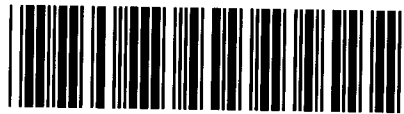


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BEFORE THE STATE OFFICE

OF

## ADMINISTRATIVE HEARINGS

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SOAH DOCKET NO. 473-14-5144.WS  
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WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S  
OBJECTIONS TO AND MOTION TO STRIKE THE PREFILED  
DIRECT TESTIMONIES OF JAY JOYCE, JAY ZARNIKAU, AND  
JOSEPH A. DIQUINZIO, JR.

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

West Travis County Public Utility Agency ("**WTCPUA**") files these Objections to, and Motion to Strike, certain parts of the prefiled direct testimonies filed on behalf of Travis County Municipal Utility District No. 12 ("**TCMUD 12**"), as set forth herein ("**Objections**"). Pursuant to SOAH Order No. 1, these objections and this motion are timely filed.

**I.     INTRODUCTION**

Testifying on behalf of TCMUD 12, witnesses Jay Joyce, Joseph A. DiQuinzio, Jr., and Dr. Jay Zarnikau attempt to address whether the WTCPUA's wholesale water treatment rate, as adopted by the Board of Directors of WTCPUA on November 21, 2013 (the "**Protested Rate**"), charged to TCMUD 12 under a certain "Wholesale Water Services Agreement" ("**Wholesale Agreement**"), as amended and assigned to WTCPUA, violates two aspects of the public interest criteria, specifically P.U.C. SUBST. R. 24.133(a)(3)(A) and (C) (collectively, the "**Contested Issues**"). These two subsections provide the following:

- (a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concludes at least one of the following public interest criteria have been violated:...
  - (3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:
    - (A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;...
    - (C) the seller changed the computation of the revenue requirement or rate from one methodology to another;...<sup>1</sup>

However, significant portions of TCMUD 12's prefiled testimonies stray far afield from the Contested Issues and should not be admitted into the record of this proceeding. WTCPUA objects to the following described portions of TCMUD 12's witnesses' prefiled direct testimonies, and requests that such objected-to portions be struck under P.U.C. PROC. R. 22.221(a) and Tex. R. Evid. 402, 701, 702, 703, and 802, as set forth herein.

## II. STANDARD OF REVIEW

The standard for evaluating objections and motions to strike evidence and exhibits in a contested case hearing before the Public Utility Commission ("**PUC**" or "**Commission**") is found in P.U.C. PROC. R. 22.221(a). This rule provides the following:

- (a) Rules of civil evidence apply. The Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

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<sup>1</sup> P.U.C. SUBST. R. 24.133(a)(3)(A) and (C) (2015).

Pertinent Texas Rules of Evidence provide the following:

**RULE 401. DEFINITION OF "RELEVANT EVIDENCE"**

"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.

**RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE**

All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.

**RULE 701. OPINION TESTIMONY BY LAY WITNESSES**

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

**RULE 702. TESTIMONY BY EXPERTS**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

**RULE 703. BASES OF OPINION TESTIMONY BY EXPERTS**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

**RULE 802. HEARSAY RULE.**

Hearsay is not admissible except as provided by statute or these rules or by other rules prescribed pursuant to statutory authority. Inadmissible hearsay admitted without objection shall not be denied probative value merely because it is hearsay.

### III. OBJECTIONS TO PREFILED DIRECT TESTIMONY OF JAY JOYCE

#### A. Cost of Service Issues Are Not Relevant.

Significant portions of Mr. Joyce's testimony and accompanying exhibits solely address his analysis of WTCPUA's cost of service and allocation issues, and are thus irrelevant to the Commission's inquiry in the public interest phase of this proceeding concerning the Protested Rate. Mr. Joyce claims that the purpose of his testimony is to provide evidence regarding whether WTCPUA's Protested Rate, as compared to the WTCPUA's prior rate approved on November 15, 2012 (the "*Prior Rate*"), constitutes a change in the computation of the revenue requirement or rate from one methodology to another.<sup>2</sup> However, his testimony and exhibits go well beyond the scope of proper and admissible testimony because they are solely concerned with an analysis of cost of service and allocation issues, and therefore constitute irrelevant evidence under Tex. R. Evid. 402.

