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

SOAH ORDER NO. 8
RULING ON OBJECTIONS TO REBUTTAL TESTIMONY

On December 14, 2016, Green Valley Special Utility District (Green Valley or GVSUD) filed its objections to the rebuttal testimony and exhibits of the City of Cibolo (Cibolo) and its related motion to strike (Green Valley's Objections).[1] On December 21, 2016, Cibolo filed its response (Cibolo's Response).[2] This order addresses only whether material objected to in Green Valley's Objections is admissible under the Texas Rules of Evidence (TRE).

Except as otherwise stated in this order, Green Valley's Objections are **OVERRULED.** This order applies the same reasoning as previous orders issued in this case. The Administrative Law Judges (ALJs) also note the following.

As discussed in previous orders, Stage I of this case will address the following issues:

9. What property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Cibolo in this proceeding? TWC § 13.255(c).

11. Are the existing appraisals limited to valuing the property that has been determined to have been rendered useless or valueless by decertification?

[1] Green Valley's Objections to the City of Cibolo's Rebuttal Testimony and Exhibits and Motion to Strike (Dec. 14, 2016).

[2] 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 (Dec. 21, 2016).

In ruling on relevance objections to material in Cibolo's rebuttal testimony, the question is whether the material meets TRE relevance standards regarding Issues 9 or 11 above. For example, if a Cibolo rebuttal witness assigns zero dollars to interests mentioned in Green Valley's direct testimony because the rebuttal witness contends that they (1) do not constitute ***Green Valley's property***, or (2) will not be rendered ***useless or valueless*** to Green Valley ***by the decertification*** sought by Cibolo in this proceeding, that testimony is relevant to Stage I.

In ruling on improper rebuttal objections, the ALJs considered, among other things, whether the rebuttal testimony addressed matters discussed or documents attached to or discussed in Green Valley's direct testimony (whether or not it was specifically cited in the rebuttal testimony).

Regarding relevance and improper rebuttal objections, the ALJs took into account any vagueness in Green Valley's position as to whether an interest mentioned in its direct testimony and discussed in Cibolo's rebuttal testimony is ***Green Valley property that will be rendered useless or valueless to Green Valley by the decertification sought by Cibolo in this proceeding***. On filing of a stipulation by Green Valley that it is not asserting in this proceeding that a specific interest mentioned in its direct testimony fits that description, the ALJs will consider timely requests to amend their evidence rulings based on that stipulation.

I. GREEN VALLEY'S OBJECTIONS TO THE REBUTTAL TESTIMONY OF RUDOLPH F. KLEIN

Green Valley's objections to the rebuttal testimony of Rudolph F. Klein, IV, P.E. are **OVERRULED** except to the extent stated below:

Testimony Objected to	**Objection**	**Ruling**
P. 4, ll. 6-10 ("especially in a . . . § 351.62(2)."; p. 5, ll 17-21 ("First, I remain . . . that opinion," p.	Commission lacks jurisdiction to determine witness's "regionalization" theory Opinion outside witness's expertise	**OVERRULED**, with this clarification: (1) the witness is qualified to offer the expert opinions in his direct testimony relating to Issues 9

Testimony Objected to	Objection	Ruling
18, ll. 10-11 ("First, . . . decertified."); p. 20, l. 12; p. 28, ll. 1-2 ("GVSUD's . . . Watershed."); p. 28, l. 16 through p. 30, l. 2 ("However, . . . Creek.")	(TRE 702) Lack of relevance (TRE 401, 402, 403)	and 11; (2) in doing so, he can describe his experience with and understanding of regulatory policies and law, which are a basis of his expert opinions, but those descriptions are not expert legal opinions

II. GREEN VALLEY'S OBJECTIONS TO THE REBUTTAL TESTIMONY OF JACK E. STOWE

Green Valley's objections to the rebuttal testimony of Jack E. Stowe are **OVERRULED** except to the extent stated below:

Testimony Objected to	Objection	Ruling
P. 9, ll. 18-21; p. 17, l. 21 through p. 18, l. 5 ("Second, . . . Chapter 351.")	Commission lacks jurisdiction to determine witness's "regionalization" theory Opinion outside witness's expertise (TRE 702) Lack of relevance (TRE 401, 402, 403)	**OVERRULED**, with this clarification: (1) the witness is qualified to offer the expert opinions in his direct testimony relating to Issues 9 and 11; (2) in doing so, he can describe his experience with and understanding of regulatory policies and law, which are a basis of his expert opinions, but those descriptions are not expert legal opinions
P. 15, l. 20 through p. 16, l. 8	Improper rebuttal; merely bolsters Cibolo's direct case Opinion outside witness's expertise (TRE 702) Lack of foundation as to what prior cases witness's opinion is based on and whether testimony accurately reflects Commission process in those cases Opinion unreliable (TRE 403)	

Testimony Objected to	Objection	Ruling
P. 18, ll. 6-18	Opinion outside witness's expertise (TRE 702)	
P. 18, l. 19 through p. 22, l. 16	Improper rebuttal; merely bolsters Cibolo's direct case Opinion outside witness's expertise (TRE 702)	
P. 28, l. 18 through p. 29, l. 5; p. 37, l. 15 through p. 39, l. 2	Improper rebuttal; merely bolsters Cibolo's direct case; does not rebut testimony of any Green Valley witness Lack of relevance (TRE 401, 402, 403) Opinion outside witness's expertise (TRE 702)	
P. 26, l. 15 through p. 27, l. 9; Exhibit Stowe R-E	Improper rebuttal; merely bolsters Cibolo's direct case; does not rebut testimony of any Green Valley witness Lack of relevance, misleading (TRE 401, 402, 403) Hearsay (TRE 802) (regarding Exhibit Stowe R-E)	**OVERRULED**, except that (as stated in Cibolo's Response at 24), Exhibit Stowe R-E is not admitted for the truth of the matters asserted but as a document on which the witness relied in forming his expert opinion about any impact the decertification would have on Green Valley's ability to repay its loans

SIGNED December 30, 2016.

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS