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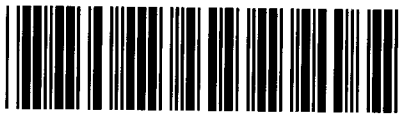

Item Number: 116

Addendum StartPage: 0

SOAH DOCKET NO. 473-14-5138.WS
PUC DOCKET NO. 42857

PETITION OF NORTH AUSTIN MUNICIPAL UTILITY DISTRICT NO. 1, NORTHTOWN MUNICIPAL UTILITY DISTRICT, TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 10 AND WELLS BRANCH MUNICIPAL UTILITY DISTRICT FROM THE RATEMAKING ACTIONS OF THE CITY OF AUSTIN AND REQUEST FOR INTERIM RATES IN WILLIAMSON AND TRAVIS COUNTIES	**§**	**BEFORE THE STATE OFFICE**
		OF
		ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 473-14-5138.WS
PUC DOCKET NO. 42867

PETITION OF NORTH AUSTIN MUNICIPAL UTILITY DISTRICT NO. 1, NORTHTOWN MUNICIPAL UTILITY DISTRICT, AND WELLS BRANCH MUNICIPAL UTILITY DISTRICT FROM THE RATEMAKING ACTIONS OF THE CITY OF AUSTIN AND REQUEST FOR INTERIM RATES IN WILLIAMSON AND TRAVIS COUNTIES	**§**	**BEFORE THE STATE OFFICE**
		OF
		ADMINISTRATIVE HEARINGS

PETITIONERS' OBJECTIONS TO, MOTION TO EXCLUDE AND MOTION TO STRIKE THE PREFILED TESTIMONY AND EXHIBITS OF MICHAEL P. CASTILLO

TO THE HONORABLE JUDGES BIERMAN AND SHENOY:

COME NOW, North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District (the "Petitioners") and file the following objections to the prefiled direct testimony and exhibits of Michael P. Castillo, which was filed on July 15, 2014, and moves to strike certain portions of Mr. Castillo's testimony, as set forth below:

I. Background

The Petitioners have appealed the City's improper action imposing rates in violation of Texas Water Code §13.044(b) and that unjustly and unreasonably seek to recover revenue for the City that is unrelated to the cost of providing water service to the Petitioners. The City of Austin bears the burden of proving de novo that their wholesale water and wastewater rates charged to Petitioners are just and reasonable.

The City designated its expert witness in response to the Petitioners' Request for Disclosures on November 8, 2013,[1] and then supplemented those responses on July 29, 2014,[2] after the City's deadline to file its direct case. The City was required to file its "rate filing package and direct case" on July 15, 2014.[3] The discovery period in this case ends December 30, 2014.[4] Under the Texas Rules of Civil Procedure a party is required to timely supplement its responses to discovery.[5] More specifically, a party is required to designate experts by responding to Rule 194.2(f) by the later of 30 days after the Request for Disclosure is served or 60 days before the end of the discovery period.[6] The City's deadline to designate experts was October 2, 2014. The City's Rule 194 Disclosures only identified Richard D. Giardina as an expert, and the City's First Amended Rule 194 Disclosures only identified Richard D. Giardina and Joseph M. Healy as experts. All of the City's other witnesses were identified by the City as "persons having knowledge of any relevant facts" under TEX. R. CIV. PROC. 194. Mr. Castillo's testimony is full of attempts to both qualify himself as an expert and provide opinion testimony as though Mr. Castillo is a properly designated expert.

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[1] *See* City of Austin's Rule 194 Disclosures, dated November 8, 2013

[2] *See* City of Austin's First Amended Rule 194 Disclosures, dated July 29, 2014

[3] *See* Order No. 9, issued May 29, 2014, p. 8.

[4] Id.

[5] Texas Rules of Civil Procedure, Rule 193.5

[6] Id., Rule 195.2

II. Objections

a. Question Nos. 3, 4, 5, 6, 7, 8, 9, and 10 and the responses, Page 3, Line 12 through Page 6, Line 27, and Austin Castillo Exhibit No. 1.

Petitioners object to the referenced testimony and exhibit on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

The testimony relates to Mr. Castillo's educational background, work experience, membership in professional organizations, honors and recognitions, and the exhibit relates to Mr. Castillo's educational background, work experience, membership in professional organizations, honors and recognitions, none of which is relevant to his testimony as a ***fact witness*** and does not assist the trier of fact in determining whether the City's wholesale rates are just and reasonable.

b. Question No. 11 and the responses, Page 7, Lines 4 through 5 and Austin Castillo Exhibit Nos. 2 and 3.

