



Control Number: 45702



Item Number: 109

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APPLICATION OF CITY OF CIBOLO §
FOR SINGLE CERTIFICATION IN §
INCORPORATED AREA AND TO §
DECERTIFY PORTIONS OF GREEN §
VALLEY SPECIAL UTILITY DISTRICT'S §
CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
GUADALUPE COUNTY §

PUBLIC UTILITY COMMISSION

OF TEXAS

**CITY OF CIBOLO'S RESPONSE TO GREEN VALLEY SPECIAL UTILITY
DISTRICT'S OBJECTIONS TO CITY OF CIBOLO'S REBUTTAL TESTIMONY AND
EXHIBITS AND MOTION TO STRIKE**

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December 21, 2016

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**SOAH DOCKET NO. 473-16-5296.WS
PUC DOCKET NO. 45702**

APPLICATION OF CITY OF CIBOLO FOR SINGLE CERTIFICATION IN INCORPORATED AREA AND TO DECERTIFY PORTIONS OF GREEN VALLEY SPECIAL UTILITY DISTRICT'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN GUADALUPE COUNTY	§ § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**CITY OF CIBOLO'S RESPONSE TO GREEN VALLEY SPECIAL UTILITY
DISTRICT'S OBJECTIONS TO CITY OF CIBOLO'S REBUTTAL TESTIMONY AND
EXHIBITS AND MOTION TO STRIKE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The City of Cibolo ("City"), files this Response to the Objections to City of Cibolo's Rebuttal Testimony and Exhibits and Motion to Strike ("Objections") filed by Green Valley Special Utility District (the "GVSUD"), as set forth herein ("Response").

I. INTRODUCTION

On December 7, 2016, the City filed the Rebuttal Testimonies of Jack Stowe and Rudolph "Rudy" F. Klein, IV, P.E., in this matter regarding the City's above-listed application under Texas Water Code ("TWC") § 13.255 (the "Application"). GVSUD filed its Objections to the City of Cibolo's Rebuttal Testimony and Exhibits and Motion to Strike ("Objections") on December 14, 2016. Under the Administrative Law Judges' ("ALJs") Order No. 3 in this matter, the deadline to file this Response is December 21, 2016; thus, this Response is timely filed. For the reasons provided herein, all of GVSUD's Objections should be overruled.

II. RESPONSE TO GVSUD'S OBJECTIONS

A. Rudolph "Rudy" F. Klein, IV, P.E.'s Rebuttal Testimony Is Proper, Admissible Rebuttal Testimony

Like the objections filed by GVSUD to Mr. Klein's direct testimony, GVSUD's objections to Mr. Klein's rebuttal testimony should be overruled. In his rebuttal testimony, Mr. Klein, P.E. properly applies his specialized knowledge and expertise regarding utility systems and the Texas Commission on Environmental Quality's ("TCEQ") regulatory framework to rebut the allegations of GVSUD's witnesses in their direct testimony and exhibits. As already determined by the ALJs in their Order No. 5, Mr. Klein's testimony regarding regionalization is within the scope of this hearing, is not a legal opinion, and is relevant to the determination of the remaining referred issues in this first phase of the hearing, known as Issues 9 and 11 from the Commission's Supplemental Preliminary Order ("Referred Issues"). GVSUD's current objections assert the same arguments, and such objections here should also be overruled and the motion to strike should be denied.

1. Mr. Klein's Testimony related to the TCEQ-designated regional wastewater provider is relevant and within the Commission's jurisdiction (Objections 1, 2, and 4-7)

In its Objections related to Mr. Klein's Rebuttal Testimony, GVSUD continues to make the same arguments it made in both its Objections and Motion to Strike Mr. Klein's Direct Testimony and its Response to the City's Motion for Summary Decision: that testimony related to regionalization of wastewater treatment facilities is beyond the jurisdiction of the Commission or ALJs to consider and irrelevant to these proceedings. GVSUD's continued objections, even after those objections have been rejected by the ALJs twice now, merely attempt to hinder the

fact-finders from considering evidence that is fatal to GVSUD's position. The City here responds to those failed arguments in much the same way it has before in this matter.

Contrary to GVSUD's contention, Mr. Klein's expert opinions regarding the application of the state's and TCEQ's regionalization policy with respect to Texas Pollutant Discharge Elimination System ("TPDES") permits, and the Cibolo Creek Municipal Authority's ("CCMA") status as the only entity designated by the TCEQ to plan for and provide wastewater collection and treatment facilities in the area to be decertified, directly impact what GVSUD property can be rendered useless or valueless by the City's Application for decertification. Accordingly, Mr. Klein's opinion that CCMA is the *exclusive* provider of regional wastewater services in CCMA's regional area is relevant to this matter because it provides one of the many reasons why no GVSUD property related to planning for a wastewater treatment plant and system is rendered useless or valueless by the decertification. Mr. Klein's testimony regarding regionalization and his concrete demonstrations showing that GVSUD intends to construct and operate wastewater facilities within CCMA's regional area are threshold considerations relevant to the entire proceeding, and specifically to this limited phase for determining what property is rendered useless or valueless by decertification, if any.

