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APPLICATION OF THE CITY OF CIBOLO FOR SINGLE CERTIFICATION IN INCORPORATED AREA AND TO DECERTIFY PORTIONS OF GREEN VALLEY SPECIAL UTILITY DISTRICT'S SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY IN GUADALUPE COUNTY	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**GREEN VALLEY'S OBJECTIONS TO THE CITY OF CIBOLO'S REBUTTAL
TESTIMONY AND EXHIBITS AND MOTION TO STRIKE**

Green Valley Special Utility District ("Green Valley") files these objections to the City of Cibolo's ("Cibolo") Rebuttal Testimony and Exhibits ("Objections") and Motion to Strike. In support, Green Valley would show as follows.¹

I. SUMMARY OF OBJECTIONS AND MOTION TO STRIKE

Green Valley requests that certain portions of the rebuttal testimony and exhibits of Rudolph F. Klein, IV, P.E. and Jack E. Stowe, Jr., offered by the City of Cibolo be stricken or admitted with the limitations discussed herein. Portions of Cibolo's rebuttal testimony are devoted to topics outside of the scope of this proceeding or consist of purely legal opinions. For example, both Mr. Klein and Mr. Stowe continue to espouse Cibolo's "regionalization" theory, an issue that is squarely before the Texas Commission on Environmental Quality ("TCEQ"), the regulatory body that has jurisdiction to administer the statute and rules upon which Cibolo's legal opinions rely.² Green Valley further objects on the ground that much, if not the entirety, of Mr.

¹ These objections are timely filed according to the schedule set forth in SOAH Order No. 3 (September 9, 2016).

² Green Valley urges the ALJs to reconsider their objections to Cibolo's "regionalization" testimony here and with regard to Cibolo's direct testimony for the reasons set forth in its Argument, below.

Stowe's "rebuttal" testimony both could and should have been submitted as part of Cibolo's direct case. Mr. Stowe's testimony is not properly limited to the scope of Green Valley's direct testimony and admission of this testimony on the eve of the hearing on the merits and at the close of discovery would substantially and unjustly prejudice Green Valley. Cibolo should not be awarded for lying behind the log with regard to its case in chief.

Based on the foregoing, Green Valley is compelled to seek the relief described herein.

II. TESTIMONY AND EXHIBITS TO BE STRICKEN

A. Cibolo Witness Rudy Klein

Green Valley objects to and requests that the following rebuttal testimony and exhibits of Rudolph "Rudy" F. Klein IV, P.E. offered on behalf of the City of Cibolo be stricken.

Obj.	Testimony	Subject Matter and Specific Passage	Basis to Strike
1	Page 4, Lines 6-10.	Testimony addressing Cibolo's "regionalization" theory as follows: "especially in a case...§351.62(2)."	All testimony and exhibits related to Mr. Klein's theory of "regionalization" is outside of the scope of the Commission's jurisdiction to determine. Expert testimony is required for pure legal opinions and witness is not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702. This testimony is not relevant and is inadmissible pursuant to TEX. R. EVID. 401, 402 and 403.
2	Page 5, Lines 17-21	Testimony addressing Cibolo's "regionalization" theory as follows: "First, I remain certain ... from that opinion,"	Green Valley incorporates its objections to Page 4, lines 6-10.

Obj.	Testimony	Subject Matter and Specific Passage	Basis to Strike
3	Page 13, Line 1 through Page 14, Line 23.	Testimony regarding value attributable to 2014 Water Master Plan as follows: Pages 13 and 14 in their entirety.	Mr. Klein's testimony is improper rebuttal because it does not rebut any testimony of Green Valley's witnesses. Nowhere in Green Valley's testimony or appraisal does Green Valley assign a value to its Water Master Plan. To the extent the subject matter is referenced in the appraisal, the issue is beyond the scope of the first phase of this proceeding and is therefore irrelevant and misleading. TEX.R.EVID. 401, 402, 403.
4	Page 18, Lines 10-11	Testimony addressing Cibolo's "regionalization" theory as follows: "First, in my opinion...decertified."	Green Valley incorporates its objections to Page 4, lines 6-10.
5	Page 20, Line 12	Testimony addressing Cibolo's "regionalization" theory as follows: Page 20, Line 12 in its entirety.	Green Valley incorporates its objections to Page 4, lines 6-10.
6	Page 28, Lines 1-2	Testimony addressing the City's "regionalization" theory as follows: "GVSUD's ... Watershed."	Green Valley incorporates its objections to Page 4, lines 6-10.
7	Page 28, Line 16 through Page 30, Line 2	Testimony addressing the City's "regionalization" theory as follows: "However, ... Upper Cibolo Creek."	Green Valley incorporates its objections to Page 4, lines 6-10.

B. Cibolo Witness Jack E. Stowe

Green Valley objects to and requests that the following rebuttal testimony and exhibits of Jack E. Stowe offered on behalf of the City of Cibolo be stricken.

Obj.	Testimony	Subject Matter and Specific Passage	Basis to Strike
8	Mr. Stowe's testimony in its entirety.	All testimony.	Mr. Stowe's testimony does not rebut the testimony of Green Valley's witnesses. Rather, Mr. Stowe's testimony only bolsters Cibolo's direct testimony. The testimony could and should have been submitted as part of Cibolo's direct case.
9	Page 25, Line 1 through Page 40, Line 7.	Alternatively, Mr. Stowe's analysis of TWC § 13.255(g) compensation factors as follows: Page 25, Line 1 through Page 40, Line 7 in its entirety.	<p>Green Valley incorporates its objections to the entirety of Mr. Stowe's testimony on the basis that it constitutes improper rebuttal.</p> <p>Most of Mr. Stowe's "rebuttal" testimony is devoted to an analysis of compensation factors which are specifically reserved to the second phase of this proceeding and are outside of the scope of Green Valley's direct testimony.</p>
10	Page 9, Lines 18-21.	Testimony addressing Cibolo's "regionalization" theory as follows: Page 9, Lines 18-21 in their entirety.	<p>All testimony and exhibits related to Cibolo's theory of "regionalization" are outside of the scope of this proceeding as established by the Commission's Preliminary Order and the ALJ's Order No. 2 and is further beyond the scope of the Commission's jurisdiction to determine.</p> <p>Expert testimony is required for pure legal opinions and witness is not qualified to provide expert opinion on the particular subject</p>

Obj.	Testimony	Subject Matter and Specific Passage	Basis to Strike
			<p>matter discussed. TEX. R. EVID. 702.</p> <p>This testimony is not relevant and is inadmissible pursuant to TEX. R. EVID. 401, 402 and 403.</p>
11	Page 14, Line 19 through Page 15, Line 4	Opinion testimony regarding Preliminary Issue No. 9 as follows: the entirety of the designated testimony.	Green Valley incorporates its objections to the entirety of Mr. Stowe's testimony on the basis that it constitutes improper rebuttal.
12	Page 15, Line 20 through Page 16, Line 8	Opinion testimony regarding Preliminary Issue No. 9 as follows: the entirety of the designated testimony.	<p>Green Valley incorporates its objections to the entirety of Mr. Stowe's testimony on the basis that it constitutes improper rebuttal.</p> <p>Expert testimony is required for pure legal opinions addressing statutory and Commission intent and witness is not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>The testimony lacks foundation as to what prior cases Mr. Stowe's opinion is based on and whether the Commission process in those cases is accurately reflected in his testimony.</p> <p>The testimony is unreliable and is inadmissible under TEX R. EVID. 403.</p>
13	Page 17, Line 21 through Page 18, Line 5	Testimony addressing the City's "regionalization" theory as follows: "Second, ... Chapter 351."	Green Valley incorporates its objections to Page 9, lines 18-21.

Obj.	Testimony	Subject Matter and Specific Passage	Basis to Strike
14	Page 18, Lines 6-18	Testimony addressing definition of “property” as follows: the entirety of the designated testimony.	Expert testimony is required for pure legal opinions and witness is not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.
15	Page 18, Line 19 through Page 22, Line 16	Testimony offering legal opinion regarding Green Valley’s economic opportunity property interest as follows: the entirety of the designated testimony.	Green Valley incorporates its objections to the entirety of Mr. Stowe’s testimony on the basis that it constitutes improper rebuttal. Expert testimony is required for pure legal opinions and witness is not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.
16	Page 25, Line 1 through Page 29, line 5	Testimony regarding Green Valley’s federal debt and ability to repay such debt as follows: the entirety of the designated testimony.	Green Valley incorporates its objections to the entirety of Mr. Stowe’s testimony on the basis that it constitutes improper rebuttal. All testimony and exhibits regarding Green Valley’s ability to repay federal debt address issues that are outside of the scope of this phase of the proceeding. Green Valley offered no testimony regarding its ability to repay its federal debt. As to Page 26, Line 15 through Page 27, Line 9, Green Valley incorporates its objections to Exhibit Stowe R-E. As to Page 28, line 18, beginning with “Additionally,” through Page 29, line 5.
17	Page 28, line 18 through Page 29, line 5	Mr. Stowe’s legal opinions regarding the effect of Green Valley’s federal debt.	Green Valley incorporates its objections to Page 25, Line 1 through Page 29, Line 5.

Obj.	Testimony	Subject Matter and Specific Passage	Basis to Strike
			<p>Expert testimony is required for pure legal opinions and witness is not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p>
18	<p>Page 37, Line 15 through Page 39, Line 2.</p>	<p>Mr. Stowe's testimony regarding "impact fees" as follows:</p>	<p>Green Valley incorporates its objections to the entirety of Mr. Stowe's testimony on the basis that it constitutes improper rebuttal. Green Valley offered no testimony or evidence that it had "impact fees" in place.</p> <p>The testimony addresses issues outside of the scope of this phase of the proceeding. TEX.R.EVID. 401, 402.</p> <p>Regarding Mr. Stowe's opinions regarding the legal implications of Cibolo's corporate limits, expert testimony is required for pure legal opinions and witness is not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p>
19	<p>Exhibit Stowe R-D</p>	<p>GVSUD Series 2003 Bonds</p>	<p>Green Valley incorporates its objections to Page 25, Line 1 through Page 29, line 5.</p>
20	<p>Exhibit Stowe R-E</p>	<p>Letter from USDA</p>	<p>Green Valley incorporates its objections to 25, Line 1 through Page 29, line 5.</p> <p>The exhibit constitutes inadmissible hearsay, bears no relevance to the issues in this phase of the proceeding, and is misleading. TEX.R.EVID. 401-403, 802.</p>

III. ARGUMENT

A. Cibolo's Testimony Regarding "Regionalization" should be Stricken.

1. **Neither the ALJs nor the Commission can rely on Cibolo's "regionalization" theory to determine what property of Green Valley is rendered useless or valueless (Objections 1, 2, 4-7, 10, 13).**

Green Valley urges the ALJs to reconsider their initial ruling with regard to the direct testimony of Cibolo witness Rudy Klein espousing Cibolo's "regionalization" theory and further asks the ALJs to strike those portions of Cibolo's rebuttal testimony addressing the issue.

Green Valley acknowledges and agrees with the ALJs' determination in denying Cibolo's motion for summary decision as to its "regionalization" theory that "[t]he Commission thus has authority to decide whether developments at TCEQ, rather than the decertification, render Green Valley property useless or valueless."³ Consistent with the ALJs' determination, Green Valley also agrees that the Commission can take notice of the proceedings before the TCEQ. However, at this point in the TCEQ proceeding, in which the issue of whether the Cibolo Creek Municipal Authority ("CCMA") is the sole provider in the area has just been referred to SOAH for a contested case hearing, there is no development beyond the TCEQ Executive Director's statements upon which the ALJs or Commission can rely in determining the issues in this proceeding.⁴ As Cibolo witness Mr. Klein acknowledges in his rebuttal testimony, "the TCEQ recommended a nine-month hearing process from the date of the preliminary hearing."⁵ Given that the hearing on the merits of *this* proceeding begins in approximately one month, there will be no final determination as to

³ SOAH Order No. 7 (Dec. 9, 2016) at 11, referencing TCEQ Docket No. 2016-1876-MWD, *Application from Green Valley Special Utility District (SUD) for New Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ1536001* (pending).

⁴ See TCEQ Executive Director's Response to Public Comment (Sep. 2016) and the Executive Director's Response to Hearing Requests and Request for Reconsideration (Nov. 14, 2016).

⁵ Rebuttal Testimony of Rudy Klein at 7, lines 6-8.

Cibolo's theory upon which the Commission or ALJs can rely in making their determination in *this* proceeding regarding the nature and extent of Green Valley's property interests.

Moreover, Green Valley asserts that while the ALJs and Commission certainly have authority to consider developments in the TCEQ proceeding, the issue of whether CCMA must be the sole permitted wastewater treatment provider for the area, as repeatedly asserted by Cibolo in *this* proceeding, is properly and exclusively a determination within the jurisdiction of the TCEQ to decide and is therefore, *de facto*, outside of the scope of this proceeding,⁶ unless the ALJs were to defer consideration of Cibolo's application until after the TCEQ reaches its determination. Cibolo witness Mr. Klein acknowledges that the issue is one for TCEQ to determine.⁷ Even were this not the case, Cibolo's "regionalization" issue has been before the TCEQ since at least August of 2015, and prudence would dictate deferral to the TCEQ of both the factual and legal questions involved in determining the issue.⁸

Alternatively, should the ALJs overrule Green Valley's objections, Cibolo's testimony should be given the proper weight. Cibolo's "regionalization" testimony consists of bald speculation that in the future another regulatory body might decide the issue of whether CCMA, a non-party to this proceeding, may ultimately decide that CCMA is the only wastewater provider allowed for the area in which Green Valley is seeking to use its own facilities. Green Valley disputes Cibolo's contention and the issue will ultimately be decided by the TCEQ.

⁶ The testimony is not only irrelevant and inadmissible as outside the scope of this hearing and the Commission's jurisdiction to determine, but misleading and unduly prejudicial to the extent that Mr. Klein opines that the issue is somehow settled given the pending litigation before the TCEQ. TEX.R.EVID. 401, 402, 403.

⁷ See Direct Testimony of Rudy Klein at 17 ("I believe that the TCEQ is the state agency that implements this (regionalization) policy."); *Id.* at 18 ("I believe that there is a system-specific regionalization policy where the TCEQ designates certain wastewater entities to be the regional sewerage system for a specific geographic area. I believe that these 8 entities are identified in 30 TAC Chapter 351 of the TCEQ's regulations.").

⁸ As the ALJs recognized, the TCEQ Executive Director characterized Cibolo's "regionalization" theory as "a mixed issue of fact and law." SOAH Order No. 7 at 12, n. 40.

2. Neither Mr. Klein nor Mr. Stowe are qualified to offer expert testimony on purely legal opinions (Objections 1, 2, 4-7, 10, 12-15, 17-20).

Consistent with his direct testimony, portions of Mr. Klein's rebuttal testimony regarding Cibolo's "regionalization" theory consist of purely legal opinions. Green Valley acknowledges the TCEQ Executive Director's characterization of the "regionalization" issue as "a mixed issue of fact and law."⁹ To the extent that Cibolo's theory turns on factual issues, the TCEQ Executive Director's Response to Public Comment on the issues raised by Cibolo in Green Valley's TPDES permit proceeding reflects an extensive and thorough examination of the underlying factual issue, which supports deferral to TCEQ to make these determinations that are squarely within its expertise.¹⁰

As to the legal issues surrounding Cibolo's theory, Mr. Klein again offers purely legal opinion testimony in his rebuttal, just as he did in his direct testimony. Similarly, Mr. Stowe's rebuttal adopts Mr. Klein's legal opinions as his own. Accordingly, Green Valley re-urges the ALJs to strike this testimony as outside of the scope of Mr. Klein's expertise. Rule 702 of the Texas Rules of Evidence states:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.¹¹

The witness must be qualified to give an expert opinion "by knowledge, skill, experience, training, or education." In deciding if a witness is qualified as an expert, courts must ensure that those who purport to be experts have expertise in the actual subject they are offering an opinion about.¹²

⁹ *Id.*

¹⁰ See TCEQ Executive Director's Response to Public Comment (Sep. 2016).

¹¹ TEX.R.EVID. 702; *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 637 (Tex. 2009).

¹² *Cooper Tire & Rubber Co. v. Mendez*, 204 S.W.3d 797, 800 (Tex. 2006) (applying TEX. R. EVID. 702).

Texas case law counsels that a witness with general experience in a particular field of expertise is not necessarily qualified to discuss every matter that might be included in that field. “Trial courts must ensure that those who purport to be experts truly have expertise concerning the actual subject about which they are offering an opinion.”¹³ In the face of proper challenge, an expert must be proved to have qualification in the specific issue before the court.¹⁴ Once a party objects to an expert’s testimony, the party sponsoring the expert bears the burden of responding to each objection and showing that the testimony is admissible by a preponderance of the evidence.¹⁵

Based on the above standards, Cibolo cannot meet its burden, and the above-specified portions of the rebuttal testimony of Messrs. Klein and Stowe should therefore be stricken as outside the realm of their respective expertise.

B. Mr. Stowe’s Testimony Should be Stricken as Improper Rebuttal (Objection 7).

Cibolo has the burden of proof in this proceeding and should have presented all of its evidence addressing the three limited Preliminary Issues regarding this phase of the proceeding as part of its direct testimony. Had Cibolo done so, Green Valley would have had an opportunity to analyze the testimony and take it into account in developing its own direct testimony. Yet by withholding Mr. Stowe’s testimony until rebuttal, Cibolo’s improper litigation tactics have prejudiced Green Valley by depriving it of an opportunity to offer testimony directly addressing Cibolo’s newly-expanded opinions. Green Valley therefore moves to strike the purported “rebuttal” testimony of Cibolo witness Jack Stowe.

¹³ *Gammill v. Jack Williams Chevrolet*, 972 S.W.2d 713, 719 (Tex. 1998) (“Just as not every physician is qualified to testify as an expert in every medical malpractice case, not every mechanical engineer is qualified to testify as an expert in every products liability case.”).

¹⁴ *In the Interest of M.D.S.*, 1 S.W.3d 190, 203 (Tex. App. Amarillo 1999) (citing *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 719-20 (Tex. 1998) (jet fighter engineer not qualified to give expert testimony on automobile seat belt design)).

¹⁵ *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 557 (Tex. 1995).

Any claim by Cibolo that Mr. Stowe's testimony is limited to rebutting Green Valley's testimony is belied by Mr. Stowe's testimony itself. An examination of the entire forty-one (41) pages of Mr. Stowe's "rebuttal" testimony contains only a single reference, on page 24 of his rebuttal, to the testimony of a Green Valley witness, Mr. Korman. The only other references to Green Valley evidence are not to testimony, but to Green Valley's appraisal (Exhibit GVSUD-1), which has been on file as required by the Commission, since June 28, 2016.¹⁶ Green Valley's appraisal was readily available to Cibolo for four months prior to the submission of Cibolo's direct testimony and Cibolo has no excuse for lying behind the log to *bolster* its direct testimony in the rebuttal phase after the opportunity for Green Valley and Staff to address the merits of Cibolo's direct case has passed.

