargaining power. TCMUD 12 is not complaining now, nor has it ever complained, about actions taken by LCRA as evidence of abuse of monopoly power and this portion of Mr. Baudino's testimony has no tendency to make the

existence of any fact that is of consequence to the determination of whether WTCPUA has abused its monopoly power more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced testimony as irrelevant under TRE 402.

4. Page 8, Line 1 – Page 12, Line 11.

Mr. Baudino is opining on the relative bargaining power of TCMUD 12 in its 2009 dealings with LCRA. He characterizes as “freely negotiated” and “an arms-length transaction” the Wholesale Water Services Agreement (Mr. Baudino refers to it as the TCMUD 12 Agreement), which he indicates he relied upon in formulating his opinion that TCMUD 12 had bargaining power in its dealings with LCRA. This Appeal addresses the actions of the WTCPUA in setting the 2014 protested rate. TCMUD 12’s Appeal in no way addresses actions taken by LCRA and this portion of Mr. Baudino’s testimony has no tendency to make the existence of any fact that is of consequence to the determination of TCMUD 12’s Appeal of WTCPUA decision to change the rates effective in 2014 more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced testimony as irrelevant under TRE 402.

5. Page 19, line 5 (“either the LCRA or”); Page 19, Line 7 (beginning with “As I describe above”) through Line 16; and Page 21, Line 4 (“the LCRA and”).

TCMUD 12 moves to strike these words from Mr. Baudino’s testimony because they address his views of LCRA’s market and bargaining power in setting rates and quantity of water. He is referring here to his earlier testimony, which is the subject of objection. TCMUD 12’s Appeal concerns WTCPUA, *not* LCRA, and the WTCPUA’s actions taken in 2013 to change the rates effective in 2014, *not* the terms of the LCRA Wholesale Water Services Agreement. This portion of Mr. Baudino’s testimony therefore has no tendency to make the existence of any fact that is of consequence to the determination of whether WTCPUA has abused its monopoly power more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced testimony as irrelevant under TRE 402.

6. Page 24, Line 13 (beginning with “If this”) through the end of Line 15.

Here again, Mr. Baudino is referring to the “original decision by TCMUD 12” to obtain wholesale water services from LCRA in 2009. For the reasons previously articulated, that issue has no tendency to make the existence of any fact that is of consequence to the determination of

whether WTCPUA has abused its monopoly power in setting the 2014 protested rate more or less probable than it would be without the evidence, it is therefore not relevant under TRE 401 and TCMUD 12 moves to strike this testimony under TRE 402.

B. Speculation: Lack of Personal Knowledge TRE 602, TRE 703.

- 1. Page 8, Line 4 (beginning with “The TCMUD 12”) through Line 5 (ending with “a service.”);**
- 2. Page 10, Line 23 “negotiate” (the question is argumentative and asks the witness to speculate about a particular provision of the Wholesale Water Services Agreement entered into by LCRA and TCMUD 12 in 2009);**
- 3. Page 11, Line 6 “freely negotiated”;**
- 4. Page 11, Line 25 “was, in my opinion, clearly an arms-length transaction that”**

Mr. Baudino was not a party to the negotiations between LCRA and TCMUD 12 that resulted in the Wholesale Water Services Agreement and he has no personal knowledge of what, if any, terms were “negotiated” or were standard terms offered by LCRA to its other wholesale water services customers. His conclusions that the Wholesale Water Services Agreement was “freely negotiated” and “an arms-length transaction” are based on conjecture and speculation. TCMUD 12 objects pursuant to TRE 602 that there is no evidence to support a finding that Mr. Baudino has personal knowledge of the dealings that occurred in 2009 between LCRA and TCMUD 12 and the referenced portions of his testimony should be struck. TCMUD 12 has also objected to the relevance of this testimony because it concerns the Petitioner’s dealings with LCRA, which is not at issue in this case.

Mr. Baudino has been designated as an expert to testify that “WTCPUA is not a monopoly and that WTCPUA has not abused its alleged monopoly power.”⁷ Under TRE 703, the dealings between the LCRA – TCMUD 12 concerning the 2009 Wholesale Water Services Agreement are not the type of facts reasonably relied upon by an expert in formulating an opinion concerning whether WTCPUA is a monopoly or whether it abused its monopoly power in setting the 2014 wholesale water services rates complained of herein.

⁷ WTCPUA Second Supplemental Responses to Requests for Disclosure (Dec. 10, 2014).