As required by Texas Rule of Evidence ("TRE") 401, Mr. Klein's discussion of regionalization both has a tendency to make the fact that no GVSUD property is rendered useless or valueless by the Application more probable than it would be without such a discussion and is of consequence in determining the action. As such, this portion of Mr. Klein's testimony and the related exhibits are admissible pursuant to TRE 402. In addition to the other reasons stated by the City's witnesses, if property related to planning to serve the decertified area through a

wastewater treatment plant can never have been useful to the decertified area under the theory of regionalization, then such property cannot be rendered useless or valueless by decertification.

Further, Mr. Montgomery's Direct Testimony identifies and discusses parts of the TCEQ Executive Director's ("ED") Response to Public Comments related to GVSUD's TPDES permit application that address this specific regionalization issue, making Mr. Klein's Rebuttal Testimony regarding CCMA's regional area and the Cibolo Creek Watershed¹ directly responsive to Mr. Montgomery's testimony.

The ideas that the ALJs or Commission should avoid this issue or cannot rely on a regionalization theory to determine what property is rendered useless or valueless because TCEQ has not decided the issue and it is not within the Commission's jurisdiction should also be rejected. The City is not asking the Commission to make a determination regarding the disposition of GVSUD's TPDES permit application. Rather, the City is providing the Commission with a reason why no property of GVSUD is rendered useless or valueless by decertification. In this matter, the Commission has a duty to consider the reasons why any alleged GVSUD property would be rendered useless or valueless by decertification. As the ALJs pointed out in their SOAH Order No.7, this is a legislatively imposed duty. To responsibly discharge that duty, the Commission must consider all relevant evidence. Testimony and evidence tending to show that there is no property that can be rendered useless or valueless is wholly relevant and within the jurisdiction of the Commission and the ALJs and should be considered.

Last, while it may be true that a *final* determination by TCEQ regarding regionalization in another matter would be something the Commission could properly rely on in making a determination, there is no case law or other reason that a ruling is a condition precedent to the

¹ Klein Rebuttal 28:11-30:2.

Commission evaluating the relevant evidence presented now. The suggestion that the Commission may rely on the ED's preliminary determination regarding GVSUD's permit application but not evidence and arguments that oppose its issuance, especially with respect to an issue that has been referred to contested case hearing, is also suspect. As an issue referred by the TCEQ to the State Office of Administrative Hearings ("SOAH") for a contested case hearing, regionalization is certainly an issue that the TCEQ believes is relevant to the analysis of whether a GVSUD's TPDES permit application should be approved or denied.

Additionally, the ALJs and the Commission are certainly capable of weighing and forming a recommendation regarding the competing testimony and evidence as to whether regionalization prohibits GVSUD from permitting and constructing a sewerage system in the area to be decertified in this matter. As the ALJs are well aware, the ED's determination is not a final determination of the Commissioners of the TCEQ. For these reasons, all of GVSUD's objections to Mr. Klein's testimony on these bases should be overruled and the motion to strike should be denied.

2. *Mr. Klein's testimony is not legal opinion (Objections 1, 2, and 4-7)*

Again, GVSUD's Objections to Mr. Klein's qualifications to opine on TCEQ's regionalization policy have been previously made and rejected by the ALJs in this matter, and GVSUD's above-listed Objections that Mr. Klein's testimony relating to regionalization should be stricken as purely legal opinion should be overruled. As discussed below, Mr. Klein is qualified to provide opinions regarding regionalization, and GVSUD's Objections in this regard again attempt to exclude evidence that would undermine GVSUD's position.

Mr. Klein is not, nor does he hold himself out to be, an attorney. GVSUD's presumption that only an attorney can express an opinion about a TCEQ policy and its implementation is

simply wrong. Just because the regionalization policy is contained in regulations does not automatically make any application of the policy or the regulations legal opinion. Again, a person does not need to be an attorney to read the plain language of statutes and regulations or be familiar with rule or policy and apply that rule or policy. This is particularly true of a wastewater engineer, who must routinely read, evaluate, and apply regulations in the planning, design and construction of a system. In fact, wastewater and other utility engineers may look at regulations and policies as much, if not more, than attorneys because regulations – particularly those related to wastewater utilities – are technical, not legal, in nature, and engineers are tasked with ensuring operational compliance with such regulations.