Petitioners object to the referenced testimony and exhibit on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding Austin as a transparent governmental entity is irrelevant to the central question in this rate appeal - whether its utility rates are just and reasonable. Creating the impression that its rates are just and reasonable because Austin is allegedly inclusive in its ratemaking process is conjecture at best and not likely to help the trier of fact whose task is to evaluate the City's rates according to specific statutory criteria which have nothing to do with a utility's public participation process.

c. Question No. 12 and the response, Page 7, Lines 10-12 and Austin Castillo Exhibit Nos. 2, 4 and 6.

Petitioners object to the referenced testimony and exhibit on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding Austin's COS rate studies in 1992, 1999 and 2008 are wholly irrelevant to the rate appeal now under way have no bearing on whether Austin's current utility rates, subject of this appeal, are just and reasonable, based upon the cost of service, including reasonable and necessary expenses and debt service costs for infrastructure used and useful to the provision of water or wastewater service. A reasonable person would not believe that testimony about rate study procedures undertaken 6 to more than 20 years ago could help the fact finder determine whether the current rate structure applied by the City is proper. That is especially true as this "walk down memory lane" at Question 12 and throughout his testimony is not only full of hearsay statements, but Mr. Castillo also admits that these former studies do not share the same issues as those raised in the current rate appeal: "Q: Are any of these issues the same. . .A: most of the issues raise in the 2013 Jay Joyce Affidavit are specific to the Fiscal Year 2013 budget, and *are not the general cost of service issues addressed in the 1999 Cost of Service Rate Study.*" (Question 25, page 13, line 24 through page 14, line 3) (Emphasis added). It is almost as if Mr. Castillo's testimony about past COS studies and practices is intended to create a presumption that its current rates now under appeal are similarly bulletproof. This is misleading and divorced from the statutory analysis the ALJ must conduct.

Petitioners object to the referenced testimony because the witness is attempting to qualify himself as an expert and was not designated as an expert by the City. The witness should not be allowed to testify as an expert because the witness was not properly identified in the City's Rule 194 Disclosures or the City's First Amended Rule 194 Disclosures. The law requires the exclusion of the witness' testimony if the witness was not listed in response to discovery requests, unless the ALJs find that either: 1) there was good cause for the City's failure to designate the witness as an expert, or 2) the City's failure to designate will not unfairly surprise

or prejudice the Petitioners. TEX R. CIV. PROC. 193.6(a)(1), (2). Counsel's carelessness or failure to properly designate the witness is not good cause. *See e.g. Sharp v. Broadway Nat'l Bank*, 784 S.W.2d 669, 670-72 (Tex. 1990); *E.F. Hutton & Co. v. Youngblood*, 741 S.W.2d 363, 364 (Tex. 1987). Additionally, the City had ample time to review and amend its discovery responses to list the witness as a testifying expert. In fact, the City had an obligation to amend or supplement its responses because the City clearly intended to call this witness as a testifying expert. TEX R. CIV. PROC. 193.5. For the City to have this witness testify as an expert and offer the witness' opinion for the first time in its prefiled testimony is a surprise to the Petitioners and unfairly prejudices them because the Petitioners lack sufficient time seek an expert to rebut the proffered testimony. Further, designated fact witnesses should be excluded as expert witnesses, because the law does not allow a party or a witness to testify as an expert if not properly designated as a testifying expert. *Collins v. Collins*, 904 S.W.2d 792, 801 (Tex. App. – Houston [1st Dist.] 1995, writ denied, 923 S.W.2d 569 (Tex. 1996); *Baylor Med. Plaza Serv. v. Kidd*, 834 S.W.2d 69, 73 (Tex. App. – Texarkana 1992, writ denied).

d. Question Nos. 13 through 19 and the responses, Page 7, Line 14 through Page 11, Line 4 and Austin Castillo Exhibit Nos. 2 and 3.