Because the Protested Rate is a wholesale rate charged pursuant to a written contract, TCMUD 12 is first required under P.U.C. SUBST. R. 24.131(b), 24.132(a), and 24.133(a) to demonstrate that the Protested Rate somehow violates certain "public interest criteria," which are expressly enumerated in P.U.C. SUBST. R. 24.133(a). Then, in the event that TCMUD 12 is able to meet its burden of proof, a second phase commences regarding whether WTCPUA's wholesale water treatment rate is just and reasonable, through a review of its cost of service study, under P.U.C. SUBST. R. 24.134.

As clarified by the Administrative Law Judge ("*ALJ*") in Order No. 2, the first phase of this case concerns "whether WTCPUA's protested wholesale rates adversely affect the public interest."<sup>3</sup> Under P.U.C. SUBST. R. 24.133(b), "[t]he [C]ommission shall not determine whether

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<sup>2</sup> Prefiled Direct Testimony of Jay Joyce at 5 (Oct. 31, 2014).

<sup>3</sup> Order No. 2 Granting Motion for Clarification at 1 (July 1, 2014), citing 30 Tex. Admin. Code ("TAC") §§ 291.133 and 291.134.

the protested rate adversely affects the public interest based on an analysis of the seller's cost of service." Thus, the relevant inquiry in this first phase is whether the Protested Rate violates P.U.C. SUBST. R. 24.133(a). By specifically listing the public interest criteria in P.U.C. SUBST. R. 24.133(a), and following that list with the prohibition in P.U.C. SUBST. R. 24.133(b) that "the Commission shall not determine whether the protested rate adversely affects the public interest based on an *analysis of the seller's cost of service*," the Commission has determined that cost of service-based information is not relevant.<sup>4</sup>

As Your Honor ruled in a previous case, P.U.C. SUBST. R. 24.133(b)<sup>5</sup> "specifically, clearly, and unambiguously renders [the seller's] cost of service legally irrelevant to determining whether the public interest will be adversely affected by [the seller's] rates."<sup>6</sup> Through this rule, the Commission has placed cost of service evidence "completely off the table" and "all cost-of-service evidence is irrelevant in the public-interest hearing."<sup>7</sup>

In this docket, the distinction between public interest issues and cost of service issues has also been recognized in Orders Nos. 6 and 8 sustaining WTCPUA's objections to discovery inquiring into cost of service issues.<sup>8</sup> Specifically and most importantly, portions of Mr. Joyce's testimony address the very issues that TCMUD 12's Requests for Information ("*RFF*") Nos. 3-7 and 3-8 attempted to discover from WTCPUA.<sup>9</sup> WTCPUA objected to these discovery requests

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<sup>4</sup> P.U.C. SUBST. R. 24.133(b).

<sup>5</sup> Previously 30 TAC § 291.133(b).

<sup>6</sup> *Appeal of Navarro County Wholesale Ratepayers to Review the Wholesale Rate Increase Imposed by the City of Corsicana, Certificate of Convenience and Necessity No. 10776, in Navarro County*, SOAH Docket No. 582-10-1944; TCEQ Docket No. 2009-1925-UCR, Proposal for Decision ("PFD") at 16-17 (Aug. 17, 2011).

<sup>7</sup> *Id.* at 22.

<sup>8</sup> For example, WTCPUA's objections were sustained to TCMUD 12's Requests for Production Nos. 1-18, 3-3, 3-6(d), 3-7, 3-8, and 3-11, requesting production/information concerning sensitivity analyses of the variables and assumptions used to develop wholesale water rates, water loss percentages, market value of the WTCPUA's water system, and growth projections.

<sup>9</sup> See Prefiled Direct Testimony of Jay Joyce at 10, lines 26-29.

on the grounds that such RFIs sought cost of service information and were thus irrelevant to this matter. WTCPUA's relevancy objections were sustained in Order No. 8. These RFIs are as follows:

TCMUD 12 RFI 3-7: What is the PUA's assumed raw water loss percentage allocated to TCMUD No. 12 for water transported between the LCRA intake point and the water treatment plant? Please provide any documents supporting that raw water loss assumption. If the assumed percentage for raw water loss has changed or was different at certain times, please identify each assumed raw water loss percentage and the dates during which that assumed percentage was used.

TCMUD 12 RFI 3-8: What is the PUA's assumed treated water loss percentage allocated to TCMUD No. 12 for water transported between the water treatment plant and TCMUD No. 12's delivery point? Please provide any documents supporting that treated water loss assumption. If the assumed percentage for treated water loss has changed or was different at certain times, please identify each assumed treated water loss percentage and the dates during which that assumed percentage was used.