- C. Page 16, Line 3 – 21; Page 17, Line 3 (“either the LCRA or”); Page 17, Lines 5 – 8; Page 17, Line 17 (beginning with the word “Basically”) through Line 23 (ending with the word “LCRA.”) Objection: Relevance (TRE 401 and 402) and Speculation: Lack of Personal Knowledge (TRE 602).**

Mr. Baudino is speculating in this portion of his testimony about alternative wholesale water services for TCMUD 12 at the time it entered into the Wholesale Water Services Agreement with LCRA (2009). That he is speculating is clear from his initial answer on page 7, line 5, to the question presented on lines 3–4; and on page 17, line 5 in which he begins, “Without full knowledge...”. Mr. Baudino’s reliance on TCMUD 12’s response to WTCPUA RFI 1-44, that asked about a time period between January 1, 2009 and March 6, 2014, might have formed the basis for an opinion concerning TCMUD 12’s alternatives in 2013/2014, when WTCPUA changed the rates that are the subject of this Appeal. But Mr. Baudino’s testimony instead focuses only on TCMUD 12’s alternative suppliers in **2009**. He states at lines 18 – 20: “From these responses to discovery in this case, it is not clear that TCMUD 12 fully explored its available options to taking wholesale water treatment service from other suppliers than the LCRA.” Similarly, his testimony on page 17 identified above, concerns only his view of alternative suppliers in 2009. TCMUD 12’s alternative supplier options in 2009, when it entered into the Wholesale Water Services Agreement with LCRA, have no tendency to make the existence of any fact that is of consequence to the determination of whether WTCPUA’s change to the rates effective in 2014 evidenced abuse of monopoly power, more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced testimony as speculation under TRE 602 and because it is irrelevant under TRE 402.

- D. Page 18, Line 1 – Page 19, Line 3. Objection: Relevance (TRE 401 and 402)**

This testimony presents a hypothetical, which as Mr. Baudino explains at lines 19 – 21, is a “little example” of how he views the choice TCMUD 12 made in 2009 when entering into the Wholesale Water Services Agreement with LCRA. TCMUD 12’s Appeal is not directed at actions taken by LCRA but instead concerns WTCPUA’s decision to change rates in 2013/2014. This portion of Mr. Baudino’s testimony has no tendency to make the existence of any fact that is of consequence to the determination of TCMUD 12’s Appeal of WTCPUA decision to change the rates effective in 2014 more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced testimony as irrelevant under TRE 402.

**E. Page 30, Line 11 (the word “speculated”); Line 14 (the words “is irrelevant”).
Objection: Form of Question and Unqualified Legal Opinion (TRE 702).**

The form of the question is objectionable because by using the word “speculated” it mischaracterizes Dr. Zarnikau’s testimony. The witness then provides a legal interpretation that Dr. Zarnikau’s testimony is “irrelevant.” Mr. Baudino is not qualified as a legal expert by knowledge, skill, experience, training or education to opine on whether Dr. Zarnikau’s opinion is based on speculation or if the testimony is relevant or not. TCMUD 12 objects that this portion of Mr. Baudino’s testimony is improper legal opinion that he is not qualified to provide and therefore should be struck pursuant to TRE 702.

**V. OBJECTIONS AND MOTION TO STRIKE
PORTIONS OF HEIDI GRAHAM’S DIRECT TESTIMONY**

A. Improper Opinion Testimony

TRE 701 states that if a witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to opinions or inferences which are: 1) rationally based on the perception of the witness and 2) helpful to a clear understanding of the witness’ testimony or the determination of a fact issue. Ms. Graham was educated as a Mechanical Engineer, has experience related to engineering reports for public water systems, and processing CCN applications, performing depreciation studies and quality of service evaluations, and designing rates but she has not been shown to be qualified on the basis of her knowledge, skill, experience, training, or education to offer an expert opinion as an economist or as an attorney under TRE 702. *See*, Ms. Graham’s Direct, Attachments HG-1 and HG-2.

The portions of Ms. Graham’s testimony identified below contain opinion testimony without the proper predicate showing that Ms. Graham is qualified to provide such opinions. In each instance, Ms. Graham’s testimony does not meet the two prong test in TRE 701 that it be rationally based on the perception of the witness and helpful to a clear understanding of the witness’ testimony or the determination of a fact issue. Accordingly, these portions of Ms. Graham’s testimony should be struck.

- 1. Page 7, line 16, starting with the phrase “The decisions made” through the end of the sentence on line 18. Objection: Improper opinion testimony (TRE 701, 702).**

In this portion of her testimony, Ms. Graham opines on what constitutes an abuse of monopoly power by focusing on the interaction between TCMUD 12 and the LCRA in 2009. Nothing in her background or experience establishes that she is qualified to address abuse of monopoly power and especially not as a result of her interpretation of transactions that occurred several years prior to the event that is in dispute in TCMUD 12’s Appeal. Without first establishing her qualifications as an economist, Ms. Graham’s testimony is improper opinion testimony and should be struck.