Petitioners object to the referenced testimony and exhibit on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding Austin's 1992 COS Rate Study is not germane to whether the City's wholesale water and wastewater rates subject to this matter are based on the cost of service. and it is immaterial if that 22-year old rate study was conducted in a similar or different manner than the process which is now under appeal. Even if the 1992 study were relevant, it does not appear that Mr. Castillo has personal knowledge of the process as he describes himself as at "a lower level in the organization structure" who "gathered information" and performed only "rudimentary financial analyses" (page 7, line 24 through page 8, line 2) and, as set forth in more detail above, Mr. Castillo is not qualified as an expert witness. Also,

whether certain customer groups demonstrated "acrimony" or were "very vocal" is unreliable hearsay under TRE Rule 801.

With regard to Austin Castillo Exhibit Nos. 2 and 3, Petitioners object to their admission because the City has not made the proper foundation for the exhibits to be admissible in evidence. The City has failed to authenticate the documents referenced in the testimony as required by TEX R. CIV. EVID. 901 *et seq*. Authentication is a prerequisite to admissibility. *In re G.F.O.*, 874 S.W.2d 729, 731 (Tex. App. -- Houston [1st Dist.] 1994, no writ). The witness must have personal knowledge to testify regarding authentication. TEX R. CIV. EVID. 602; *City of Dallas v. GTE SW., Inc.*, 980 S.W.2d 928, 935 (Tex. App. -- Fort Worth 1998, pet. denied).

Further, the City has failed to authenticate the exhibits as a public record. The City failed to provide evidence to support self-authentication under TEX R. CIV. EVID. 902 and 1005. The documents are not offered under seal (TEX R. CIV. EVID. 902(1)), the City failed to provide certified copies of the evidence proffered (TEX R. CIV. EVID. 902(4)), and made no attempt to have the witness prove up the authenticity of the evidence referred to in the witness' testimony. The evidence should be excluded.

Finally, the Petitioners object to Austin Castillo Exhibit No. 2 and 3 because each is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. Mr. Castillo provides no testimony regarding his personal knowledge about the exhibits and their origins or creation.

e. Question Nos. 20 through 26 and the responses, Page 11, Line 6 through Page 14, Line 13, and Austin Castillo Exhibit Nos. 4 and 5.

Petitioners object to the referenced testimony and exhibits on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding Austin's 1999 COS study is irrelevant for the same reasons asserted above, that is, the 1999 has no bearing on whether the current rates now under appeal are based upon the City's cost of service. The absence of a previous rate appeal may have been the result of many factors wholly separate from whether the rates being reviewed in this

matter are based on the City's cost of providing wholesale water and wastewater service to Petitioners. Additionally, again, to the extent that there is no evidence that Mr. Castillo participated in the meetings and workshops directly and he is not a qualified expert, what wholesale PIC representatives "relayed" "during PIC meetings after discussions with their consultant" is unreliable hearsay under TRE Rule 801 (*see* page 13, lines 10-14).

With regard to Austin Castillo Exhibit Nos. 4 and 5, Petitioners object to each exhibits admission because the City has not made the proper foundation for the exhibit to be admissible in evidence. The City has failed to authenticate the documents referenced in the testimony as required by TEX R. CIV. EVID. 901 *et seq*. Authentication is a prerequisite to admissibility. *In re G.F.O.*, 874 S.W.2d 729, 731 (Tex. App. -- Houston [1st Dist.] 1994, no writ). The witness must have personal knowledge to testify regarding authentication. TEX R. CIV. EVID. 602; *City of Dallas v. GTE SW., Inc.*, 980 S.W.2d 928, 935 (Tex. App. -- Fort Worth 1998, pet. denied).

Further, the City has failed to authenticate the exhibits as a public record. The City failed to provide evidence to support self-authentication under TEX R. CIV. EVID. 902 and 1005. The documents are not offered under seal (TEX R. CIV. EVID. 902(1)), the City failed to provide certified copies of the evidence proffered (TEX R. CIV. EVID. 902(4)), and made no attempt to have the witness prove up the authenticity of the evidence referred to in the witness' testimony. The evidence should be excluded.

Finally, the Petitioners object to Austin Castillo Exhibit No. 4 and 5 because each is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. Mr. Castillo provides no testimony regarding his personal knowledge about the exhibits and their origins or creation.

f. Question Nos. 27 through 41 and the responses, Page 14, Line 15 through Page 24, Line 24, and Austin Castillo Exhibit Nos. 6 through 10.