Knowledge of a policy that is codified in a regulation or how it is implemented by an agency does not require legal expertise. An engineer, like Mr. Klein, who has over 30 years of experience in the wastewater utility industry and who has prepared and filed TPDES permit applications, which includes a section specifically related to the regionalization policy, is capable of being knowledgeable of TCEQ's regionalization policy and to have an opinion on the application of that policy. Mr. Klein has already established that he is qualified to express opinions regarding this experience, what his understanding of TCEQ policies are, and how the TCEQ has implemented the regionalization policies in his experience.

Further, Mr. Klein's Rebuttal Testimony on page 28, lines 1 and 2 (referred to in GVSUD Objection 6) and page 29, line 3 through page 30, line 2 (included in GVSUD Objection 7) could not be considered legal opinion by any stretch of the imagination. It is clearly testimony regarding watersheds and the geography of the regions discussed in both the City's and GVSUD's testimony in this matter, which a wastewater engineer with abundant personal knowledge of the applicable region is qualified to discuss. While this testimony and the

underlying facts testified to may result in a legal outcome unfavorable to GVSUD's TPDES permit application and this matter, those legal implications do not render Mr. Klein's testimony legal opinion. GVSUD's Objections should be overruled and the motion to strike should be denied.

3. *Relevant regionalization testimony should not be excluded under TRE 403 (Objections 1, 2, and 4-7)*

While GVSUD also raises an objection to Mr. Klein's regionalization testimony under TRE 403, it again fails to explain the basis for its objection. TRE 403 provides that a court may "exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Although it is certainly not clear from GVSUD's Objections, GVSUD's prior assertion that regionalization is a "complex" issue appeared to be an attempt to claim that this otherwise relevant evidence should be excluded on the basis that the probative value of the testimony is substantially outweighed by the danger of confusing the issues.

As previously described, however, regionalization is a crucial element to this phase of the proceeding because it addresses the scope of GVSUD property that can be affected by decertification (one of the Referred Issues). As such, Mr. Klein's opinions regarding how the TCEQ has implemented regionalization policies are neither misplaced, given the issues to be considered in this proceeding, nor premature. Mr. Klein's testimony serves to prove that no GVSUD property can be rendered useless or valueless by the decertification. As such, this testimony has substantial probative value to the issues in this proceeding. Unlike the typical TPDES regionalization policy implemented by TCEQ, for which there are no specific regulations, the regionalization issue in this instance is much more straightforward because there

are specific rules in play. SOAH ALJs certainly have the ability to understand and evaluate the issue. As a result, this objection should be overruled and the motion to strike should be denied.

4. *Testimony regarding GVSUD's Water Master Plan is proper rebuttal testimony (Objection 3)*

In its Objections, GVSUD objects to portions of Mr. Klein's Rebuttal Testimony discussing GVSUD's 2014 Water Master Plan on the grounds that it is "improper rebuttal testimony." While not making formal arguments on this objection, GVSUD claims that in no part of the GVSUD testimony or appraisal does GVSUD "assign value to its Water Master Plan." Additionally, GVSUD claims that this testimony is not relevant to this first phase of these proceedings and is misleading. Such objections should be overruled.

Regarding GVSUD's "improper rebuttal" objection, the City contends that GVSUD does, in fact, make specific reference to the Water Master Plan in Mr. Montgomery's direct testimony at page 6, lines 6-7, and in Mr. Allen's testimony at page 6, lines 18-19. Further, that document is presented as part of an exhibit and as being relevant to Mr. Korman for preparing GVSUD's appraisal.² It is not clear why GVSUD would attach such a document and make sure to include it as an exhibit to its testimony if it did not find it to be relevant to the determination of what property of GVSUD is rendered useless or valueless by decertification. In fact, Mr. Korman states that he based his opinions on what property is rendered useless or valueless by decertification "on all documents attached to or referenced in my testimony." The 2014 Water Master Plan is one of those documents included in GVSUD-1.

² See Montgomery Direct at page 6, lines 1-3.

Further, Mr. Montgomery testifies to a typical “Master Planning process” but does not specifically identify or distinguish between a Water or a Wastewater Master Plan.³ Later in Mr. Montgomery’s testimony, he testifies regarding problems implementing its “Master Plan,” but, again does not specify which Master Plan he is referring to.⁴

Likewise, Mr. Korman’s direct testimony vaguely discusses “many other wastewater planning activities” but never identifies which “planning activities” he considered when determining what property would be rendered useless or valueless by decertification.⁵ In fact, the City would argue that GVSUD has never been completely clear on what “planning activities” it considers relevant to this proceeding, and how any such planning is rendered useless or valueless by the decertification sought by the City. Here, Mr. Klein’s testimony on page 13, lines 2-10 rebuts whether the Water Master Plan is a planning document and then whether it is a wastewater planning document. As a result, such testimony is proper rebuttal. Therefore, GVSUD’s objection should be overruled. GVSUD should not be rewarded for being intentionally vague. In the alternative, if GVSUD would like to withdraw any and all testimony regarding the 2014 Water Master Plan or any “investment” it made in the Water Master Plan, then the City is willing to work with GVSUD to reach that end. Until that occurs, GVSUD’s objection should be overruled and the motion to strike should be denied.