- 2. Page 11, line 18, starting with the word “Consequently” through end of that sentence on line 20; and Page 12, line 7 through line 10 (ending with “FY 2014”). Objection: Improper opinion testimony (TRE 701, 702).**

In these portions of her testimony, Ms. Graham is offering her opinion as to whether or not an evidentiary standard has been met. Nothing in her background or experience establishes that she is qualified to render a legal opinion or that she has any experience interpreting the regulation applicable to this case. Without first establishing her qualifications as a legal expert, Ms. Graham’s testimony is improper opinion testimony.

- B. Page 7, lines 13–14 starting with words “The Petitioner” through the end of that paragraph on line 18. Objection: Relevance (TRE 401 and 402).**

In this portion of Ms. Graham’s testimony, she addresses TCMUD 12’s dealings with the LCRA in 2009 and the consent to the assignment of the Wholesale Water Services Agreement from the LCRA to the WTCPUA. TCMUD 12’s Appeal is not directed at actions taken by LCRA but instead concerns WTCPUA’s decision in 2013 to set the 2014 protested rates. This portion of Ms. Graham’s testimony has no tendency to make the existence of any fact that is of consequence to the determination of TCMUD 12’s Appeal of WTCPUA decision to change the rates effective in 2014 more or less probable than it would be without the evidence. TCMUD 12 moves to strike the referenced testimony as irrelevant under TRE 402.

VI. CONCLUSION AND PRAYER

TCMUD No. 12 respectfully requests that the Administrative Law Judge sustain TCMUD 12's objections and strike the portions of the testimony identified herein, and grant TCMUD No. 12 such further relief to which it may be entitled.

Respectfully Submitted,

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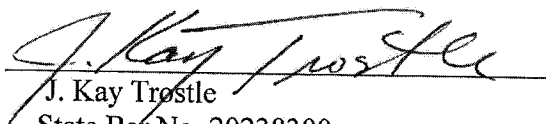
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J. Kay Trostle

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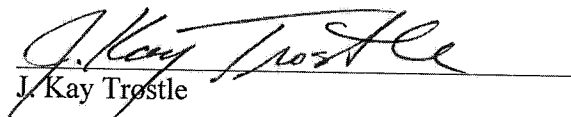
Miguel A. Huerta

State Bar No. 00787733

**ATTORNEYS FOR TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 12**

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March a true and correct copy of the above and foregoing document is being served via electronic mail, facsimile, U.S. mail and/or hand delivery to all parties of record.


J. Kay Trostle

SOAH DOCKET NO. 582-14-3382
TCEQ DOCKET NO. 2014-0439-UCR

PETITION OF TRAVIS COUNTY	§	
MUNICIPAL UTILITY DISTRICT	§	
NO. 12 APPEALING CHANGE OF	§	
WHOLESALE WATER RATES	§	BEFORE THE STATE OFFICE
IMPLEMENTED BY WEST	§	
TRAVIS COUNTY PUBLIC	§	
UTILITY AGENCY, AND THE	§	
CITY OF BEE CAVE, TEXAS,	§	OF
HAYS COUNTY, TEXAS AND	§	
WEST TRAVIS COUNTY	§	ADMINISTRATIVE HEARINGS
MUNICIPAL UTILITY DISTRICT	§	
NO. 5	§	

WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S
RESPONSES TO REQUESTS FOR DISCLOSURE


Pursuant to Administrative Law Judge's Order No. 1, 30 Texas Administrative Code,
Chapter 80, Subchapter D, and Rule 194 of the Texas Rules of Civil Procedure, West Travis
County Public Utility Agency hereby serves its responses to Requests for Disclosure.

Respectfully submitted,

LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.

816 Congress Ave., Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile (512) 472-0532

DAVID J. KLEIN
State Bar No. 24041257


GEORGIA N. CRUMP
State Bar No. 05185500

ATTORNEYS FOR WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY

AUG 18 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2014, a true and correct copy of the foregoing document was transmitted by the method shown, in accordance with SOAH Order No. 1, to the parties listed below:

FOR TRAVIS COUNTY MUD NO. 12:

Kay Trostle
Smith Trostle & Huerta LLP
4401 Westgate Blvd., Ste. 330
Austin, Texas 78745
(512) 494-9500 (phone)
(512) 494-9505 (fax)
ktrostle@smithtrostle.com

FOR THE EXECUTIVE DIRECTOR:

Ron Olson
Texas Commission on Environmental Quality
Environmental Law Division
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
(512) 239-0600 (phone)
(512) 239-0606 (fax)
ron.olson@tceq.texas.gov

FOR HAYS COUNTY:

Mark D. Kennedy
Hays County
Office of General Counsel
111 E. San Antonio St., Suite 202
San Marcos, Texas 78666
(512) 393-2208 (phone)
(512) 392-6500 (fax)

FOR THE PUBLIC INTEREST COUNSEL:

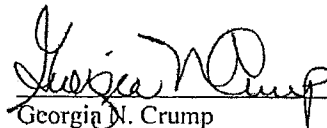
Rudy Calderon
Texas Commission on Environmental Quality
Office of Public Interest Counsel
P.O. Box 13087, MC-103
Austin, Texas 78711-3087
(512) 239-3144 (phone)
(512) 239-6377 (fax)
rudy.calderon@tceq.texas.gov

FOR WEST TRAVIS COUNTY MUD NO. 5:

Randall Wilburn
3000 South IH 35, Suite 150
Austin, Texas 78704
(512) 535-1661 (phone)
(512) 535-1678 (fax)
(512) 431-8442 (cell)

FOR CITY OF BEE CAVE:

Jim Haley
The Akers Law Firm
6618 Sitio Del Rio Blvd., Bldg. E, Ste. 102
Austin, Texas 78730
(512) 810-2142 (phone)
(512) 233-0801 (fax)
jhaley@txcityattorney.com


Georgia N. Crump

RESPONSES TO REQUESTS FOR DISCLOSURE

1. Rule 194.2(a) the correct names of the parties to the lawsuit.

RESPONSE: West Travis County Public Utility Agency's correct name is West Travis County Public Utility Agency ("PUA"). To the best of its current knowledge, the WTCPUA believes all other parties were correctly named in Order No. 1.

2. Rule 194.2 (b) the name, address, and telephone number of any potential parties.

RESPONSE: The PUA is not aware of any potential parties.

3. Rule 194.2 (c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial).

RESPONSE: The PUA contends that it does not sell a raw water supply to Petitioner, Travis County Municipal Utility District 12 ("MUD12"). Rather, the PUA treats MUD12's raw water supply (a water supply that MUD12 secures from the Lower Colorado River Authority under a "Firm Water Contract"), and charges MUD12 for such water treatment services on a wholesale basis, under a certain "Wholesale Water Services Agreement," between MUD12 and the Lower Colorado River Authority ("LCRA"), which has been subsequently assigned by LCRA to the PUA through a certain "Agreement Regarding Transfer of Operations of the West Travis County Water System from the Lower Colorado River Authority, to the West Travis County Public Utility Agency."

The PUA further contends that MUD12 will be unable to meet its burden of proof that the PUA's wholesale water treatment rate (the "Protested Rate") adversely impacts the public interest or violates any of the public interest criteria under Title 30 Texas Administrative Code § 291.133(a).

Specifically, the PUA's financial and operational ability to continue providing water treatment service is not impaired by implementing the Protested Rate charged to MUD12, which is lower than the prior rate. Also, given that the PUA's Protested Rate is lower than the rate previously charged to MUD12, MUD12 will be unable to demonstrate that the Protested Rate impairs MUD12's ability to continue providing water service to its retail customers. The PUA further contends that MUD12 will be unable to demonstrate that the PUA has a monopoly power over MUD12, or alternatively, that if the PUA is shown to have a monopoly power, then MUD12 will be unable to demonstrate that the PUA abused such power in providing wholesale water treatment

services to MUD12, under the application of the relevant factors set forth in 30 Tex. Admin. Code § 291.133(a)(3).

In addition, the PUA contends that MUD12 cannot demonstrate that the Protested Rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the PUA charges its other wholesale customers that receive wholesale water treatment services.

4. Rule 194.2(d) the amount and any method of calculating economic damages.

RESPONSE: Not applicable.

5. Rule 194.2(e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE:

David J. Klein, Attorney
Georgia N. Crump, Attorney
Christie L. Dickenson, Attorney
Lauren J. Kalisek, Attorney
Stefanie P. Albright, Attorney
Lissette M. Ruiz, Paralegal
Judy G. Bentley, Paralegal
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800

Mr. Klein, Ms. Crump, Ms. Dickenson, Ms. Kalisek, and Ms. Albright are attorneys that serve as general counsel for PUA. Ms. Ruiz and Ms. Bentley are paralegals for the general counsel law firm.

Jerry Kyle, Attorney
Andrews Kurth LLP
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-9271

Mr. Kyle is the bond counsel for the PUA. Mr. Kyle assists the PUA with its bond issues.

Nelisa Heddin

Nelisa Heddin Consulting, LLC
P.O. Box 341855
Lakeway, Texas 78734
(512) 589-1028

Ms. Heddin is the Financial Advisor for the PUA who attended meetings with wholesale customers regarding the PUA's wholesale water treatment rates. Ms. Heddin calculated and presented the revised wholesale water treatment rates to the Board of Directors of the PUA.

