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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,
TEXAS AND WEST TRAVIS
COUNTY MUNICIPAL UTILITY
DISTRICT NO. 5

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	RESPONSE TO OBJECTIONS TO DIRECT TESTIMONY OF JACK STOWE	3
A.	Response to 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).....	4
B.	Response to Page 24, Lines 8-12; and Page 25, Lines 8-14. Objection: Improper opinion testimony (TRE 701, 702).	5
C.	Response to Page 20, Line 12 to Line 22; and Page 21, Line 1 to Line 17. Objection: Relevance (TRE 401, 402).....	5
III.	RESPONSE TO OBJECTIONS TO DIRECT TESTIMONY OF RICHARD BAUDINO	6
A.	Response to Relevance Objections to Testimony Regarding Lower Colorado River Authority. (Objections at IV.A. 1 through 6.).....	6
B.	Response to Objections as to Speculation. (Objections at IV.B. 1 through 6.)	8
C.	Response to Page 16, Lines 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).....	8

D.	Response to Page 18, Line 1 – Page 19, Line 3. Objection: Relevance (TRE 401-402).....	9
E.	Response to Page 30, Line 11 (the word “speculated”); Line 14 (the words “is irrelevant”). Objection: Form of Question and Unqualified Legal Opinion (TRE 702).	10
IV.	RESPONSES TO OBJECTIONS TO PREFILED DIRECT TESTIMONY OF DONALD RAUSCHUBER.....	10
A.	Response to Section III.A. of TCMUD 12’s Objections: Relevance.	11
B.	Response to Section III.B. of TCMUD 12’s Objections: Best Evidence and Hearsay.	12
C.	Response to Section III.C. of TCMUD 12’s Objections: Opinions.....	14
D.	Response to Section III.D. of TCMUD 12’s Objections: Relevance.	16
E.	Response to Section III.E. of TCMUD 12’s Objections: Hearsay.	18
F.	Response to Section III.F. of TCMUD 12’s Objections: Relevance.	19
V.	CONCLUSION.....	19

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

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

West Travis County Public Utility Agency ("**WTCPUA**"), files these Responses to the Objections and Motion to Strike Portions of WTCPUA's Direct Testimony filed by Travis County Municipal Utility District No. 12 ("**TCMUD 12**"), as set forth herein ("**Responses**"). Pursuant to SOAH Order No. 12, these Responses are timely filed.

I. INTRODUCTION

The WTCPUA filed Direct Testimony on December 19, 2014. TCMUD 12 filed its Objections and Motion to Strike Portions of WTCPUA's Direct Testimony ("**Objections**") on March 17, 2015. Under Order No. 12, these Responses are timely filed.

**II. RESPONSE TO OBJECTIONS TO DIRECT TESTIMONY
 OF JACK STOWE**

TCMUD 12's Objections to portions of WTCPUA expert witness Jack Stowe's Direct Testimony should be overruled, as provided below.

A. Response to 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).

TCMUD 12 claims that this portion of Mr. Stowe's testimony is his interpretation of certain emails attached to the testimony of TCMUD 12 witness Zarnikau. Mr. Stowe's testimony is in direct response to Dr. Zarnikau's testimony at page 17 where he interprets certain emails from Ms. Nelisa Heddin contained within JZ Exhibit 5.

WTCPUA objected to the admission of JZ Exhibit 5 on the grounds that the emails contained therein constitute hearsay (TRE 802) and have not been shown by witness Zarnikau to be the type of data commonly relied upon by experts such as himself.¹ On page 17, line 12-14, Dr. Zarnikau referred to these emails and provided his interpretation of same: "... it is apparent that the rate consultant to the Suppliers views the November 2013 Rate Order which established wholesale rates for 2014 to represent a change in rate methodology." If Mr. Zarkinau's "interpretation" of these emails, as an economist, is admitted into the record, then Mr. Stowe, as an expert water rate consultant, knowledgeable of revenue requirement, rate, and cost of service methodologies, is most certainly qualified to read the emails and respond to Dr. Zarnikau's opinion as to what the emails mean.

It is ironic that having failed to establish a foundation for the admission of these emails in Dr. Zarnikau's testimony, TCMUD 12 would now have the Administrative Law Judge ("ALJ") prohibit Mr. Stowe from addressing and rebutting the opinion expressed by Dr. Zarnikau about the content of the emails. It is Dr. Zarnikau, not Mr. Stowe, who uses the emails in an improper manner. TCMUD 12's objections to this portion of Mr. Stowe's testimony should be overruled.