5. *Testimony regarding 2014 Water Master Plan is relevant and not misleading (Objection 3)*

For many of the same reasons as Section II.A.4. of this Response, Mr. Klein’s testimony regarding the Water Master Plan is relevant and is not misleading. The fact that GVSUD asserts

³ Montgomery Direct at page 10, line 12; and further description of the process at page 10, line 14 through page 12, line 2.

⁴ Montgomery Direct at page 15, lines 13-16.

⁵ Korman Direct at page 12, line 20. *See also*, Korman Direct at page 13, lines 3-6.

that nowhere in GVSUD's testimony or appraisal does it assign value to its Water Master Plan really has no meaning. In the City's view, it is not clear which of GVSUD's planning activities had value assigned to it in the GVSUD appraisal, and in fact, Mr. Korman asserts that all documents attached to his testimony formed the basis of his opinions.⁶ Therefore, the City must assume that every item attached to GVSUD's appraisal could be evidence of a planning activity that GVSUD considered an "investment" and assigned value to and relevant to determining what property would be rendered useless or valueless by decertification.

Second, while it may have been misleading for GVSUD to include documents it did not consider relevant to what property is rendered useless or valueless, it could have clarified its reason for including the document in either its appraisal or its testimony. It did not. If the City's testimony draws out the conclusion that the Water Master Plan or an investment in the plan is not rendered useless or valueless by decertification, it can hardly be considered misleading. Rather, it focuses attention on GVSUD's lack of forthrightness and clarity in identifying relevant "property." The reality is that Mr. Klein's objected testimony rebuts several documents that GVSUD provided in its testimony. The Water Master Plan is just one of them. GVSUD's objection should be overruled. Again, if GVSUD would like to withdraw any and all testimony regarding the 2014 Water Master Plan or any "investment" it made in the Water Master Plan, then the City is willing to work with GVSUD to reach that end. Until that occurs, GVSUD's objection should be overruled and the motion to strike should be denied.

B. Jack E. Stowe's Rebuttal Testimony Is Proper, Admissible Rebuttal Testimony

1. *Mr. Stowe's Testimony is Proper Testimony Rebutting the Prefiled Testimony and Exhibits of the GVSUD Witnesses (Objection 8)*

⁶ *Id.*

GVSUD's global objection to Mr. Stowe's testimony as improper rebuttal testimony should be overruled, as such testimony directly responds to the allegations made in GVSUD's witnesses' testimony and exhibits. GVSUD asserts, with little evidence, that Mr. Stowe's testimony should have been presented as part of the City's direct testimony and that GVSUD is improperly prejudiced by such testimony by not having the opportunity to address Mr. Stowe's opinions. However, GVSUD does nothing to suggest what parts of Mr. Stowe's opinions it might have theoretically addressed or how it is prejudiced.

GVSUD's claim, in essence, relies on an unrealistic and unreasonable assumption that the City knew or should have known what GVSUD would specifically argue in its prefiled testimony and anticipated that Mr. Stowe's specific testimony would be needed. GVSUD's arguments that the City has had GVSUD's appraisal since June 28, 2016 and that Mr. Stowe's testimony addresses GVSUD's appraisal as being indicative of Mr. Stowe's testimony not being true rebuttal testimony understates GVSUD's testimony. While it is true that Mr. Stowe's testimony addresses the factors listed in GVSUD's appraisal, his testimony goes well beyond just addressing GVSUD's appraisal, responding directly to GVSUD's financial, non-technical based theories, offered through its witness, Mr. Korman. Said another way, Mr. Stowe's testimony identifies the financial falsities regarding alleged "property" and "property interests" that Mr. Korman asserts and relies upon in his testimony regarding his compensation factors.