George Murfee, P.E.

Dennis Lozano, P.E.

Murfee Engineering Company, Inc.
1101 South Capital of Texas Highway, Suite D110
West Lake Hills, Texas 78746
(512) 327-9204

Mr. Murfee and Mr. Lozano are the engineers for the PUA, and have knowledge regarding the PUA's water system.

Kristi Hester

Severn Trent Services
14050 Summit Drive, Suite 113
Austin, Texas 78728
(512) 246-0498

Ms. Hester is the Senior Area Manager and lead contact for the Severn Trent Services team that operates the PUA water system. She has knowledge of PUA customer service matters and the operations of such water system.

Garry Kimball

Specialized Public Finance, Inc.
248 Addie Roy Road, Suite B-103
Austin, Texas 78746
(512) 275-7301

Mr. Kimball is the Financial Advisor for the WTCPUA. Mr. Kimball assists the PUA with its bond issues and has knowledge of facts relating to the PUA's prior bond issues.

Dr. Larry Fox, Ph.D., President of the PUA

Michael Murphy, Vice President of the PUA

Honorable Ray Whisenant, Jr., Secretary of the PUA

Bill Goodwin, Director of the PUA

Scott Roberts, Director of the PUA
Don G. Rauschuber, P.E., General Manager of the WTCPUA

West Travis County Public Utility Agency
12117 Bee Cave Road
Building 3, Suite 120
Bee Cave, Texas 78738
(512) 263-0100

Dr. Fox, Mr. Murphy, Honorable Whisenant, Councilman Goodwin, and Mr. Roberts are board members of the PUA.

Mr. Rauschuber is the General Manager of the PUA. He is knowledgeable of relevant facts through his management of the day-to-day activities of the PUA and, in particular, attending meetings with the wholesale customers.

Autumn Phillips
Municipal Accounts & Consulting, LP
8834 N. Capital of Texas Hwy
Suite 150
Austin, TX 78759
(512) 782-2401

Ms. Phillips is the lead contact for Municipal Accounts, the PUA's bookkeeper.

Jim Haley, Attorney for City of Bee Cave, Texas
Akers Law Firm, L.L.P.
6618 Sitio Del Rio Blvd., Bldg. E, Ste. 102
Austin, Texas 78730
(512) 551-0901

Mr. Haley is the counsel for the City of Bee Cave, Texas.

Mark Kennedy, General Counsel for Hays County, Texas
Hays County, Texas
Office of General Counsel
111 East San Antonio Street, Suite 202
San Marcos, Texas 78666
(512) 393-2219

Mr. Kennedy is the General Counsel for Hays County, Texas.

Randall B. Wilburn, Attorney for West Travis County MUD No. 5
3000 South IH 35, Suite 150

Austin, Texas 78704
(512) 535-1661

Mr. Wilburn is the general counsel for West Travis County Municipal Utility District No. 5

Ron Olson, Staff Attorney for TCEQ Executive Director
Jessica Gray, Staff Attorney for TCEQ Executive Director
TCEQ, MC-173
Environmental Law Division
P.O. Box 13807
Austin, Texas 78711
(512) 239-0627

Mr. Olson and Ms. Gray are Staff Attorneys in the Environmental Law Division of the TCEQ Executive Director's Office of Legal Services.

Rudy Calderon, Staff Attorney for the TCEQ Office of Public Interest Counsel
TCEQ, MC-103
Office of Public Interest Counsel
P.O. Box 13807
Austin, Texas 78711
(512) 239-3144

Mr. Calderon is the Staff Attorney for the TCEQ's Office of Public Interest Counsel.

6. Rule 194.2(f) for any testifying expert:
- (1) the expert's name, address, and telephone number;
 - (2) the subject matter on which the expert will testify;
 - (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
 - (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(B) the expert's current resume and bibliography.

RESPONSE: The PUA has not identified any testifying or non-retained testifying expert witnesses at this time.

7. Rule 194.2(g) any indemnity and insuring agreements described in Rule 192.3(f).

RESPONSE: Not applicable.

8. Rule 194.2(h) any settlement agreements described in Rule 192.3(g).

RESPONSE: Not applicable.

9. Rule 194.2(i) any witness statements described in Rule 192.3(h).

RESPONSE: None.