¹ See, WTCPUA's Objections to and Motion to Strike the Prefiled Direct Testimonies of Jay Joyce, Jay Zarnikau, and Joseph A. DiQuinzio, Jr. ("WTCPUA Objections") at 14-15 (Mar. 17, 2015).

B. Response to Page 24, Lines 8-12; and Page 25, Lines 8-14. Objection: Improper opinion testimony (TRE 701, 702).

TCMUD 12 claims that Mr. Stowe's testimony at page 24, lines 8-12, amounts to a legal conclusion drawn by Mr. Stowe. Although TCMUD 12 is correct that Mr. Stowe is not an attorney, the presumption that only an attorney can express an opinion about the import of an agency regulation is incorrect. Mr. Stowe has over 40 years of experience in all facets of utility rates and utility ratemaking, including participation in the rulemaking that resulted in the rule he discusses in his testimony.² The portions of Mr. Stowe's testimony to which no objections have been lodged explain the genesis of this rule and the precedent of how it has been applied. His experience in litigation involving the wholesale rate regulations has positioned him to be uniquely qualified to assist the trier of fact in this proceeding understand the rules at issue.

TCMUD 12 also objects to page 25, lines 8-14 of Mr. Stowe's testimony, asserting that he is providing a legal opinion regarding the relevance of Mr. Joyce's testimony. This allegation is incorrect; Mr. Stowe does not speak to the relevance of Mr. Joyce's testimony. To the contrary, he takes issue with Mr. Joyce's broad misinterpretation of the public interest rule, which is a statement he is clearly qualified to make as an expert rate consultant.

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

TCMUD 12 alleges that the hypothetical example offered by Mr. Stowe to illustrate an example of abusive behavior in the context of a wholesale contract, his description of an actual occurrence of abusive behavior, and his experience in the seminal litigation of a wholesale rate case, are irrelevant to the issues to be determined in this docket. TCMUD 12's efforts to restrict the availability of useful information should be overruled.

² See, Direct Testimony of Jack Stowe at 5-6 and Attachments A and B.

Determining whether a supplier abused its power in changing its revenue requirement methodology is a central issue in this matter, and testimony by an expert witness concerning this issue through hypotheticals or prior court decisions is relevant evidence. There have not been many cases that have proceeded to either contested case hearings or litigation in state courts involving the Commission's (and its predecessors') application of the public interest rule to wholesale rate disputes. The notion that a discussion of past precedent is irrelevant and will not assist the ALJ or the Commission in determining how such rule should be applied to this case is antithetical to the Commission's practice, which has been to review precedent and provide certainty to the public regarding how its rules will be applied. Mr. Stowe's testimony both illuminates the precedent and provides real-life examples and possible scenarios for the application of the Commission's rule.

WTCPUA anticipates that at the hearing on the merits, Mr. Stowe may be asked some hypothetical questions, which is a common practice when expert witnesses are being cross-examined. If the hypothetical offered in direct testimony is deemed to be irrelevant, then no hypothetical questions of Mr. Stowe should be allowed when he is cross-examined on his direct testimony. TCMUD 12's objections to this portion of Mr. Stowe's testimony should be overruled.

III. RESPONSE TO OBJECTIONS TO DIRECT TESTIMONY OF RICHARD BAUDINO

TCMUD 12's Objections to portions of WTCPUA expert witness Richard Baudino's Prefiled Testimony should be overruled, as provided below.

A. Response to Relevance Objections to Testimony Regarding Lower Colorado River Authority. (Objections at IV.A. 1 through 6.)

TCMUD 12 has objected to the relevance of all of Mr. Baudino's testimony regarding the Lower Colorado River Authority ("LCRA"), LCRA's bargaining power and ability to control

prices, its relationship with TCMUD 12, and the decision of TCMUD 12 to enter into the initial Wholesale Water Services agreement with LCRA (referred to as the “TCMUD 12 Agreement” in Mr. Baudino’s testimony). However, in stark contrast to the arguments presented in TCMUD 12’s Objections, the fact remains that the WTCPUA stepped into the shoes of LCRA when the WTCPUA purchased the water systems and treatment facilities from LCRA, as well as hundreds of LCRA’s agreements with third parties, including the TCMUD 12 Agreement. Therefore, testimony regarding the TCMUD 12 Agreement is certainly relevant under TRE 401 and 402.