It is also not clear why the City should have known, based on any information the City received from GVSUD prior to the City filing its direct testimony, the precise nature of the property arguments Mr. Korman would make in his testimony. GVSUD's appraisal itself does not appear to specifically identify "property" other than planning and land (in spite of Mr. Korman's assertions to the contrary), and it does not explain how any such item is rendered

useless and valueless by decertification. In its Responses to the City's Third Requests for Information ("RFIs"), filed before the City submitted prefiled direct testimony in this matter, GVSUD responded to RFI 3-3, requesting its legal theories and factual bases of its claims and defenses, by saying, with respect to property, that:

TWC §13.255(c) and 16 TAC §24.120(c) require that the decertified retail public utility received adequate and just compensation from the applicant retail public utility for property being rendered useless or valueless by the decertification. All property, whether tangible or intangible, real, or personal must be considered as part of this process. TWC § 13.255(g) and 16 TAC §24.120(g), in addition to the definitions of "facilities" and "service" within TWC Chapter 13 and 16 TAC §24.3, serve as guidance for the types of property to consider and the value to ascribe to them.

What the City could gather from this description and the appraisal is that intangible property should be considered, not just tangible facilities or land. GVSUD did not go on to say that it would try to turn the money spent on planning or land into "property" rather than considering the planning or land itself the property. Further, the City could properly assume that Mr. Klein's testimony alone could show that no property was rendered useless or valueless based on the fact that GVSUD has no facilities, property, or customers within the area to be decertified. GVSUD, instead, has made rather "in-the-clouds," esoteric arguments in its testimony that the City did not fully anticipate for a process that is generally firmly planted on the ground and in the physical realm. Further, it was not apparent from GVSUD's appraisal that it also considered "lost profits" to be "property" rather than a compensation factor. Taken at face value, it just appeared that GVSUD was skipping past showing what property was rendered useless or valueless to get to the compensation factors.

Ultimately, for Mr. Stowe's rebuttal testimony to be improper, it would have to not address testimony put forth by GVSUD. Mr. Stowe's testimony does, in fact, address GVSUD's testimony and exhibits. GVSUD's testimony, as well as its RFI responses, has consistently

pointed to GVSUD's appraisal as being the complete picture in terms of identifying property rendered useless or valueless by decertification. However, Mr. Korman's direct testimony in particular, puts a new spin on that appraisal by identifying items that look like compensation factors in the appraisal now as the property itself. It is entirely within the City's right to address these new—and arguably novel for the TWC §13.255 process—arguments in its rebuttal with a witness who is an expert in the TWC §13.255 process, in financial concepts, and in utilities as a whole. Thus, GVSUD's global objection to Mr. Stowe's testimony should be overruled and motion to strike denied. GVSUD reasserts this objection in its other specific objections, and the City will address those more specific objections to Mr. Stowe's testimony in this Section II.B. below. GVSUD's objection should be overruled and its motion to strike should be denied.

2. *Mr. Stowe's testimony on compensation factors is proper rebuttal and relevant (Objection 9)*

In Objection 9, GVSUD objects to portions of Mr. Stowe's testimony addressing compensation factors as improper rebuttal and outside the scope of the first phase of this proceeding. As to GVSUD's improper rebuttal argument, the City incorporates its response in Section II.B.1 to GVSUD's Objection 9. While GVSUD does not call the "outside the scope" argument a relevance argument, the City will assume, for the sake of responding to GVSUD's objections in totality, that this is an objection under TRE 401 and 402. However, the cited portion of Mr. Stowe's testimony is proper rebuttal testimony and relevant to the question of whether GVSUD's appraisal is properly limited to property rendered useless or valueless by decertification.

First, GVSUD provides two witnesses, Mr. Korman and Mr. Blackhurst,⁷ who argue that the compensation factors listed in TWC § 13.255(g) and 16 TAC §24.120(g) should be considered in determining what property is rendered useless and valueless by decertification. But now, when the City's witness calls the application of that property analysis into question, and shows how, in fact, Mr. Korman, rather than considering those factors in his identification of property, skips the analysis of property rendered useless and valueless, and goes straight to compensation factors, GVSUD now suddenly considers those factors to be irrelevant.

Second, GVSUD, through the prefiled testimony of Mr. Korman, has opened the door to reexamining and taking a deeper dive into GVSUD's appraisal by implying that its appraisal contained a complete analysis while at the same time offering new property theories in its testimony. The City has the right to rebut that testimony and provide its opinion on such theories. In its Response to the City's Fourth RFIs (which were narrowly tailored and aimed at specifically identifying what property GVSUD considered useless and valueless) and in its testimony, GVSUD consistently pointed to its appraisal as containing all the property rendered useless or valueless by decertification.⁸ Because Mr. Korman (or any of GVSUD's other witnesses) does not properly identify such property either in his testimony or at the outset of the appraisal, it was necessary for Mr. Stowe to "explain in further detail why GVSUD's allegations in each of [the] compensation factors do not result in property rendered useless or valueless by the decertification requested in the Application, as they are presented in the GVSUD Appraisal."⁹ Mr. Stowe directly challenges the allegations in GVSUD's testimony from Mr.