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SOAH DOCKET NO. 473-14-5144
PUC DOCKET NO. 42866

PETITION OF TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 12 APPEALING CHANGE OF
WHOLESALE WATER RATES
IMPLEMENTED BY WEST
TRAVIS COUNTY PUBLIC
UTILITY AGENCY, AND THE
CITY OF BEE CAVE, TEXAS,
HAYS COUNTY, TEXAS AND
WEST TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 5

BEFORE THE STATE OFFICE

OF

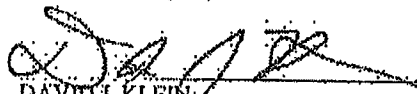
ADMINISTRATIVE HEARINGS

**WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S
SUPPLEMENTAL RESPONSES TO REQUESTS FOR DISCLOSURE**

Pursuant to Administrative Law Judge's Order No. 1, 30 Texas Administrative Code,
Chapter 80, Subchapter D; and Rule 194 of the Texas Rules of Civil Procedure, West Travis
County Public Utility Agency hereby serves its supplemental responses to Requests for
Disclosure.

Respectfully submitted,

LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.
816 Congress Ave., Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile (512) 472-0532



DAVID J. KLEIN
State Bar No. 24041257

GEORGIA N. CRUMP
State Bar No. 05185500

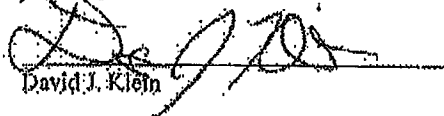
ATTORNEYS FOR WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand-delivery and/or facsimile on this 26th day September, 2014.


David J. Klein

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SUPPLEMENTAL RESPONSES TO REQUESTS FOR DISCLOSURE

The West Travis County Public Utility Agency ("WTCPUA") hereby supplements its previous response to disclosures 5 and 6 (Texas Rule of Civil Procedure 194.2(e) and (f)), with the following:

5. Rule 194.2(e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

RESPONSE:

*Nellisa Heddin
Nellisa Heddin Consulting, LLC
P.O. Box 341855
Lakeway, Texas 78734
Phone (512) 589-1028*

Ms. Heddin is a financial advisor/rate consultant to the WTCPUA, whose engagement by WTCPUA includes the calculation of its utility rates. In particular, Ms. Heddin developed the WTCPUA's wholesale water treatment rates that were presented and adopted by the WTCPUA Board of Directors on November 15, 2012 and November 21, 2013. Ms. Heddin also developed the FYE 2014 Cost of Service & Rate Design Study for Rough Hollow. She also attended meetings with the WTCPUA's wholesale water treatment service customers on several occasions in 2012 and 2013 regarding such customers' opposition to the WTCPUA's 2012 and 2013 wholesale water treatment rates.

6. Rule 194.2(f) for any testifying expert:

RESPONSE:

- (1) the expert's name, address, and telephone number;

*Jack Stowe
NewGen Strategies & Solutions, LLC
3409 Executive Center Drive, Suite 128
Austin, TX 78737
Phone: (512) 900-8195*

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(2) the subject matter on which the expert will testify;

Mr. Stowe will provide expert witness testimony regarding: (i) the methodology utilized by the WTCPUA in its wholesale water treatment rates, as approved by the WTCPUA Board of Directors in 2012 and 2013 (the 2013 rate being the "Appealed Rate"); (ii) the other issues relating to the public interest criteria under P.U.C. Subst. R. 24.133(a); and (iii) the testimony of witnesses for Travis County Municipal Utility District No. 12 ("MUD 12"), to the extent such testimony pertains to the public interest criteria under P.U.C. Subst. R. 24.133(a). The scope of subject matter on which Mr. Stowe will testify is subject to change as he continues his review in this contested case hearing.

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

It is Mr. Stowe's preliminary opinion that the methodology for the calculation of the WTCPUA's wholesale water treatment rates, as approved by the WTCPUA Board of Directors in 2012 and 2013 did not change, and that the Appealed Rate does not adversely impact the public interest or violate any of the public interest criteria under P.U.C. Subst. R. 24.133(a).

Specifically, Mr. Stowe's preliminary opinions are as follows: (1) the WTCPUA's financial and operational ability to continue providing water treatment service is not impaired by the Appealed Rate charged to MUD 12; (2) the WTCPUA's Appealed Rate does not impair MUD 12's ability to continue providing water service to its retail customers; (3) the WTCPUA does not have a monopoly power over MUD 12; (4) even if the WTCPUA is shown to have a monopoly power, then the WTCPUA has not abused such power in implementing the Appealed Rate for providing wholesale water treatment services to MUD 12, under the application of the relevant factors set forth in the public interest test under Section 22.133(a) of the rules of the Public Utility Commission; and (5) the Appealed Rate is not unreasonably preferential, prejudicial, or discriminatory, as compared to the wholesale water treatment rates that the WTCPUA charges its other wholesale customers.