The WTCPUA did not strike a brand new agreement with TCMUD 12 when it purchased the systems from LCRA, but rather inherited the TCMUD 12 Agreement that LCRA and TCMUD 12 had negotiated. As explained by Mr. Baudino, the fact that WTCPUA stepped into LCRA’s shoes and assumed LCRA’s obligations in the TCMUD 12 Agreement means that the bargaining powers of the parties to that contract when it was originally negotiated are vitally important to the Commission’s application of the public interest criteria to the facts at hand. TCMUD 12 witness DiQuinzio himself focused his argument regarding the alternative choices available to the TCMUD 12 at the time TCMUD 12 decided to contract with the LCRA.³ Thus, the relative bargaining positions of LCRA and TCMUD 12 are the market positions that were brought to bear in 2009 and that resulted in the TCMUD 12 Agreement that now forms the basis for TCMUD 12’s appeal of the rates set under that contract. It is improper for TCMUD 12 to describe those activities and then to seek to prevent the trier of fact from examining them in the context of TCMUD 12’s claims of abuse by WTCPUA under the contract that arose from those activities.

TCMUD 12 takes umbrage with the WTCPUA’s use of the word “amendment” when referring to the subsequent assignment of the TCMUD 12 Agreement from the LCRA to the

³ Direct Testimony of Joseph A. DiQuinzio, Jr. at 5-6.

WTCPUA, (“2012 Amendment”) which can only mean that TCMUD 12 believes the TCMUD 12 Agreement continues in force without revisions or amendments. If the TCMUD 12 Agreement has not been amended, then certainly an examination of the original contracting parties’ relative bargaining powers is relevant and should be undertaken.

B. Response to Objections as to Speculation. (Objections at IV.B. 1 through 6.)

TCMUD 12 witness DiQuinzio testified that the LCRA and TCMUD 12 negotiated for an extended period at the time of the 2009 agreement.⁴ However, as noted in Mr. DiQuinzio’s response to WTCPUA’s Request for Information No. 2-10, he did not personally participate in the negotiations between LCRA and TCMUD 12. In other words, TCMUD 12 has certainly opened the door for other parties to testify as to the contract.

Additionally, the objected portion of Mr. Baudino’s testimony is based upon facts reasonably relied upon an expert in formulating an opinion regarding a fact at issue. Mr. Baudino’s opinion that the TCMUD 12 Agreement (the agreement establishing that LCRA (now WTCPUA) would provide “Wholesale Water Services” to TCMUD 12) was freely negotiated and an arms-length transaction are issues relevant to the determination of whether a monopoly existed and whether there is disparate bargaining power between WTCPUA and TCMUD 12. Mr. Baudino’s opinions on the TCMUD 12 Agreement are based upon his review of the terms of the TCMUD 12 Agreement. TCMUD 12’s objections should be overruled.

C. Response to Page 16, Lines 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).

The objected portions of Mr. Baudino’s prefiled testimony are relevant to this matter under TRE 401 and 402, and do not constitute speculation testimony under TRE 602. As to the

⁴ Direct Testimony of Joseph A. DiQuinzio, Jr. at 6.

relevance objection, WTCPUA incorporates here its response in Subsection III.A. above regarding the relevance of LCRA and the TCMUD 12 Agreement to this proceeding. Mr. Baudino's testimony addresses an issue central to this public interest test hearing – whether TCMUD 12 had alternatives for securing Wholesale Water Services from entities other than LCRA and WTCPUA.

As to the speculation objection, the opinions expressed and conclusions reached by Mr. Baudino in his testimony are based upon the discovery responses of TCMUD 12 and Mr. DiQuinzio's testimony. Relying upon these sources of information to arrive at opinions does not constitute speculation. Rather, Mr. Baudino is entitled to rely upon the information and facts provided by the petitioner/appellant, which is the very purpose of the discovery process. These portions of Mr. Baudino's testimony demonstrate, not through speculation but based upon information provided by TCMUD 12, that TCMUD 12 has not met its burden of proof to establish that TCMUD 12 did not have alternatives to LCRA or WTCPUA. Therefore, TCMUD 12's objections should be overruled.