One alarm-bell signaling that testimony (or discovery) is addressing cost of service issues is when the testimony (or discovery request) addresses how the water service provider's costs and expenses are *allocated* to customers, or how rates are *designed*. Like TCMUD No. 12's discovery requests regarding the allocation of water losses, Mr. Joyce's testimony repeatedly addresses cost of service and cost allocation issues, as well as rate design issues, while erroneously stating he is not doing so.<sup>10</sup>

TCMUD 12 has admitted that the WTCPUA did not change the computation of the revenue requirement or rate methodology from the cash needs basis to the utility basis, or vice versa, thus TCMUD 12's testimony is understandably silent as to that issue.<sup>11</sup> However, having

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<sup>10</sup> In fact, a word search for "allocate" or "allocation" in Mr. Joyce's testimony alone results in over 20 instances of use. When his exhibits are also searched, another 13 instances are found.

<sup>11</sup> See WTCPUA's Motion for Partial Summary Decision, filed March 6, 2015, and attachments thereto.



no evidence to provide regarding any change in methodology of calculating the revenue requirement or rate, does not give TCMUD 12 license to insert an analysis of WTCPUA's cost of service or cost allocation into this first phase of the matter, in violation of P.U.C. SUBST. R. 24.133(b).

WTCPUA's revenue requirement is the amount of money it must receive through its rates to meet its needs. Cost allocation is the manner in which the revenue requirements are allocated to, and collected from, the WTCPUA's customers. It is uncontested that there has not been a change in the computation of the revenue requirement "from one methodology to another";<sup>12</sup> Mr. Joyce's attempts to frame his cost of service analysis as a revenue requirement analysis are unavailing.

Significant portions of Mr. Joyce's testimony and accompanying exhibits, which are identified in the following passages, address Mr. Joyce's analysis of the WTCPUA's cost of service and cost allocation, and should be struck as irrelevant evidence under Tex. R. Evid. 402:

- Page 7, lines 14-16 (beginning with "(e.g.," and ending with "amount)."
- Page 8, lines 13-17 in their entirety.
- Page 8, lines 20-24 in their entirety.
- Page 9, line 1 through page 10, line 9 in their entirety.
- Page 10, line 12 (the word "No.").
- Page 10, lines 13-18 (beginning with "and" and ending with "contract.").
- Page 10, lines 22-29 in their entirety.
- Page 11, lines 14-19 in their entirety.
- Page 12, line 3 through Page 18, line 18 in their entirety.
- Page 18, line 27 through page 19, line 13 in their entirety.
- Page 19, lines 16-18 in their entirety.
- Page 20, lines 3-4 in their entirety.
- Page 20, lines 11-16 (beginning with "No." and ending with "\$2.77)."

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<sup>12</sup> P.U.C. SUBST. R. 24.133(a)(3)(C).

- Page 20, lines 24-30 (beginning with “The FY 14” and ending with “changed”).
- Page 21, lines 1-24 in their entirety.
- Page 22, lines 5-12 in their entirety.
- Page 23, lines 20-25 (beginning with “to discuss” and ending with “entirely.”).
- Page 24, line 16 through Page 25, line 3 (beginning with “pertaining” and ending with “JJJ-17.”).
- Exhibit JJJ-3 in its entirety.
- Exhibit JJJ-4 in its entirety.
- Exhibit JJJ-5 in its entirety.
- Exhibit JJJ-6 in its entirety.
- Exhibit JJJ-7 in its entirety.
- Exhibit JJJ-8 in its entirety.
- Exhibit JJJ-9 in its entirety.
- Exhibit JJJ-10 in its entirety.
- Exhibit JJJ-11:
  - Pages 1-13 in their entirety;
  - Pages 17-32 in their entirety;
  - Page 35, the text of the email;
  - Page 39, the second and third sentences of the first paragraph in the text of the email, beginning with “We don’t see” through “monthly charge.”;
  - Page 41, sections “1)” and “3)”;
  - Page 43, the text of the email;
  - Pages 44-46 in their entirety;
  - Page 47, the text of Sections 1 and 3 of the email from Joe DiQuinzio to Don Rauschuber;
  - Page 48, all of the text of the email, except for the last question “What is the structure for resuming the wholesale rate discussions?”;
  - Pages 51-73 in their entirety;
  - Pages 80-81 in their entirety.

