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**SOAH DOCKET NO. 473-16-1848.WS
PUC DOCKET NO. 44809**

2016 MAR -1 PM 2: 04

**APPLICATION OF QUADVEST L.P.
FOR A RATE/TARIFF CHANGE**

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**BEFORE THE STATE OFFICE OF
PUBLIC UTILITIES COMMISSION
FILING CLERK
OF
ADMINISTRATIVE HEARINGS**

**OFFICE OF PUBLIC UTILITY COUNSEL'S
OBJECTION AND MOTION TO STRIKE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The Office of Public Utility Counsel (OPUC) files this Objection to and Motion to Strike Portions of Jeffry Eastman's and Charles Loy's testimony filed on behalf of Quadvest, L.P. (QVLP). OPUC objects to all references to Mr. Greg Scheig as a witness or his testimony in Mr. Jeffry Eastman and Charles Loy's testimony. OPUC further moves to strike Appendix 2 of the application. In support thereof, OPUC would show:

I.

On February 2, 2016, the current parties agreed in a prehearing conference to a procedural schedule, with a deadline for the applicant to file prefiled testimony on February 22, 2016. In accordance with that agreement, QVLP filed the direct testimony of Jeffrey Eastman, Charles Loy, CPA, and Morey Villareal. No one else filed testimony on behalf of the applicant. According to the agreed procedural schedule, March 1 is the deadline to file objections to Quadvest's direct testimony. Accordingly, this objection is timely filed.

II.

There are several references in the company's direct testimony to the direct testimony of Mr. Scheig. Quadvest CFO Jeffrey Eastman lists Mr. Scheig as one of the expert witnesses

“who will be filing testimony in this case.”¹ Company consultant, Mr. Loy similarly refers to Mr. Scheig’s direct testimony as supporting the requested rate of return.² Although Mr. Loy is the witness sponsoring the application,³ his reference to Mr. Scheig, makes clear that Mr. Loy is not sponsoring the return on equity analysis:

The application shows a water service rate base of \$14,194,706 for the five systems included in the application and an overall rate of return of 8.52%, which reflects a 12.1% return on equity *which is supported by Mr. Greg Scheig’s Cost of Equity report initially filed with the Application and his Direct Testimony*. [Direct Testimony of Mr. Loy at 5:20-22] (emphasis supplied).

It is clear that Mr. Scheig is the only person with expertise on rate of return and that no other witness supports that testimony. However, Mr. Scheig did not file testimony. Therefore, these references to Mr. Scheig’s direct testimony should be stricken as impermissible hearsay.

III.

The applicant bears the burden of proof. 30 TAC § 291.12 (1990); 16 TAC § 24.12 (2016). Order No 2, by agreement of the parties, set the deadline for the applicant’s direct case at February 22, 2016. That date has come and gone and the applicant has not produced any direct testimony on rate of return or any testimony by Mr. Scheig, despite the several references to his testimony. As such, the applicant cannot meet its burden of supporting the rate of return. Although the application contains an analysis on rate of return (performed by Mr. Scheig), it is not presented by Mr. Scheig and it is not a part of any direct testimony. In fact, Mr. Scheig did not file any testimony and is not offered as a witness. While Mr. Loy presents the application, with which the rate of return analysis was filed, he did not perform the study nor does he indicate

¹ Direct Testimony of Jeffrey Eastman at 2:8-16.

² Direct Testimony of Charles E. Loy at 5:20-22.

³ *Id.* at 3:9-11.

he has the knowledge to speak to the study. Further, Mr. Loy's testimony and resume⁴ do not show that he is qualified to present the rate of return study or adopt it; nor has the Company laid the proper predicate for its inclusion. Additionally, the Company has not stated whether Mr. Loy is a fact witness or an expert witness. Accordingly, OPUC objects to the inclusion of the rate of return analysis because it is unsupported hearsay.

IV.

For the reasons set out above, OPUC moves to strike Appendix 2 of the application and any reference to Mr. Scheig's testimony, as well as any residual numbers that may derive therefrom. Specifically, OPUC moves to strike the following:

1. Direct Testimony of Jeffrey Eastman, page 2 (bates 4), lines 14 through 16.
2. Direct Testimony of Charles E. Loy, page 5 (bates 7), lines 20 through 22, beginning with "and an overall rate of return . . ."
3. Appendix 2, Requested Rate of Return Analysis, pages 78-123 (bates 128-123), of the application – QVLP Exhibit 1 of Charles E. Loy's Direct testimony.

OPUC further moves to strike any residual references to Mr. Scheig not specifically set out above.

V.

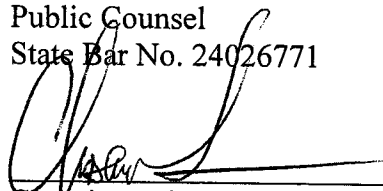
WHEREFORE, PREMISES CONSIDERED, the Office of Public Utility Counsel prays that the ALJ sustain this objection, strike the described portion of testimony prefiled by Quadvest, L.P., as set out above, and grant the Office of Public Utility Counsel such other and further relief to which it may be justly entitled.

⁴ Direct Testimony of Charles E. Loy, Exhibit CEL-1 (Resume of Charles E. Loy).

Dated: March 1, 2016

Respectfully submitted,

Tonya Baer
Public Counsel
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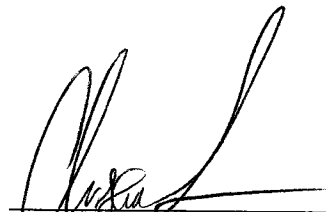


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CERTIFICATE OF SERVICE
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I certify that on March 1, 2016, I served a true copy of the foregoing Office of Public Utility Counsel's Objection to and Motion to Strike on all parties of record via United States First-Class Mail, hand-delivery or facsimile.



Christiaan Siano