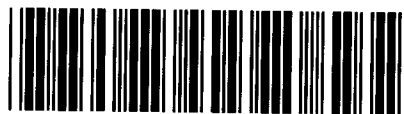




Control Number: 42866



Item Number: 130

Addendum StartPage: 0

SOAH DOCKET NO. 473-14-5144.WS

PUC DOCKET NO. 4286631 PM 1:21

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
FILING CLERK

OF

ADMINISTRATIVE HEARINGS

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

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Commission Staff's Response to Travis County Municipal Utility District No. 12's Objections and Motion to Strike Portions of West Travis County Public Utility Agency's and Commission Staff's Direct Testimony and would show the following:

I. BACKGROUND

On March 6, 2014, Travis County Municipal Utility District No. 12 (TCMUD12), on behalf of itself and Travis County Municipal Utility Districts Nos. 11 and 13, filed a petition appealing the wholesale water rates implemented by West Travis County Public Utility Agency (WTCPUA), the City of Bee Cave, Texas, Hays County, Texas, and West Travis County Municipal Utility District No. 5, individually and as the Public Entities. On March 6, 2015, WTCPUA timely filed a Motion for Partial Summary Decision (Motion), requesting that the public interest portion of this matter be dismissed pursuant to Title 16, TEX. ADMIN. CODE (16 TAC) § 22.182(a). On February 6, 2015, Commission Staff filed the direct testimony of its expert witness, Ms. Heidi Graham. On March 12, 2015, SOAH Order No. 12 was issued adopting the parties' modified procedural schedule, which required parties to file responses to objections and motions to strike direct-case prefiled evidence by March 31, 2015. Therefore, this Response is timely filed.

II. STAFF'S RESPONSE TO TCMUD12'S OBJECTIONS AND MOTION TO STRIKE PORTIONS OF HEIDI GRAHAM'S DIRECT TESTIMONY

a. Improper Opinion Testimony

TCMUD12 asserts that, because Ms. Graham holds a degree in mechanical engineering, she is not an expert and cannot provide expert testimony as an attorney or economist under the Texas Rules of Evidence (TRE) 702. Consequently, TCMUD12 objects to these portions of Ms. Graham's testimony as not meeting the two-prong test in TRE 701.

TRE 702 provides that a witness may be qualified as an expert through "knowledge, skill, experience, training, or education," which expressly negates TCMUD12's argument that Ms. Graham must have a law degree or degree in economics to provide an expert testimony on the public interest factors in this proceeding. Ms. Graham has participated in countless rate applications for eight years and has participated in multiple contested cases, as shown in Ms. Graham's testimony.¹ Additionally, Ms. Graham has reviewed wholesale water rate cases filed both at the TCEQ and the PUC and is knowledgeable of the Commission's policy regarding analysis of the public interest factors. Consequently, Ms. Graham clearly has the knowledge, skill, experience, and training to analyze the public interest factors on behalf of Commission Staff in wholesale water rate proceedings. Ms. Graham is qualified to testify as an expert in this matter; therefore, the motion to strike portions of her testimony should be denied.

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)

TCMUD 12 asserts that this portion of Ms. Graham's testimony should be struck because Ms. Graham improperly opines on what constitutes an abuse of monopoly power. Ms. Graham's job as an Engineering Specialist V in the Commission's Water Utility Division is to process and analyze water and sewer applications and petitions, including petitions for appeal of wholesale water rate changes. In the normal course of Ms. Graham's employment, she analyzes and applies statutes and Commission rules in a manner consistent with Commission policy. By rule, one of the factors to be considered when determining whether a wholesale rate change violates the public interest is whether there has been an abuse of monopoly power. In order to provide an opinion on whether public interest has been violated, as is the express purpose of her job in these

¹ Direct Testimony of Heidi Graham, PUC Docket No. 42866 (Feb. 6, 2015) at 3 and Attachment HG-1 and Attachment HG-2.

types of appeals, Ms. Graham must determine whether there is an abuse of monopoly power. Ms. Graham has worked extensively with the TCEQ, and now with the PUC, and is well qualified to form an opinion on and apply agency policy. If TCMUD12 disagrees with Staff's analysis of the public interest factors, that is an argument that is proper to address at the hearing to determine the weight of the evidence but does not make the testimony inadmissible.