Petitioners object to the referenced testimony and exhibit on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding a Pubic Involvement Committee in 2008, its members, roles and expectations, schedule, goals and objection, criteria for membership, orientation of meetings, and statements during those meetings offers no logical probative value toward some fact that is legally of consequence to whether Austin based its wholesale rates on its cost of providing water and wastewater service. Whether Austin is inclusive, transparent, or encouraged sharing of information in its ratemaking process is conjecture at best and does not help the trier of fact determine whether the City's wholesale water and sewer rates at issue in this matter are based on the City's cost of providing service to Petitioners.

Beginning at question 35, page 20, through question 31, page 24, Mr. Castillo's irrelevant testimony also includes numerous out-of-court statements, summarizations of discussions and documents for which there is no evidence he attended or had personal knowledge of offered in evidence to prove the truth of the matter asserted. This testimony constitutes unreliable hearsay that must be stricken in accordance with TRE Rule 801:

- Question 35, page 20, line 1 through page 21, line 5 ("Joy Smith. . .expressed her appreciation. . .[t]he Wholesale Class representative . . . argued again for the release of a working copy of the COS model. . ." ". . .staff thought we had a good start. . .").
- Question 37, page 21, line 24 through page 22, line 9 ("we discussed how it is well suited. . .").
- Question 38, page 22, line 11-27 ("Mr. Bamer immediately requested the [sic] AWU maintain the Cash Basis methodology. . .PIC members. . .agreed").
- Question 39, page 23, lines 1-12 ("We discussed how debt service coverage is an indicator. . .").
- Question 40, page 23, line 14 through page 24, line 9 ("The Wholesale Class representative from Wells Branch MUD argued. . . [s]he claimed. . .").
- Question 41, page 24, lines 12-19 (". . .the Executive Team announced. . .").

With regard to Austin Castillo Exhibit Nos. 6 through 10, Petitioners object to each exhibit's admission because the City has not made the proper foundation for the exhibit to be admissible in evidence. The City has failed to authenticate the documents referenced in the testimony as required by TEX R. CIV. EVID. 901 *et seq.* Authentication is a prerequisite to admissibility. *In re G.F.O.*, 874 S.W.2d 729, 731 (Tex. App. -- Houston [1st Dist.] 1994, no writ). The witness must have personal knowledge to testify regarding authentication. TEX R. CIV. EVID. 602; *City of Dallas v. GTE SW., Inc.*, 980 S.W.2d 928, 935 (Tex. App. -- Fort Worth 1998, pet. denied).

Further, the City has failed to authenticate the exhibits as a public record. The City failed to provide evidence to support self-authentication under TEX R. CIV. EVID. 902 and 1005. The documents are not offered under seal (TEX R. CIV. EVID. 902(1)), the City failed to provide certified copies of the evidence proffered (TEX R. CIV. EVID. 902(4)), and made no attempt to have the witness prove up the authenticity of the evidence referred to in the witness' testimony. The evidence should be excluded.

Finally, the Petitioners object to Austin Castillo Exhibit No. 6 through 10 because each is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. Mr. Castillo provides no testimony regarding his personal knowledge about the exhibits and their origins or creation.

g. Question Nos. 42 through 50 and the responses, Page 24, Line 26 through Page 28, Line 19, and Austin Castillo Exhibit Nos.11 through 13.

Petitioners object to the referenced testimony and exhibit on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding a 2008 Water Cost Allocation Workshop in 2008, its members, roles and expectations, schedule, goals and objection, criteria for membership, orientation of meetings, and statements during those meetings offers no logical probative value toward some fact that is legally of consequence to whether Austin based its wholesale rates on its cost of providing water and wastewater service. Whether Austin is inclusive, transparent, or

encouraged sharing of information in its ratemaking process is conjecture at best and does not help the trier of fact determine whether the City's wholesale water and sewer rates at issue in this matter are based on the City's cost of providing service to Petitioners.

Beginning at question 43, page 25, through question 50, page 28, Mr. Castillo's irrelevant testimony also includes numerous out-of-court statements, summarizations of discussions and documents for which there is no evidence he attended or had personal knowledge of offered in evidence to prove the truth of the matter asserted. This testimony constitutes unreliable hearsay that must be stricken in accordance with TRE Rule 801:

- Question 43, page 25, lines 5-14 ("We started off by discussing. . .").
- Question 44, page 25, lines 15-20 ("PIC members were asked. . .").
- Question 45, page 25, line 24 through page 26, line 3 ("There was a good deal of comment. . .[o]ther PIC members were critical of AWU's methodology. . .").
- Question 48, page 26, line 20 through page 27, line 3 ("The PIC discussed. . .").
- Question 49, page 27, line 5 through page 28, line 3 ("The Wholesale Representative (Wells Branch MUD) agreed. . .[t]he Industrial group argued. . .").
- Question 50, page 28, lines 5-19 ("They requested the model be built. . .").