⁷ See, Blackhurst Direct at page 12, lines 7-10 and page 13, lines 10-18; and Korman Direct at page 11, lines 11-19.

⁸ See, GVSUD's Responses to the City's Fourth RFI's, attached as Exhibit 1; Korman Direct at page 8, lines 1-6; Korman Direct at page 12, lines 6 and 7. Korman's testimony on pages 12 and 13, like his appraisal, skips the analysis of how any property is rendered useless or valueless.

⁹ Stowe Rebuttal at page 24, lines 19-22."

Korman that GVSUD's appraisal is limited to property rendered useless or valueless by decertification.

GVSUD also asserts that Mr. Stowe's testimony attaches monetary values to GVSUD's identified "property interests." This is untrue. Rather, Mr. Stowe makes the single argument that the items are not credible and should be rejected in their entirety. Said another way, Mr. Stowe's testimony does not attach any monetary values because, unlike Mr. Korman, he finds no property to which a monetary value can be attached, in light of Mr. Korman's theories. Stowe's testimony regarding the compensation factors as applied (or not applied) to "property rendered useless or valueless" is both relevant and proper rebuttal. GVSUD's objections in this regard should be overruled and its motion to strike should be denied.

3. Mr. Stowe's testimony regarding regionalization is relevant and not legal opinion (Objections 10 and 13)

GVSUD's objections to these portions of Mr. Stowe's rebuttal testimony regarding regionalization are essentially the same arguments that it makes regarding Mr. Klein's regionalization testimony, i.e., that it is not relevant, not within the Commission's jurisdiction, and that it constitutes legal opinion. The City incorporates its applicable responses to such arguments as provided above in Sections A.1., A.2., and A.3. (to the extent GVSUD is making a TRE 403 objection here, which is not clear). Mr. Stowe's opinions regarding regionalization are based on both his own experience¹⁰ and supported by the conclusions of Mr. Klein, an expert witness, and are not presented as legal opinion.¹¹ Further, Mr. Stowe has additional experience with CCN decertification to help the trier of fact understand the consequences of this particular regionalization issue for determining what property of GVSUD, if any, is rendered useless or

¹⁰ See Stowe Rebuttal at page 9, lines 18-21

¹¹ See Stowe Rebuttal at page 17, line 21 through page 18, line 2.

valueless by decertification. Based on Mr. Stowe's experience with these matters, he reaches the opinion that GVSUD's allegations are flawed, and consequently that no property can be rendered useless or valueless if it was never useful or valuable with respect to the decertified area in the first place. GVSUD's objections should be overruled and its motion to strike should be denied.

4. *Mr. Stowe's testimony regarding property rendered useless or valueless by decertification and whether the appraisals are limited to such property is proper rebuttal (Objections 11 and 12)*

GVSUD's Objection here only refers to Referred Issue No. 9, but the cited testimony addresses both Referred Issues Nos. 9 and 11. Mr. Stowe's testimony on whether any property of GVSUD would be rendered useless or valueless by virtue of the proposed decertification and whether the appraisal submitted in this matter are limited to property rendered useless or valueless is proper rebuttal testimony. For efficiency, the City reasserts the response in Section II.B.1.. above, to this objection regarding proper rebuttal. Given that Mr. Korman claims in his testimony to have considered all property rendered useless or valueless by decertification, and Mr. Korman asserts in his testimony that (1) GVSUD's appraisal is limited to property rendered useless or valueless by decertification, and (2) the City's appraisal is not limited to property rendered useless or valueless by decertification, Mr. Stowe's opinion on those assertions is proper rebuttal. Mr. Stowe's rebuttal is proper, as the theories espoused by Mr. Korman as to what he believes to constitute "property" or a "property interest" are more expansive than indicated in either GVSUD's appraisal or its discovery responses. GVSUD's objection should be overruled and its motion to strike should be denied.

5. *Mr. Stowe's testimony contains a foundation and is reliable (Objection 12)*

As to the foundation and TRE objections in Objection 12, the cited portion of Mr. Stowe's testimony has a foundation and is reliable. Mr. Stowe clearly lays the foundation for

his opinions regarding the TWC §13.255 process at page 5, line 14 through page 6, line 17; page 8, line 6 through page 9, line 5; and in Exhibit Stowe R-B. GVSUD fails to provide an explanation as to why Mr. Stowe's testimony is unreliable and should be disregarded under TRE 403. In any case, Mr. Stowe's decades of experience with CCN decertification matters, and financial and appraisal matters for utilities, heavily outweighs that of GVSUD's expert, Mr. Korman. GVSUD's objections should be overruled and the motion to strike should be denied.