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

The testimony referenced above is admissible, relevant testimony under TRE 401 and 402. Again, WTCPUA incorporates here its response in Subsection III.A. above regarding the relevance of LCRA and the TCMUD 12 Agreement to this proceeding. The decision of TCMUD 12 to enter into the TCMUD 12 Agreement, which set forth the terms and conditions under which Wholesale Water Services would be provided, is relevant to whether WTCPUA, as the successor to LCRA, is a monopoly. TCMUD 12's objections should be overruled.

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

TCMUD 12 objects to the use of the word “speculation” in the question posed to Mr. Baudino. However, Dr. Zarnikau was clearly asked to speculate in his testimony, and he complied:

Q. What would have happened if TCMUD 12 had simply refused
...?

A. It appears likely that TCMUD 12 would then still be paying...⁵

Clearly, the characterization of this Q&A as “speculation” is entirely accurate. As expert witnesses, both Mr. Baudino and Dr. Zarnikau are expected to apply their expertise to the facts and to hypothetical scenarios in order to assist the trier of fact. TCMUD 12 should not be heard to complain about activities that it, itself, has engaged in.

TCMUD 12 also objects to an alleged legal opinion offered by Mr. Baudino when he uses the word “irrelevant” in his testimony. The legal community does not have a monopoly on the use of the word “relevant,” and Mr. Baudino’s statement is not offered as a legal opinion. Speaking as an economist, Mr. Baudino is certainly qualified, and able, to opine on monopoly power and what an economist would consider relevant considerations when examining monopoly power. TCMUD 12’s objection is overreaching and should be overruled.

IV. RESPONSES TO OBJECTIONS TO PREFILED DIRECT TESTIMONY OF DONALD RAUSCHUBER

TCMUD 12’s Objections to portions of WTCPUA witness Don Rauschuber, P.E.’s Prefiled Testimony should be overruled.

⁵ Direct Testimony of Jay Zarnikau at 16, lines 10-14.

A. Response to Section III.A. of TCMUD 12's Objections: Relevance.

Mr. Rauschuber's testimony cited in Section III.A of TCMUD 12's Objections is relevant to this matter under TRE 401 and 402, and TCMUD 12's Objections should be overruled. These portions of Mr. Rauschuber's testimony provide basic facts about the WTCPUA that tend to make the existence of facts that are of consequence to the determination of the action more or less probable than they would be without the evidence, as is required under TRE 401 and as discussed in more detail below.

- Page 10, Line 1 – Page 11, Line 6. This portion of Mr. Rauschuber's prefiled testimony is relevant evidence because it explains the identity of WTCPUA, the Wholesale Water Services provider whose rates are challenged in this hearing; the number of employees and consultants of WTCPUA, thereby showing Mr. Rauschuber's level of involvement in the day-to-day operations of WTCPUA; how WTCPUA became obligated to operate and maintain the water system used to provide Wholesale Water Services, as defined in the TCMUD Agreement, ("Wholesale Water Services") to TCMUD 12; and how the WTCPUA undertook LCRA's contractual responsibilities, which would include providing Wholesale Water Services to TCMUD 12. This testimony is also relevant in this matter because it explains that TCMUD 12 initially entered into a contract with LCRA, not WTCPUA.
- Page 11, Line 21 – Page 12, Line 5. This testimony regarding the number of connections and service area of the WTCPUA is relevant evidence explaining the identity of WTCPUA, the Wholesale Water Services provider whose rates are challenged in this hearing. The quantity of WTCPUA customers is also relevant as to whether the WTCPUA could be considered a monopoly in west Travis County.

B. Response to Section III.B. of TCMUD 12's Objections: Best Evidence and Hearsay.

TCMUD 12's Objections to all the portions of Mr. Rauschuber's testimony cited in Section III.B. should be overruled because such testimony is relevant, non-hearsay evidence. Additionally, TCMUD 12's objections regarding best evidence are ambiguous and fail to cite a specific rule of evidence. Mr. Rauschuber is the General Manager of the WTCPUA, and as noted in other portions of his testimony, he is responsible for "all WTCPUA administration and operation activities, including but not limited to, day-to-day supervision and management of the WTCPUA operations and its staff, consultants, and contractors...overseeing the preparation of contracts, agreements and reports..." To this end, the portions of his testimony cited in this section are not attempting to provide a summary or even offered for the truth of the matter asserted. Rather, his testimony provides his perceptions of the TCMUD 12 Agreement and 2012 Amendment and how he has implemented the terms of this contract, as amended, on behalf of his employer, WTCPUA. He also explains his experiences as General Manager, which includes his attendance at public meetings.