Mr. Stowe's initial mental impressions and opinions are subject to change as he continues his review. His mental impressions and opinions are based on his many years of experience as a rate consultant, his experience in contested case hearings applying the public interest criteria to wholesale water rates, his review of MUD 12's Petition appealing the rates, and all exhibits thereto, and discovery propounded and answered in this docket, all of which are available on the Commission interchange.

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(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party;

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

As noted above, Mr. Stowe has reviewed documents that have been filed and are available on the PUC Interchange. Additional documents, tangible things, reports, models, or data compilations that may be provided to, reviewed by, or prepared by or for Mr. Stowe in anticipation of his testimony will be provided with his workpapers, which will be filed with his prefiled testimony, as per P.U.C. Proc. R. 22.225.

(B) the expert's current resume and bibliography.

A copy of Mr. Stowe's resume is attached hereto as Attachment 1.

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SOAH DOCKET NO. 473-14-5144.WS
PUC DOCKET NO. 42866

PETITION OF TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 12 APPEALING CHANGE OF
WHOLESALE WATER RATES
IMPLEMENTED BY WEST
TRAVIS COUNTY PUBLIC
UTILITY AGENCY, AND THE
CITY OF BEE CAVE, TEXAS,
HAYS COUNTY, TEXAS AND
WEST TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 5

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S SECOND
SUPPLEMENTAL RESPONSES TO REQUESTS FOR DISCLOSURE

Pursuant to Administrative Law Judge's Order No. 1 and Rule 194 of the Texas Rules of
Civil Procedure, West Travis County Public Utility Agency ("WTCPUA") hereby serves its
supplemental responses to Requests for Disclosure.

Respectfully submitted,

LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.

816 Congress Ave., Suite 1900

Austin, Texas 78701

Telephone: (512) 322-5800

Facsimile (512) 472-0532


DAVID J. KLEIN

State Bar No. 24041257

GEORGIA N. CRUMP

State Bar No. 05185500

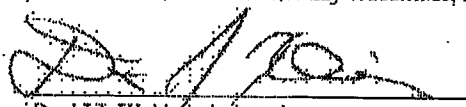
ATTORNEYS FOR WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY

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CERTIFICATE OF SERVICE

I hereby verify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 10th day December, 2014, to the parties of record.


David J. Klein

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SECOND SUPPLEMENTAL RESPONSES TO REQUESTS FOR DISCLOSURE

The WTCPUA hereby supplements its previous response to disclosure 6 (Texas Rule of Civil Procedure 194.2(c) and (f)), with the following:

6. Rule 194.2(f) for any testifying expert:

RESPONSE:

(1) the expert's name, address, and telephone number;

*Richard A. Baudino
J. Kennedy and Associates, Inc.
570 Colonial Park Drive, Suite 303
Roswell, Georgia 30075
Phone: (336) 351-4462*

(2) the subject matter on which the expert will testify;

Mr. Baudino will testify regarding the operations of the WTCPUA in rebuttal to the allegation that the WTCPUA operates as a monopoly. Mr. Baudino's testimony will address the changes to the WTCPUA's wholesale water treatment service rates that are charged to TCMUD 12, as well as how those rates relate to Public Utility Commission Substantive Rule 24.133. Mr. Baudino will rebut the testimony of TCMUD 12's witnesses, and will provide expert testimony that WTCPUA is not a monopoly, and that WTCPUA has not abused its alleged monopoly power. Mr. Baudino will also address the respective bargaining power of LCRA, WTCPUA, and TCMUD 12.

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

As will be provided in Mr. Baudino's prefiled testimony, it is currently Mr. Baudino's opinion that WTCPUA is not a monopoly and that WTCPUA's adoption of its wholesale water treatment service rates charged to TCMUD 12 in 2013 does not constitute an abuse of monopoly power. Mr. Baudino will also provide his current opinion that the appealed rate does not adversely impact the public interest or violate the public interest criteria under P.U.C. Subst. R. 24.133(a) that have been alleged by TCMUD 12 in its prefiled testimony. In particular, the Mr. Baudino currently believes that WTCPUA does not have disparate bargaining power over TCMUD 12, as such analysis applies to P.U.C. Subst. R. 24.133(a)(3)(A).

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Mr. Baudino's initial mental impressions and opinions are subject to change as he continues his review. His mental impressions and opinions are based on his many years of experience as a rate consultant and economist and in applying the public interest criteria to WTCPUA's wholesale water treatment service rates, his review of TCMUD 12's Petition appealing the rates, and all exhibits thereto, discovery propounded and answered in this docket, and the testimony of TCMUD 12's witnesses, all of which are available on the Commission Interchange.

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

As noted above, Mr. Baudino has reviewed documents that have been filed and are available on the PUC Interchange. Additional documents, tangible things, reports, models, or data compilations that may be provided to, reviewed by, or prepared by or for Mr. Baudino in anticipation of his testimony will be provided with his workpapers, which will be filed with his profiled testimony, as per P.U.C. Proc. R. 22.225.