With regard to Austin Castillo Exhibit Nos. 11 through 13, Petitioners object to their admission because the City has not made the proper foundation for the exhibit to be admissible in evidence. The City has failed to authenticate the documents referenced in the testimony as required by TEX R. CIV. EVID. 901 *et seq.* Authentication is a prerequisite to admissibility. *In re G.F.O.*, 874 S.W.2d 729, 731 (Tex. App. -- Houston [1st Dist.] 1994, no writ). The witness must have personal knowledge to testify regarding authentication. TEX R. CIV. EVID. 602; *City of Dallas v. GTE SW., Inc.*, 980 S.W.2d 928, 935 (Tex. App. -- Fort Worth 1998, pet. denied).

Further, the City has failed to authenticate the exhibits as a public record. The City failed to provide evidence to support self-authentication under TEX R. CIV. EVID. 902 and 1005. The documents are not offered under seal (TEX R. CIV. EVID. 902(1)), the City failed to provide certified copies of the evidence proffered (TEX R. CIV. EVID. 902(4)), and made no attempt to have the witness prove up the authenticity of the evidence referred to in the witness' testimony. The evidence should be excluded.

Finally, the Petitioners object to Austin Castillo Exhibit No. 11 through 13 because each is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. Mr. Castillo provides no testimony regarding his personal knowledge about the exhibits and their origins or creation.

h. Question Nos. 51 through 58 and the responses, Page 28, Line 21 through Page 31, Line 6, and Austin Castillo Exhibit No. 14.

Petitioners object to the referenced testimony and exhibit on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding a February 2008 PIC Workshop, its members, roles and expectations, schedule, goals and objection, criteria for membership, orientation of meetings, and statements during those meetings offers no logical probative value toward some fact that is legally of consequence to whether Austin based its wholesale rates on its cost of providing water and wastewater service. Whether Austin is inclusive, transparent, or encouraged sharing of information in its ratemaking process is conjecture at best and does not help the trier of fact determine whether the City's wholesale water and sewer rates at issue in this matter are based on the City's cost of providing service to Petitioners.

Beginning at question 52, page 28, through question 58, page 31, Mr. Castillo's irrelevant testimony also includes numerous out-of-court statements, summarizations of discussions and documents for which there is no evidence he attended or had personal knowledge of offered in evidence to prove the truth of the matter asserted. This testimony constitutes unreliable hearsay that must be stricken in accordance with TRE Rule 801:

- Question 52, page 28, line 26 through page 31, line 6 ("At the workshop, we discussed. . .[w]e discussed how rate design and classification should be consistent. . .we talked about the obvious customer classes. . .we discussed BOD concentrations. . .[a]n Industrial representative spoke in favor. . .the Executive Team stated that it would disaggregate. . .").

With regard to Austin Castillo Exhibit No. 14, Petitioners object its admission because the City has not made the proper foundation for the exhibit to be admissible in evidence. The City has failed to authenticate the documents referenced in the testimony as required by TEX R. CIV. EVID. 901 *et seq*. Authentication is a prerequisite to admissibility. *In re G.F.O.*, 874 S.W.2d 729, 731 (Tex. App. -- Houston [1st Dist.] 1994, no writ). The witness must have personal knowledge to testify regarding authentication. TEX R. CIV. EVID. 602; *City of Dallas v. GTE SW., Inc.*, 980 S.W.2d 928, 935 (Tex. App. -- Fort Worth 1998, pet. denied).

Further, the City has failed to authenticate the exhibits as a public record. The City failed to provide evidence to support self-authentication under TEX R. CIV. EVID. 902 and 1005. The documents are not offered under seal (TEX R. CIV. EVID. 902(1)), the City failed to provide certified copies of the evidence proffered (TEX R. CIV. EVID. 902(4)), and made no attempt to have the witness prove up the authenticity of the evidence referred to in the witness' testimony. The evidence should be excluded.