- Page 14, Lines 1-5. This testimony explains Mr. Rauschuber's understanding, as General Manager and in managing the WTCPUA water system, of the services WTCPUA must provide to TCMUD 12.
- Page 14, Lines 16-22. This testimony explains Mr. Rauschuber's understanding, as General Manager and in managing the WTCPUA water system, of the extent of WTCPUA's obligation to serve TCMUD 12.
- Page 15, Lines 1-5. This testimony explains Mr. Rauschuber's understanding, as General Manager and in managing the WTCPUA water system, of how WTCPUA invoices TCMUD 12.

- Page 15, Lines 13-17. This testimony explains Mr. Rauschuber's understanding, as General Manager, in managing the WTCPUA water system, in overseeing financial activities, and in assessing, coordinating, and implementing WTCPUA rates and fees, of how WTCPUA develops rates to charge TCMUD 12 for services provided.
- Page 17, Lines 5-7 (beginning with "The 2012 Amendment" and ending with "March 19, 2012"). This testimony explains Mr. Rauschuber's understanding, as General Manager, in managing the WTCPUA water system, and in overseeing the preparation of contracts, agreements, and reports, of how WTCPUA amended the contract initially entered into between LCRA and TCMUD 12.
- Page 17, Lines 9-15; Page 17, a portion of Line 19; Page 17, Lines 20-23; Page 18, Lines 2-8; and Page 18, Lines 9-10. These portions of Mr. Rauschuber's testimony explain his understanding, as General Manager, in managing the WTCPUA water system, and in overseeing the preparation of contracts, agreements, and reports, of how WTCPUA amended the TCMUD 12 Agreement. They also explain his perception and understanding of the WTCPUA Board of Director's actions on May 3, 2012.
- Page 18, Lines 15-16. This question is not summarizing the TCMUD 12 Agreement or 2012 Amendment. Rather, it is identifying the contracts to consider in providing an answer.
- Page 26, Line 12. This question is not summarizing the TCMUD 12 Agreement or 2012 Amendment. Rather, it is identifying the contracts to consider in providing an answer.
- Page 32, Lines 14-15. This portion of Mr. Rauschuber's testimony explains his understanding, as General Manager, in managing the WTCPUA water system, in

overseeing financial activities, and in overseeing the preparation of contracts, agreements, and reports, of how WTCPUA charged TCMUD 12 for services provided.

C. Response to Section III.C. of TCMUD 12's Objections: Opinions.

TCMUD 12's objections to Mr. Rauschuber's testimony in Section III.C. should be overruled because such testimony is admissible under TRE 701 and is not offered as expert testimony under TRE 702. As discussed in Section IV.B., above, Mr. Rauschuber is the General Manager of WTCPUA, and he has listed his numerous responsibilities as the General Manager in both his testimony and attachments. TRE 701 states that a non-expert witness may provide testimony "in the form of 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 fact in issue." Here, all of these portions of Mr. Rauschuber's testimony objected to by TCMUD 12 are his rationally-based perceptions, as discussed in more detail below:

- Page 15, Lines 16-17. Mr. Rauschuber is providing his perception and understanding of the Agreement, where, as General Manager, he manages the WTCPUA water system, oversees WTCPUA financial activities, and assesses, coordinates, and implements WTCPUA's rates and fees that are charged in part to TCMUD 12 for services provided.
- Page 19, Line 9. Rauschuber, as General Manager, is responsible for managing the WTCPUA water system, overseeing WTCPUA financial activities, and assessing, coordinating, and implementing WTCPUA's rates and fees, and this testimony provides Rauschuber's perception and understanding of the 2012 Rate Analysis.
- Page 21, Lines 3-10. Mr. Rauschuber, as General Manager, is responsible for managing the WTCPUA water system, overseeing WTCPUA financial activities, and assessing,

coordinating, and implementing WTCPUA's rates and fees. Mr. Rauschuber has personal knowledge as to the manner in which the WTCPUA charges and invoices TCMUD 12 for services provided.