6. *Mr. Stowe's testimony regarding Preliminary Issue No. 9 is not legal opinion (Objection 12)*

GVSUD objects to several portions of Mr. Stowe's testimony as being unqualified legal opinion. But in each case, GVSUD mischaracterizes the nature of Mr. Stowe's expert opinions. The heart of all Mr. Stowe's testimony is directly financial in nature and related specifically to utilities and CCN decertification matters. TRE 702 does not require any particular certification to qualify as an expert. Rather, special knowledge that qualifies a witness to give an expert opinion may be derived from specialized education; practical experience; a study of technical works, or some combination thereof. In this case, Mr. Stowe has all of those credentials. Mr. Stowe has extensive experience as an accountant and financial expert generally and decades of experience as a consultant on financial issues for utilities specifically. Further, he has taken part in several CCN decertification matters as a consultant. These credentials make him uniquely qualified to help the trier of fact determine the issues of whether there is any property of GVSUD that is rendered useless or valueless by decertification and whether the appraisals submitted in this matter were limited to property rendered useless or valueless. And Mr. Stowe is able, through his experience, to address the property theories that GVSUD's witnesses, in particular Mr. Korman, offered in their testimonies.

In its Objection 12, GVSUD asserts, without explanation, that the cited testimony is “pure legal opinions addressing statutory and Commission intent.” Unlike portions of Mr. Blackhurst’s testimony that were struck by the ALJs, nowhere does Mr. Stowe discuss statutory or Commission intent. Rather, Mr. Stowe discusses his opinions, based on his experience with decertification matters, of what “property” includes with respect to TWC §13.255 and when a decertified CCN holder can receive compensation. In this respect, it is functionally no different than Mr. Korman’s direct testimony at page 6, lines 17-20, and page 11, lines 14-21, or page 15, lines 11-14, except that Mr. Stowe has more experience to base his opinions on. GVSUD’s objection should be overruled and the motion to strike should be denied.

7. *Mr. Stowe’s testimony regarding meaning of property and property interests is not legal opinion (Objections 14 and 15)*

Much like its objections to Mr. Stowe’s testimony regarding Preliminary Issue No. 9, it is not clear why GVSUD characterizes the cited testimony as “pure legal opinion” other than as an attempt to exclude evidence that rebuts the testimony of its own witnesses. The City reasserts and incorporates its arguments provided in Section II.B.6 above regarding Mr. Stowe not providing a legal opinion to Objections 14 and 15. Again, Mr. Stowe has extensive financial experience, including experience in classifying assets, expenses, expenditures, investments and property from a financial perspective. And again, Mr. Stowe’s testimony responds to similar financial testimony provided by Mr. Korman. GVSUD’s objection should be overruled and the motion to strike should be denied.

8. *Mr. Stowe’s testimony regarding GVSUD’s federal debt is proper rebuttal, relevant (Objection 16 and 17)*

GVSUD’s objections regarding its federal debt should be overruled. For efficiency, the City incorporates its arguments in Section II.B.1 here regarding the objection concerning proper

rebuttal testimony. As to the objection regarding the relevance of the USDA debt, GVSUD made such debt relevant and properly rebuttable when it included references to that federal debt in its appraisal, attached documents related to the federal debt to its appraisal, and claimed through Mr. Korman's testimony, without further explanation, that all documents attached to his testimony formed the basis of his opinions. Again, GVSUD cannot point to its appraisal as containing all relevant information and then object when that claim is analyzed document by document. Further, Mr. Stowe is directly rebutting the assertion by Mr. Korman that lost revenue not connected to anything tangible or fixed is property and that the GVSUD appraisal appropriately considers the impact of these lost revenues on the remainder of the (nonexisting) customer base related to that "property". This goes to the very heart of the Referred Issues. GVSUD's objection should be overruled and the motion to strike should be denied.

9. *Stowe testimony regarding GVSUD's federal debt is not legal opinion (Objection 17)*

GVSUD claims portions of Mr. Stowe's testimony regarding GVSUD's federal debt are "legal opinions regarding the effect of [GVSUD's] federal debt." However, the cited portions of Mr. Stowe's testimony do not discuss the legal effect of the debt. It discusses both Mr. Korman's apparent attempt to tie the debt to potential lost revenues from sewer service and the financial impact of decertification on GVSUD's ability to repay such debt. None of this is legal opinion and is based on Mr. Stowe's experience as a financial consultant for utilities who understands debt, including the type of debt GVSUD has incurred. The City incorporates its arguments from Section II.B.6 here as to GVSUD's "pure legal opinion" objections. GVSUD's objections should be overruled and the motion to strike should be denied.