- Exhibit JJJ-13:
  - Page 1, beginning with “At today’s Board meeting” and ending at the bottom of the page;
  - Pages 3-56.
- Exhibit JJJ-16 in its entirety.

**B. Testimony Not Addressing Protested Rates is Irrelevant.**

WTCPUA objects to portions of Mr. Joyce’s testimony and accompanying exhibits, and moves to strike such testimony and exhibits, as irrelevant under Tex. R. Evid. 402 because neither the testimony nor the exhibits pertain to the Protested Rate. Such portions are listed below:

- Page 22, lines 5-9: On this page, Mr. Joyce provides a narrative and a table regarding the future minimum monthly bills of the WTCPUA. The WTCPUA objects to the testimony and all data in the table, except for the FY 2013 line item. The only comparison contemplated in P.U.C. SUBST. R. 24.128 - .133 is between the rate *currently being charged*, as compared to the rate *previously charged*, not a comparison of speculative future rates. In addition, the focus of a public interest proceeding is on the rates actually set by the wholesale provider, not rates that the purchaser postulates may be in effect in the future. Thus, evidence concerning WTCPUA’s hypothetical future rates is not relevant under P.U.C. SUBST. R. 24.133(a) and should be struck. WTCPUA had previously objected to TCMUD 12’s Request for Production 1-17 (requesting that WTCPUA “[p]rovide all documents showing the projected PUA retail water rates beyond 2014”) in part on the grounds that a discovery request concerning future rates is irrelevant to this hearing, and this objection was sustained.<sup>13</sup>

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<sup>13</sup> Order No. 6 (Sept. 30, 2014).

- Exhibit JJJ-11, page 41, Sections “1)” and “3)” in the email text: These sections are not relevant to the analysis of the Protested Rate under P.U.C. SUBST. R. 24.133(a). The status of WTCPUA’s legislation and bond ratings are not related to the WTCPUA’s revenue requirement or rate methodologies for the Protested Rate. Accordingly, such portions of Exhibit JJJ-11 should be struck. In RFI 3-1, TCMUD 12 had asked WTCPUA to “[i]dentify any and all entities that provided assistance to the PUA in obtaining bond financing (for example, but not limited to, Assured Guaranty Municipal) or bond ratings services.” WTCPUA objected to this discovery request on the grounds that third parties assisting WTCPUA with bond financing had no bearing on, or relation to, whether WTCPUA has abused any alleged monopoly power in its provision of water treatment services to TCMUD 12 and was not relevant to this proceeding. WTCPUA’s objection was sustained.<sup>14</sup>

**C. Inadmissible Hearsay.**

Rule 703 of the Texas Rules of Evidence allows an expert witness to base an opinion or inference on hearsay, also known as “expert hearsay.”<sup>15</sup> However, the hearsay that may form the basis for an opinion or inference must be “of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject.”<sup>16</sup> Mr. Joyce is presented by TCMUD 12 as an expert in “utility pricing and rate matters; cost of service and revenue requirement issues; cash working capital studies; customer and weather normalization; and other gas, electric, water, and wastewater related matters.”<sup>17</sup> Therefore, any hearsay relied upon by

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<sup>14</sup> Order No. 8 (Oct. 16, 2014).

<sup>15</sup> Tex. R. Evid. 703.

<sup>16</sup> *Ibid.*

<sup>17</sup> Prefiled Direct Testimony of Jay Joyce at 4, lines 6-9.

Mr. Joyce must be shown to be of a type reasonably relied upon by experts in his particular field. The emails objected to herein completely fail that test:

- Exhibit JJJ-11, pages 39 and 41: The emails from J. Robert Long and Roger Durden to nheddin@wrmlp.com are hearsay under Tex. R. Evid. 802 and inadmissible under Rule 703. Mr. Joyce has provided no foundation for the admissibility of these email communications. Mr. Joyce provides no description of Mr. Long's or Mr. Durden's qualifications or education, no explanation for how communications from non-parties are either relevant or germane, no assertion that it was reasonable for him to rely upon email communications from third parties, and no assertion that rate experts generally and reasonably rely upon email communications from non-parties whose qualifications and education are never disclosed. These email communications fail the test of Tex. R. Evid. 703, and therefore must be struck under Tex. R. Evid. 802 as inadmissible hearsay.

#### **IV. OBJECTIONS TO PREFILED DIRECT TESTIMONY OF JAY ZARNIKAU**

##### **A. Unqualified Opinion Testimony.**

Dr. Zarnikau is offered by TCMUD 12 as an economist to address whether WTCPUA operates as a monopoly, not as a rate consultant or ratemaking expert, nor as a water system engineer.<sup>18</sup> TCMUD 12 witness DiQuinzio's description of Dr. Zarnikau's testimony also limits his expertise: "Dr. Zarnikau is an Economist and testifies regarding monopoly, market power, and the exercise of market power, also referred to as abuse of monopoly power."<sup>19</sup> Under Tex. R. Evid. 702, Dr. Zarnikau's opinions must be based on his knowledge, skill, experience, training, or education. On several occasions, however, Dr. Zarnikau offers opinions that are

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<sup>18</sup> Prefiled Direct Testimony of Dr. Jay Zarnikau at 5, lines 4-10 (Oct. 31, 2014).

<sup>19</sup> Prefiled Direct Testimony of Joseph A. DiQuinzio, Jr. at 3, lines 19-20 (Oct. 31, 2014).

outside his expertise. No foundation has been provided for such unqualified opinions, and they must be struck:

- Page 10, lines 3-4: Dr. Zarnikau makes a conclusory statement regarding the time and investment needed to construct a wholesale water service supply. Dr. Zarnikau has not been shown to be an engineer or to otherwise have any training or expertise in the construction or financing of water systems, therefore this testimony is unqualified opinion testimony and should be struck.
- Page 17, lines 3 through 21: Dr. Zarnikau has not been offered as an expert witness on rate methodologies, therefore he is unqualified to render an opinion as to whether the WTCPUA changed the computation of the revenue requirement or rate from one methodology to another under P.U.C. SUBST. R. 24.133(a)(3)(C). Dr. Zarnikau's testimony is that he arrived at his opinion by reviewing correspondence from WTCPUA's rate consultant and Mr. Joyce's testimony regarding his cost of service analysis.<sup>20</sup> Dr. Zarnikau has not been shown to be qualified to render an opinion as to any change in methodology.

**B. Irrelevant Testimony.**

- Page 16, line 14 through page 17, line 2: This portion of Dr. Zarnikau's testimony is irrelevant to the issues before the Commission. In this part of his testimony, Dr. Zarnikau discusses the administrative fee set by the Lower Colorado River Authority ("*LCRA*") on two retail water utilities that failed to agree to the assignment of the LCRA contracts to the WTCPUA. Dr. Zarnikau attempts to thereby show that the WTCPUA controls the prices in the market. However, the LCRA no longer provides wholesale water services in the West Travis County area, having sold its system to

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<sup>20</sup> Prefiled Direct Testimony of Dr. Jay Zarnikau at 17, lines 6-14.

the WTCPUA. The decision by the two named entities to not agree to the assignment of their contracts to the WTCPUA was theirs to make; Mr. Zarnikau provides no evidence that the WTCPUA requires the LCRA to impose the administrative fee, and does not otherwise show how a fee charged by the LCRA to other entities is relevant to the rate charged by WTCPUA to TCMUD 12. As such, the testimony is irrelevant under Tex. R. Evid. 402 and should be struck.

**C. Inadmissible Hearsay.**

Rule 703 of the Texas Rules of Evidence allows an expert witness to base an opinion or inference on hearsay, also known as “expert hearsay.”<sup>21</sup> However, the hearsay that may form the basis for an opinion or inference must be “of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject.”<sup>22</sup> Dr. Zarnikau is presented by TCMUD 12 as an expert in economics. Therefore, any hearsay relied upon by Dr. Zarnikau must be shown to be of a type reasonably relied upon by experts in his particular field. The emails objected to herein completely fail that test:

- JZ Exhibit 5: This exhibit consists of a number of emails between Nelisa Heddin (rate consultant for WTCPUA), Roger Durden, Greg Perrin, and Matthew Kutac. These emails constitute hearsay under Tex. R. Evid. 802 and are inadmissible under Tex. R. Evid. 703. Mr. Zarnikau has provided no foundation for the admissibility of these email communications. Mr. Zarnikau provides no description of these individual’s qualifications or education, no explanation for how communications from non-parties are either relevant or germane, no assertion that it was reasonable for him to rely upon email communications from third parties, and no assertion that

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<sup>21</sup> Tex. R. Evid. 703.