- Page 27, Line 3. The question asks for Mr. Rauschuber's perception and understanding, not an expert opinion, of the rates WTCPUA charged to TCMUD 12, as he undertook his duties as General Manager of the WTCPUA.
- Page 27, Lines 8-10. Mr. Rauschuber is providing his perception and understanding of how to implement the TCMUD 12 Agreement and rates charged by WTCPUA to TCMUD 12 prior to the Protested Rate, of which he has personal knowledge in performing his duties as General Manager of the WTCPUA. By attending November 15, 2012 Board meeting, he also has personal knowledge as to the decision of the Board of Directors of WTCPUA.
- Page 32, Lines 6-15. This question is not asking for Mr. Rauschuber to provide an expert legal opinion regarding economic issues, economic indicators, or "disparate bargaining power" under P.U.C. SUBST. R 24.133(a)(3). Rather, this question and answer addresses his knowledge and experience in his role as General Manager. Mr. Rauschuber testifies that as General Manager of the WTCPUA he is in part responsible for overseeing the preparation of contracts, agreements, and reports, and this portion of his testimony is related to his personal knowledge as the WTCPUA's ability to negotiate contracts.
- Page 33, Line 1 – Page 34, Line 13. This question is not asking for, and Mr. Rauschuber's answer is not providing, expert testimony regarding an abuse of monopoly power. Rather, this question and answer addresses Mr. Rauschuber's perceptions and personal knowledge of how WTCPUA communicated and worked with

TCMUD 12 prior to adopting the Protested Rates. This testimony lists the numerous meetings that he attended with TCMUD 12 and other wholesale customers of WTCPUA, as well as communications that he was involved in between WTCPUA and TCMUD 12.

D. Response to Section III.D. of TCMUD 12's Objections: Relevance.

TCMUD 12's objections to Mr. Rauschuber's testimony and attachments in Section III.D. should be overruled because such portions of his testimony and attachments are relevant under TRE 401 and 402.

- Page 19, Line 18 – Page 20, Line 2; Page 20, Line 7 through Page 21, Line 10 and Attachment L. These portions of Mr. Rauschuber's testimony are relevant to the subject matter of this hearing. Under the Commission's public interest test analysis in P.U.C. SUBST. R. 24.133(a)(3)(C), the Public Utility Commission ("PUC" or "Commission") considers whether "the seller changed the computation of the revenue requirement or rate from one methodology to another..." Here, Mr. Rauschuber's testimony provides his understanding of the revenue requirement methodology and rate methodology implemented in the Wholesale Water Service rates adopted by the WTCPUA on November 15, 2012, which were the rates approved immediately before the protested rates. Attachment L consists of the meeting minutes where such rates were adopted, which is certainly relevant to identifying the revenue requirement and rate methodology associated with the prior rates. This testimony is also relevant because it demonstrates that the WTCPUA did not abuse its monopoly power (if it has such power) or have disparate bargaining power over TCMUD 12 because when the WTCPUA adopted its Wholesale Water Service rates on November 15, 2012, the WTCPUA anticipated that such rates would need to be raised again. But, when WTCPUA adopted wholesale rates

on November 21, 2013 ("Protested Rates"), it elected not to raise its rates, as previously considered.

- Page 28, Lines 2-9 and Attachment T. This testimony and attachment are relevant to this hearing because they show that the Protested Rates do not constitute an abuse of monopoly power (if a monopoly is found to exist), nor do they demonstrate that WTCPUA has disparate bargaining power over TCMUD 12. Such evidence shows that the prior approved rates, which were based upon the same revenue requirement and rate methodology as the Protested Rates, but were more expensive than the Protested Rates, were not objected to by TCMUD 12 as an abuse of monopoly power or an exercise of disparate bargaining power.
- Page 32, Line 2 (beginning with "These November..." through line 3 (ending with "TCMUD 12 Agreement.")). This testimony is relevant to this hearing because it shows that the Protested Rates do not constitute an abuse of monopoly power by WTCPUA (if WTCPUA even has such power) and do not demonstrate that WTCPUA has disparate bargaining power over TCMUD 12. TCMUD 12 has alleged that the Protested Rates constitute an abuse of monopoly power by WTCPUA and are the result of WTCPUA's disparate bargaining power. This portion of Mr. Rauschuber's testimony refutes such allegations, explaining that the Protested Rates are lower than the rates that TCMUD 12 originally agreed to when it initially and voluntarily decided to enter into the TCMUD 12 Agreement with LCRA. In other words, WTCPUA realized that a rate decrease, not increase, was appropriate.
- Table 1, Columns 2 and 3. TCMUD 12 has alleged that the Protested Rates are an abuse of monopoly power and the result of WTCPUA's disparate bargaining power. This

testimony is relevant to this hearing because it shows that the Protested Rates do not constitute an abuse its monopoly power by WTCPUA (if WTCPUA even has such power) and do not demonstrate that WTCPUA has disparate bargaining power over TCMUD 12. This table in Mr. Rauschuber's testimony refutes such allegations, explaining that the Protested Rates are lower than the rates that TCMUD 12 originally agreed to when it voluntarily decided to enter into the TCMUD 12 Agreement with LCRA and lower than the rates that preceded the Protested Rates. A water provider may be considered abusive by raising rates. Here, Rauschuber's table shows that the Protested Rates, from a historical view, are at an all-time low.

E. Response to Section III.E. of TCMUD 12's Objections: Hearsay.

TCMUD 12's objections to Mr. Rauschuber's testimony in Section III.E. of its Objections should be overruled because such portions of his testimony are not hearsay under TRE 801 and 802, and are alternatively subject to an exception to the hearsay rule under TRE 803(1) as a present sense impression. As expressly stated in Mr. Rauschuber's testimony on page 23, lines 17-20, "this testimony is not offered to discuss the merits of the proposed cost allocations...; rather these summaries specifically show that WTCPUA received feedback and that WTCPUA took such feedback seriously." In other words, the summary is not offered for the truth of the matter asserted concerning the allocation of costs. Rather, such testimony is offered for the purpose of demonstrating that WTCPUA, in part through Mr. Rauschuber, met and collaborated with its wholesale customers when developing the Wholesale Water Service rates that ultimately became the Protested Rates. Additionally, the objected testimony explains Mr. Rauschuber's experiences and understandings during those meetings.

F. Response to Section III.F. of TCMUD 12's Objections: Relevance.

TCMUD 12's objection to Mr. Rauschuber's testimony in Section III.F. of its Objections should be overruled because such testimony is relevant under TRE 401 and 402. Under the PUC's public interest test analysis in P.U.C. SUBST. R. 24.133(a)(3)(A), the PUC considers whether the WTCPUA abused its monopoly power (if it has such power) or exercised disparate bargaining power over TCMUD 12. This testimony is relevant to this hearing because it shows that the Protested Rates do not constitute an abuse of monopoly power (if it has such power) and do not demonstrate that WTCPUA has disparate bargaining power over TCMUD 12. Rather, this testimony demonstrates that WTCPUA's voluntary offer to its wholesale customers, including TCMUD 12, to renegotiate their water agreements prior to adopting the Protested Rates, which directly impacted their Wholesale Water Service rates was meaningful to and in fact voluntarily accepted by nearly half of WTCPUA's customers – but not TCMUD 12. This testimony explains that WTCPUA does not have a monopoly, does not have absolute control over the market, and does not have absolute power of the price of Wholesale Water Services, as alleged by Dr. Zarnikau in his testimony. This testimony is also relevant because TCMUD 12 witness Mr. Joyce alleges in his prefiled testimony that TCMUD 12 did not have enough time to evaluate WTCPUA's offer to renegotiate its Agreement with WTCPUA, and this testimony explains that WTCPUA provided more time to TCMUD 12 to renegotiate its agreement, as the WTCPUA approved contract amendments as late as November 21, 2013.

V. CONCLUSION

For the reasons set forth above, WTCPUA respectfully requests that the Administrative Law Judge overrule TCMUD 12's objections to the cited portions of the prefiled direct testimonies of WTCPUA, deny TCMUD 12's motion to strike, and grant WTCPUA such other relief to which it may be entitled

Respectfully submitted,

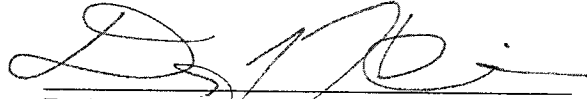
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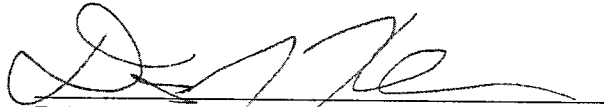
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ATTORNEYS FOR WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY

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 31st day of March, 2015 to the parties of record.


DAVID J. KLEIN