10. Testimony regarding impact fees is proper rebuttal, relevant to this proceeding, and not legal opinion (Objection 18)

As with GVSUD's other "improper rebuttal" and relevance objections, GVSUD's objections with respect to impact fees are patently flawed. The City here incorporates its response to improper rebuttal objections in Section II.B.1 here in response to GVSUD's Objection 18. GVSUD claims it provided no testimony regarding impact fees, but Mr. Montgomery's testimony directly discusses impact fees at page 20, lines 18-22 in connection with "lost revenues" and again at page 21, lines 16 through page 22, line 6. Mr. Korman asserts that lost revenues are property that will be rendered useless or valueless (without specifying exactly how they are property or rendered useless or valueless). He also expressly relies on Mr. Montgomery's calculations of impact fees, which are included in addenda to GVSUD's appraisal report, but never refers to impact fees as property or property interests in the GVSUD appraisal. Based on all of these items, Mr. Stowe's testimony is both proper rebuttal and relevant to the Referred Issues. GVSUD's objections should be overruled, and the motion to strike should be denied.

Last, GVSUD makes a vague objection to Mr. Stowe's impact fee testimony as legal opinion regarding the implications of GVSUD's corporate limits. While GVSUD does not cite the specific portion of the testimony this objection applies to, the only portion of the cited testimony that discusses the City's corporate limits is at page 37, lines 15-18. Again, Mr. Stowe has laid a foundation for his experience with decertification issues and financial concepts. He specifically lays the foundation for his opinion in this portion of the testimony at page 7, line 19 through page 8, line 5, in addition to his testimony regarding economic opportunity interests. The City additionally incorporates its arguments from Section II.B.6 here. GVSUD's objections should be overruled and motion to strike denied.

11. *Exhibit Stowe R-D relating to GVSUD's federal debt is proper rebuttal and relevant (Objection 19)*

GVSUD incorporates the same arguments in its response to Objection 16 in Section II.B.8. regarding GVSUD's federal debt, to this response, as Exhibit Stowe R-D is proper rebuttal and relevant to this matter. Exhibit Stowe R-D, a GVSUD document, wholly supports Mr. Stowe's proper rebuttal analysis of Mr. Korman's testimony and exhibits and is relevant to this proceeding by showing decertification can have no effect on GVSUD's ability to repay its bonds. Such document evidences the debt alleged in GVSUD's testimony and exhibits. GVSUD's objection should be overruled and the motion to strike should be denied.

12. *Exhibit Stowe R-E relating to GVSUD's federal debt is proper rebuttal, relevant, not offered for the truth of the matter asserted, and not misleading (Objection 20)*

GVSUD incorporates some of the same arguments regarding this exhibit as it made in its responses to Objection 16 (Section II.B.8.) and Objection 19 (Section II.B.11), as Exhibit Stowe R-E is proper rebuttal and relevant to this matter. In addition, Stowe R-E is relevant because it forms part of the basis of Mr. Stowe's opinion that decertification of the area requested by the City will not affect GVSUD's ability to pay debt unrelated to wastewater. This Exhibit also became relevant and proper rebuttal when GVSUD presented the debt as relevant in its appraisal and continued in its testimony to assert that "lost revenues" were a property interest that could be connected to an impact on remaining customers.

GVSUD additionally argues that the document is hearsay, is irrelevant, and is misleading. First, this exhibit is not submitted for the truth of the matter asserted but rather as a document upon which Mr. Stowe relied on to form his expert opinion regarding any impact the decertification would have on GVSUD's ability to repay its loans. Mr. Stowe is qualified by experience and training as both a financial expert and a utility expert to form opinions that aid

the finders of fact in this matter. As such an expert, Mr. Stowe can properly rely on Exhibit Stowe R-E, a letter from the issuer of the debt in question, to form an opinion about how that debt is to be repaid.


Lastly, it is unclear why GVSUD characterizes the exhibit as misleading. Once again, GVSUD implicates items as relevant and then objects to items as misleading when its own suggestions are shown to be unclear or disingenuous. Here, the letter provides Mr. Stowe with yet another basis to rely on for his conclusions regarding Mr. Korman's testimony concerning property. GVSUD's objections should be overruled and motion to strike denied.

III. CONCLUSION

For the reasons set forth above, the City of Cibolo respectfully requests that the Administrative Law Judge (1) overrule Green Valley Special Utility District's Objections to the cited portions of the rebuttal testimony of the City, (2) deny the District's motion to strike, and (3) grant the City such other relief to which it may be entitled.

Respectfully submitted,

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ATTORNEYS FOR THE CITY OF CIBOLO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first-class mail on this 21st day of December, 2016 to the parties of record.


David J. Klein