Finally, the Petitioners object to Austin Castillo Exhibit No. 14 because it is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. Mr. Castillo provides no testimony regarding his personal knowledge about the exhibits and their origins or creation.

i. Question Nos. 59 through 81 and the responses, Page 31, Line 8 through Page 38, Line 15, and Austin Castillo Exhibit Nos.15 through 18.

Petitioners object to the referenced testimony and exhibits on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding a additional PIC Workshops in March, April, July, and October 2008, and each meetings members, roles and expectations, schedule, goals and objection, criteria for membership, orientation of meetings, and statements during those meetings offers no logical probative value toward some fact that is legally of consequence to whether Austin based its wholesale rates on its cost of providing water and wastewater service. Whether Austin is inclusive, transparent, or encouraged sharing of information in its ratemaking process is

conjecture at best and does not help the trier of fact determine whether the City's wholesale water and sewer rates at issue in this matter are based on the City's cost of providing service to Petitioners.

Beginning at question 59, page 31, through question 81, page 38, Mr. Castillo's irrelevant testimony also includes numerous out-of-court statements, summarizations of discussions and documents for which there is no evidence he attended or had personal knowledge of offered in evidence to prove the truth of the matter asserted. This testimony constitutes unreliable hearsay that must be stricken in accordance with TRE Rule 801:

- Questions 60, 61, 62, 63, 64 and 65, page 31, line 12 through page 33, line 25 ("First, we started by discussing. . .," "What points were discussed regarding. . .").
- Question 67, page 34, lines 6-26 ("At this workshop we discussed. . .").
- Questions 70, 72, page 35, lines 5-11 ("PIC Members discussed desired and additional "what if" scenarios. . .") and lines 19-26 ("The Executive Team agreed. . .").
- Questions 74, 75, and 77, page 36, line 7 through page 37, line 10 ("The Executive Team agreed. . .Joy Smith. . .stated. . .she strongly recommended. . .")

With regard to Austin Castillo Exhibit Nos. 15 through 18, Petitioners object to their admission because the City has not made the proper foundation for the exhibit to be admissible in evidence. The City has failed to authenticate the documents referenced in the testimony as required by TEX R. CIV. EVID. 901 *et seq*. Authentication is a prerequisite to admissibility. *In re G.F.O.*, 874 S.W.2d 729, 731 (Tex. App. -- Houston [1st Dist.] 1994, no writ). The witness must have personal knowledge to testify regarding authentication. TEX R. CIV. EVID. 602; *City of Dallas v. GTE SW., Inc.*, 980 S.W.2d 928, 935 (Tex. App. -- Fort Worth 1998, pet. denied).

Further, the City has failed to authenticate the exhibits as a public record. The City failed to provide evidence to support self-authentication under TEX R. CIV. EVID. 902 and 1005. The documents are not offered under seal (TEX R. CIV. EVID. 902(1)), the City failed to provide certified copies of the evidence proffered (TEX R. CIV. EVID. 902(4)), and made no attempt to have the witness prove up the authenticity of the evidence referred to in the witness' testimony. The evidence should be excluded.

Finally, the Petitioners object to Austin Castillo Exhibit No. 15 through 19 because each is prohibited hearsay under TEX R. CIV. EVID. 801 and 802. Mr. Castillo provides no testimony regarding his personal knowledge about the exhibits and their origins or creation.

j. Question Nos. 82 through 84 and responses, Page 39, Line 19 through Page 84, Line 24.

Petitioners object to the referenced testimony on the basis of relevance. TEX R. CIV. EVID. 401-402. "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, and should be stricken.

Mr. Castillo's testimony regarding the City's process for updating procedures, approving new rates, and the City's provision of information to customers regarding rate increases offers no logical probative value toward some fact that is legally of consequence to whether Austin based its wholesale rates on its cost of providing water and wastewater service. Whether Austin is inclusive, transparent, or encouraged sharing of information in its ratemaking process is conjecture at best and does not help the trier of fact determine whether the City's wholesale water and sewer rates at issue in this matter are based on the City's cost of providing service to Petitioners.

III. Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully request that the Judges sustain Petitioners' objections and enter an order excluding and striking the Testimony of Michael P. Castillo as requested above and such and further relief to which they may be entitled.

Respectfully submitted,
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By: _____
Randall B. Wilburn

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested on all parties on the 22nd of December, 2014.

_____
Randall B. Wilburn