Ms. Graham's opinion on whether there has been an abuse of monopoly power is not an opinion on economics but on how to apply Commission rules and policy when examining the public interest. Ms. Graham is qualified by experience to testify on whether there has been an abuse of monopoly power, and ultimately whether a rate change violates the public interest. Although Ms. Graham does not hold a degree in economics, she has developed an expertise in ratemaking practices during her tenure with the TCEQ and PUC. Her expertise was developed through her day-to-day review and participation in various types of water and sewer applications. Ms. Graham is and has been employed by the regulatory agency entrusted with the regulation and implementation of the state's water and sewer utility program; this fact proves that she is one of the most qualified people in the state to testify on policy regarding rate applications and agency standards. Ms. Graham is a rate case expert based on her experience and training. She is familiar with Commission policy on examining public interest factors, which includes analyzing possible abuses of monopoly power in order to determine whether a rate change has violated the public interest. Ms. Graham's determination that there has been no abuse of monopoly power is the result of her analysis of the public interest factors. To exclude this testimony would be to exclude to very opinion she was hired to provide. Therefore, Ms. Graham can provide expert opinion testimony pursuant to TRE 702, and the motion to strike portions of her testimony should be denied.

***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)***

TRE 702 provides that a witness may be qualified as an expert through "knowledge, skill, experience, training, or education." Ms. Graham has been reviewing rate applications for eight years and has participated in multiple contested cases. Ms. Graham does not have to be an attorney to know what rules she implements when she reviews a rate application. Legal expertise is not required when determining whether the public interest factors in Commission rules have

been violated; instead, experience in reviewing rate applications is necessary to qualify a witness as an expert for the purposes of offering this type of testimony. The Commission must determine whether a wholesale rate change violates the public interest and, as a Commission employee, Ms. Graham was hired to apply Commission policy and rules to determine whether this standard has been met. The public interest factors are a matter of policy. Ms. Graham's opinion is not a legal opinion that requires legal understanding to form but is based upon her years of experience with the TCEQ and, recently, with the PUC. Additionally, TCMUD12's objection goes toward the weight of Ms. Graham's opinion, rather than admissibility. Therefore, Ms. Graham is qualified to provide expert opinion testimony pursuant to TRE 702, and the motion to strike portions of her testimony should be denied.

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)

TRE 401 defines relevant evidence as "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 portion of testimony in question is relevant because it establishes the context of Ms. Graham's testimony and outlines Ms. Graham's reasoning when examining the facts of the case and developing her overall expert opinion on whether the rate change evidenced an abuse of monopoly power and ultimately violated the public interest factors. Additionally, Ms. Graham asserts that these facts are important to consider when assessing whether there was an abuse of monopoly power. Disclosing the specific pieces of evidence that Ms. Graham examined when determining whether there was an abuse of monopoly power allows the audience to track Ms. Graham's thought process, making her testimony more understandable. Because Ms. Graham used these facts to develop her expert testimony, this evidence is relevant and admissible pursuant to TRE 401 and 402.

III. CONCLUSION

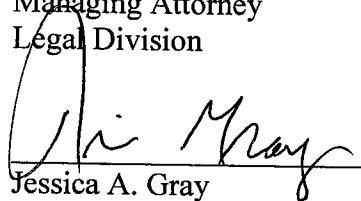
For the reasons stated above, Staff respectfully requests that the Administrative Law Judge overrule TCMUD12's objections and deny the motion to strike portions of Ms. Graham's direct testimony.

DATE: March 31, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

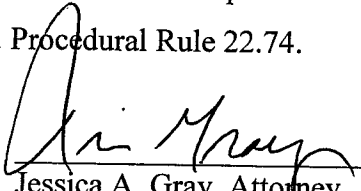


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 31st day of March, 2015 in accordance with P.U.C. Procedural Rule 22.74.



Jessica A. Gray, Attorney