(B) the expert's current resume and bibliography.

A copy of Mr. Baudino's resume is attached hereto as Attachment 1.

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SOAH DOCKET NO. 473-14-5144.WS
PUC DOCKET NO. 42866

**PETITION OF TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 12 APPEALING CHANGE OF
WHOLESALE WATER RATES
IMPLEMENTED BY WEST
TRAVIS COUNTY PUBLIC
UTILITY AGENCY, AND THE
CITY OF BEE CAVE, TEXAS,
HAYS COUNTY, TEXAS AND
WEST TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT
NO. 5**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S THIRD
SUPPLEMENTAL RESPONSES TO REQUESTS FOR DISCLOSURE**

Pursuant to Administrative Law Judge's Order No. 1 and Rule 194 of the Texas Rules of Civil Procedure, West Travis County Public Utility Agency ("*WTCPUA*") hereby serves its supplemental responses to Requests for Disclosure.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**

816 Congress Ave., Suite 1900

Austin, Texas 78701

Telephone: (S.12) 322-5800

Facsimile (512) 472-0532

DAVID J. KLEIN

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GEORGLA N. CRUMP

State Bar No. 05185500

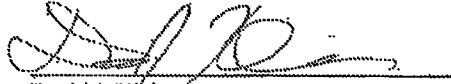
**ATTORNEYS FOR WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 23th day December, 2014, to the parties of record.


David J. Klein

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THIRD SUPPLEMENTAL RESPONSES TO REQUESTS FOR DISCLOSURE

The WTCPUA hereby supplements its previous responses to disclosures 3 and 6 (Texas Rule of Civil Procedure 194.2 (c) and (f)), with the following:

3. **Rule 194.2 (c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial).**

RESPONSE:

The WTCPUA further contends that Travis County Municipal Utility District No. 12 ("TCMUD 12") has not and will not be able to meet its burden of proof that the WTCPUA's wholesale water treatment rate (the "Protested Rate") charged to TCMUD 12 under the Wholesale Water Services Agreement, as amended, as adopted by the Board of Directors of WTCPUA on November 21, 2013, adversely impacts the public interest or violates any of the public interest criteria under and P.U.C. Subst. R. 24.133(a).

In particular, WTCPUA is not a monopoly under P.U.C. Subst. R. 24.133(a)(3), and the Protested Rate does not evidence an abuse of the alleged monopoly power in its provision of wholesale water treatment services to TCMUD 12. Specifically, WTCPUA did not have disparate bargaining power over TCMUD 12, as TCMUD 12 had alternate means, alternative costs, no environmental impacts, no regulatory issues, and no problems with obtaining wholesale water treatment services from an alternate source. Further, there was no change in the revenue requirement or rate methodology utilized by WTCPUA in the Protested Rate, as compared to the revenue requirement or rate methodology utilized by WTCPUA in the wholesale water treatment rates charged to TCMUD 12 that were previously adopted by the WTCPUA Board of Directors on November 15, 2012 (collectively, the "Disputed Issues").

The alleged factual bases stated in the testimony of TCMUD 12's witnesses, DiQuinzio, Joyce, and Zarnikau fail to provide evidence demonstrating the public interest criteria factors in P.U.C. Subst. R. 24.133(a)(3)(A) and (C). Additionally, the testimony of WTCPUA witnesses Rauschuber, Stowe, and Baudino state the bases that refute the allegations of TCMUD 12's witnesses regarding the Disputed Issues, as well as provide independent factual and technical bases demonstrating how TCMUD 12's testimony regarding the Disputed Issues is meritless.

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6. Rule 194.2(f) for any testifying expert:

RESPONSE:

- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;**

Summaries describing the general substance of WTCPUA's experts' mental impressions and opinions have been set out in the Direct Testimony of those experts. See, e.g., Direct Testimony of Mr. Richard Baudino at p. 4, line 16 through p. 5, line 12 and p. 31, lines 12-17; Direct Testimony of Mr. Jack Stowe at p. 6, line 23 through p. 7, line 8, p. 15, lines 29-31, p. 18, line 18 through p. 19, line 2.

- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:**

- (A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and**

The documents relied on by WTCPUA's expert witnesses were identified in the direct testimonies of those expert witnesses. Additionally, WTCPUA's expert witnesses reviewed the prefiled testimonies of the TCMUD 12 witnesses and discovery responses in this hearing.

- (B) the expert's current resume and bibliography.**

The current resumes and bibliographies of WTCPUA's expert witnesses are attached to their direct testimonies, at Baudino Attachment A and Stowe Attachments A and B.