To allow Mr. Stowe's improper supplemental direct testimony would reward this type of behavior and encourage such tactics by future litigants. In the case of Green Valley, allowance of Mr. Stowe's testimony would deprive Green Valley of the opportunity to provide testimony addressing Mr. Stowe's contentions, raising due process issues. A recent Commission proceeding addressing this precise issue is instructive.¹⁷ In Docket No. 45188, joint movants sought to strike the improper rebuttal testimony of Oncor Electric Delivery Company LLC and a group of joint purchasers, who held the burden of proof, on the ground that the Oncor group had "presented evidence in their rebuttal testimony that should have been presented in their direct testimony, thus, depriving the Parties of the opportunity to submit testimony regarding this information."¹⁸ The

¹⁶ See Commission Order No. 7 (Jun. 14, 2016) at 1.

¹⁷ PUC Docket No. 45188, *Joint Report and Application of Oncor Electric Delivery Company, LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262 (l)-(m), and 39.915*.

¹⁸ *Id.*, Order No. 14 Ruling on Commission Staff, Office of Public Utility Counsel, Steering Committee of Cities Served by Oncor, Alliance of Oncor Cities, Texas Industrial Energy Consumers, and Gexa Energy, LP's Objections and Motion to Strike (Dec. 21, 2015) at 1.

Commission ALJ, noting the “constricted schedule in this case,” struck portions of the Oncor group’s rebuttal testimony on the ground that it should have been submitted as part of direct.¹⁹ In so doing, the ALJ observed that “[r]ebuttal is *narrower* than direct, *not broader*” and that “[o]n rebuttal, a party is limited to evidence that directly answers or disproves the last round of the other party’s evidence.”²⁰ The 3rd Court of Appeals has similarly determined that “alleged rebuttal evidence must be in fact offered to *rebut* other evidence, not as a part of the proponent’s case-in-chief.”²¹

Given the similarity here to the circumstances at issue in Docket No. 45188, the same result should apply. In this proceeding: (1) the parties are under an abbreviated schedule arising from the requirements of TWC § 13.255(g)(1); (2) the scope of the proceeding is limited to a defined set of preliminary issues; and (3) Cibolo has been aware of Green Valley’s contentions since at least June, if not well before. Faced with these circumstances, Cibolo waited until the very day that it submitted its rebuttal to supplement its response Green Valley’s 2nd request for information and designate Mr. Stowe as a testifying witness. The ALJs should reject Cibolo’s litigation tactics and strike Mr. Stowe’s “rebuttal” in its entirety.

C. Alternatively, Portions of Mr. Stowe’s “Rebuttal” Should be Stricken (Objections 9-20).

In the alternative, should the ALJs deny Green Valley’s motion to strike Mr. Stowe’s testimony in its entirety, the ALJs should strike the above-referenced portions of testimony for the

¹⁹ *Id.* at 4.

²⁰ *Id.* (citing *In re Bledsoe*, 41 S.W.3d 807, 813 (Tex. App. –Fort Worth 2001, orig. proceeding)) (emphasis added). (“...alleged rebuttal evidence must be in fact offered to *rebut* other evidence, not as a part of the proponent’s case-in-chief.”)(emphasis in original).

²¹ *Waldrep v. Texas Employers Ins. Ass’n.*, 21 S.W.3d 692, 706 (Tex. App. –Austin, 2000, no pet.).

reasons set forth in the chart, as previously addressed above (Sections III.A. and III.B.), and as follows

1. Stowe testimony on compensation factors (Objection 9).

Green Valley incorporates here its objection to the entirety of Mr. Stowe's testimony as improper rebuttal. In the event that the ALJs allow portions of Mr. Stowe's rebuttal to stand, a major portion of his testimony should still be stricken as beyond the narrow issues to be addressed in this proceeding. More than fifteen (15) pages of Mr. Stowe's testimony is devoted to an in-depth application of the compensation factors set forth in TWC § 13.255(g).²² As an initial matter, Mr. Stowe's analysis of the compensation factors does not rebut any Green Valley testimony, but only bolsters, supplements and amplifies Cibolo's direct testimony. Moreover, this testimony improperly addresses Mr. Stowe's application of the compensation factors, which the Commission and ALJs determined should not be considered in this phase.²³ While Green Valley acknowledges for the purpose of statutory interpretation that the compensation factors bear some relevance to the legal determination of what constitutes property for the purpose of this proceeding, and agrees with the ALJs determination that "for the Commission to fulfill its duties under TWC § 13.255, "property" must be construed broadly enough to include items the statute lists as compensable...",²⁴ Mr. Stowe's new analysis goes much further by purporting to attach monetary values (*i.e.*, zero dollars) to Green Valley's identified property interests. Because Mr. Stowe's analysis should have been brought in direct, is not limited to rebutting Green Valley's direct testimony, and exceeds the scope of this phase of the proceeding, the testimony should be

²² Stowe Rebuttal Testimony at page 25, line 1 through page 40, line 7.

²³ Supplemental Preliminary Order at 3 ("After the Commission issues an interim order identifying any such property, based on consideration of a proposal for decision from SOAH, the appraisal process under TWC § 13.255(l) can be taken up."); SOAH Order No. 2 at 1 ("the first stage of this contested proceeding will only address Issue Nos. 9, 10, and 11 in the Commission's Supplemental Preliminary Order.").

²⁴ SOAH Order No. 7 at 9.

stricken.

2. Stowe testimony on federal loan debt (Objection 16, 17, 19, 20).

Green Valley incorporates here its objection to the entirety of Mr. Stowe's testimony as improper rebuttal. Mr. Stowe's "rebuttal" addressing Green Valley's federal loan debt does not rebut any testimony offered in Green Valley's direct case. Green Valley's appraisal contains a single reference to its debt and that reference does not attach a property interest to the debt. Green Valley has made no claim that Cibolo should repay a portion of the debt. Mr. Stowe's discussion regarding Green Valley's ability to repay such debt is irrelevant as outside of the scope of this phase of the proceeding. If relevant to the overall proceeding, this testimony addresses a valuation issue explicitly reserved for the next phase of the proceeding.

Mr. Stowe's testimony regarding Cibolo's federal debt further contains improper purely legal opinions. Mr. Stowe is not a lawyer and his testimony on the impact of Green Valley's debt, including his interpretation of the USDA letter that Cibolo offers as Exhibit Stowe R-E are therefore inadmissible. Further, Exhibit Stowe R-E is inadmissible hearsay and its admission would unduly prejudice Green Valley because it is misleading absent proper context, which Mr. Stowe fails to provide.

3. Stowe testimony on "impact fees" (Objection 18).

Green Valley incorporates here its objection to the entirety of Mr. Stowe's testimony as improper rebuttal. Green Valley did not offer any testimony stating that it has current impact fees. The testimony is irrelevant, lacks foundation, and exceeds both the scope Green Valley's direct testimony and this "property identification" phase of the proceeding.

IV. CONCLUSION

For the reasons set out above, Green Valley requests that the above-noted portions of Cibolo witness Rudy Klein's rebuttal testimony and exhibits and the entirety of Cibolo witness

Jack Stowe's rebuttal testimony and exhibits specified in these Objections and Motion to Strike be stricken. In the event that the ALJs decline to strike the entire rebuttal testimony of Mr. Stowe, Green Valley moves to strike the above-specified portions of his testimony and exhibits. Should the ALJs admit any of the specified testimony subject to these Objections, Green Valley requests that the ALJs accord such testimony and exhibit the appropriate weight.

Respectfully submitted,

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**ATTORNEYS FOR GREEN VALLEY
SPECIAL UTILITY DISTRICT**

CERTIFICATE OF SERVICE

I hereby CERTIFY that on December 14, 2016, a true and complete copy of the above was sent by the method indicated to counsel of record at the following addresses in accordance with P.U.C. PROC. R. 22.74:

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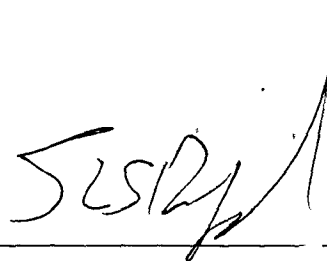
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A handwritten signature, appearing to read "SLSD", is written over a horizontal line.