<sup>22</sup> *Ibid.*

economists generally and reasonably rely upon email communications from non-parties whose qualifications and education are never disclosed. These email communications fail the test of Tex. R. Evid. 703, and therefore must be struck under Tex. R. Evid. 802 as inadmissible hearsay.

**V. OBJECTIONS TO PREFILED DIRECT TESTIMONY OF  
JOSEPH A. DIQUINZIO, JR.**

**A. Inadmissible Lay Opinion; Irrelevant.**

Mr. DiQuinzio offers an inadmissible lay opinion regarding the interpretation and legal impact of an agreement between WTCPUA and TCMUD 12, in violation of Tex. R. Evid. 701. Mr. DiQuinzio is not an attorney, therefore his testimony regarding the legal implications of specific language in a contract in the form of his opinion or inference is not admissible.

- Page 11, line 11: On page 10 of his direct testimony, lines 19-23, Mr. DiQuinzio describes a “critical provision” that induced TCMUD 12 to enter into the Agreement Regarding Transfer, pertaining to the Connection Fee under the Water Services Agreement. He then offers a lay opinion, on page 11 at line 11, that “the PUA did not have authority under the Transfer Agreement to change that Fee.” This statement is in the nature of a legal opinion regarding the parties’ authorities under the Transfer Agreement, and Mr. DiQuinzio is not qualified to render such opinion under Tex. R. Evid. 701. His lay opinion goes beyond his perception, and is not helpful in a determination of any fact in issue.

There is no fact issue in this proceeding regarding whether parties complied with the Transfer Agreement in 2012 when the Connection Fee was changed. The Protested Rate was set in 2013 and effective in 2014. The 2012 rate change referenced by Mr. DiQuinzio is not the subject of this docket, as he admits in his testimony that TCMUD 12 did not protest any 2012 rate changes. In addition, the



Commission does not have jurisdiction to determine whether parties have complied with contractual provisions. Mr. DiQuinzio's testimony is thus also irrelevant to the issues to be decided in this proceeding and should be struck under Tex. R. Evid. 402.

- Page 14, line 31 beginning with "The cost" through page 15, line 2: In this portion of his testimony, Mr. DiQuinzio offers an unqualified lay opinion regarding the cost of building a water infrastructure for The Highlands. Mr. DiQuinzio is not an engineer or a contractor, and has not shown to be qualified to render an expert opinion as to the construction costs of a water system. No foundation for his opinion has been provided, and he has not provided any information that supports the claimed "prohibitive" costs. As such, his opinion is an unqualified lay opinion, and should be struck.

**B. Irrelevant.**

**1. Connection Fee.**

The Connection Fee charged by WTCPUA to TCMUD 12 (also known as the "Water Impact Fee"), is a fee separate from the fees charged for diversion, transportation, and treatment of water by the WTCPUA. As discussed above, this fee is not the subject of this proceeding, and the Commission thus has no jurisdiction over the fee. The following testimony and exhibit regarding the Connection Fee are not relevant to the issue to be decided in this public interest phase and should be struck under Tex. R. Evid. 402:

- Page 7, line 14 through page 8, line 7.
- Page 10, lines 26-30.
- Page 11, lines 1-11.
- Exhibit JAD-11.

## 2. Raw Water Supply.

The raw water that TCMUD 12 obtains under a separate raw water contract with LCRA is unrelated to the Wholesale Water Treatment Services that WTCPUA provides TCMUD 12 under the Wholesale Agreement, as amended and assigned. The following testimony regarding the terms under which TCMUD 12 secures a raw water supply from LCRA is not relevant to the public interest phase of this matter and should be struck under Tex. R. Evid. 402:

- Page 4, line 24 through page 5, line 14, after the phrase "approved by LCRA."

## VI. CONCLUSION

For the foregoing reasons, WTCPUA respectfully requests that its Objections to the Prefiled Direct Testimonies and exhibits of Jay Joyce, Jay Zarnikau, and Joseph DiQuinzio be sustained and that its motion to strike such testimony and exhibits be granted. WTCPUA requests that it be granted such other relief to which it has shown itself entitled.

Respectfully submitted,

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PUBLIC UTILITY AGENCY

### 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 17<sup>th</sup> day of March, 2015, to the parties of record.

  
GEORGIA N. CRUMP