



Control Number: 45702



Item Number: 81

Addendum StartPage: 0

RECEIVED

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

2016 NOV -2 PM 2:49

PUBLIC UTILITY COMMISSION
CLERK

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 DIRECT TESTIMONY AND
EXHIBITS AND MOTION TO STRIKE**

DAVID J. KLEIN
State Bar No. 24041257
dklein@lglawfirm.com

CHRISTIE DICKENSON
State Bar No. 24037667
cdickenson@lglawfirm.com

ASHLEIGH K. ACEVEDO
State Bar No. 24097273
aacevedo@lglawfirm.com

LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)

ATTORNEYS FOR THE CITY OF CIBOLO

November 2, 2016

81

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	RESPONSE TO GVSUD'S OBJECTIONS.....	3
A.	Mr. Rudolph Klein, IV, P.E.'s direct testimony regarding regionalization is relevant to this proceeding. (Objections 1, 11, 12, 15, 17, 18, 20, 21, 23, 24)	3
1.	Regionalization testimony and related Exhibits are relevant and admissible under TRE 401 and 402.	4
2.	Relevant regionalization testimony and exhibits should not be excluded under TRE 403.	6
3.	Exhibit F does not require authentication under TRE 901.	7
B.	Mr. Klein is qualified to offer expert testimony regarding all matters contained in his direct testimony and exhibits.	8
1.	Mr. Klein is qualified to provide expert testimony regarding appraisals and the nature of all of Green Valley's property, thus his testimony regarding the City's Appraisal and the Appraisal itself are relevant and admissible in this proceeding. (Objections 2-9, 13, 14, 17, 19, 21, 22)	9
a.	Mr. Klein is qualified to testify regarding property rendered useless or valueless by decertification.	9
b.	Exhibit C is a report reviewed by Mr. Klein to form an expert opinion.	11
c.	Exhibit C is relevant and admissible.....	12
2.	Mr. Klein is qualified to provide expert testimony relating to the state's regionalization policy and the nature of property. (Objections 1, 2, 11, 12, 15, 16, 17, 18, 20, 21, 23 24).....	13
a.	Testimony regarding regionalization policies is not legal opinion.	13
b.	Testimony regarding the nature of property not purely legal.....	15
c.	Exhibit E is admissible under TRE 703.....	16
C.	Application of Response to GVSUD's Table of Specific Objections.	16
III.	CONCLUSION.....	20

**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
--	--	--

**CITY OF CIBOLO'S RESPONSE TO GREEN VALLEY SPECIAL UTILITY
DISTRICT'S OBJECTIONS TO CITY OF CIBOLO'S DIRECT 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 Direct Testimony and Exhibits and Motion to Strike ("Objections") filed by Green Valley Special Utility District (the "GVSUD"), as set forth herein ("Response").

I. INTRODUCTION

The City filed Direct Testimony on October 19, 2016, regarding the above-listed application under Texas Water Code ("TWC") § 13.255 (the "Application"). GVSUD filed its Objections to the City of Cibolo's Direct Testimony and Exhibits and Motion to Strike ("Objections") on October 26, 2016. Under Order No. 3, the deadline to file this Response is November 2, 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. Mr. Rudolph Klein, IV, P.E.'s¹ direct testimony regarding regionalization is relevant to this proceeding. (Objections 1, 11, 12, 15, 17, 18, 20, 21, 23, 24)²**

¹ To be clear, all references to Mr. Klein in this Response are to the City's expert witness, Mr. Rudolph "Rudy" Klein, IV, P.E., not the attorney for the City, Mr. David Klein.

The Administrative Law Judge (“ALJ”) should overrule GVSUD’s above-referenced Objections to portions of Mr. Klein’s testimony dealing with the Texas Commission on Environmental Quality’s (“TCEQ”) regionalization policies, and to Exhibits E and F, which GVSUD alleges are beyond the scope of this proceeding, and thus, irrelevant. Likewise, the ALJ should reject GVSUD’s Objections that this otherwise relevant evidence should be excluded because of its claimed complexity, and that Exhibit F must be authenticated.

1. *Regionalization testimony and related Exhibits are relevant and admissible under TRE 401 and 402.*

Contrary to GVSUD’s contention, Mr. Klein’s expert opinions regarding the TCEQ’s implementation of the state and TCEQ’s policies regarding regionalization is absolutely relevant in this matter, especially even in the specific scope of this proceeding.³ Specifically, Mr. Klein’s opinions regarding the application of the state 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 and unconditionally impact what GVSUD property can be rendered useless or valueless by the City’s Application for decertification. The fact that CCMA is the *exclusive* provider of regional wastewater services in CCMA’s service area, an opinion that Mr. Klein provides, is based upon his experiences with water quality applications in that region of the state and his understanding that the proposed area to be decertified is within CCMA’s regional area. In other words, such opinions are relevant because they are part of his basis of why there is no GVSUD property that

² It should be noted that the cited testimony in the GVSUD’s Objection attempts to include testimony that is not related to the Objection. Specifically, as to the GVSUD’s Objection No. 20 to page 29, line 23 through page 30, line 9, this Objection really only applies to page 30, lines 1-9. The lines cited in GVSUD’s Objection No. 21 are not related to this Objection at all.

³ Supplemental Preliminary Order, Docket No. 45702, at 4-5 (July 20, 2016); SOAH Order No. 2, Docket No. 45702, at 1 (Aug. 19, 2016).

could be useful or valuable to GVSUD with respect to this Application, that CCMA – not GVSUD – is the only entity that can develop a sewerage system to collect, transport, treat, and discharge wastewater generated in that area of the State of Texas. Mr. Klein’s testimony regarding regionalization; the regulations from which the regionalization issue is derived as provided in Exhibit E, and his concrete demonstration that GVSUD intends to construct and operate wastewater facilities within CCMA’s regional area as shown by Exhibits E and F, are all threshold considerations relevant to the entire proceeding, and specifically to this limited phase for determining what property is rendered useless or valueless by decertification.

Further, despite the fact that the regionalization issue is a straightforward issue, GVSUD’s objection that such issue is “complex” does not render testimony on that issue irrelevant or inadmissible. Rather, such objection reflects a far-fetched attempt to hinder the factfinder from considering evidence that is clearly fatal to GVSUD’s position. As required by Texas Rule of Evidence (“TRE”) 401, Mr. Klein’s discussion of regionalization both has a tendency to make a fact more or less 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. Particularly, the regionalization discussion goes to the heart of this proceeding, which is identifying GVSUD’s property and determining whether it will be rendered useless or valueless.

GVSUD’s assertion that CCMA’s designation as a regional wastewater provider is not before either the Public Utility Commission (“Commission”) or the State Office of Administrative Hearings (“SOAH”) and is only relevant to a non-party (CCMA) is a gross mischaracterization of the facts related to this proceeding and contradicts the filings by GVSUD in this matter. Rather, CCMA has been a *TCEQ-designated* regional entity since 1978 – one of

only eight such designated entities in the entire state⁴ – and has *exclusive* authority to provide wastewater collection and treatment facilities within its regional area⁵ (depicted in Exhibit F), which is substantially more than a preference, as suggested by GVSUD. More importantly, because regionalization, generally, and CCMA’s authority, specifically, have a bearing on GVSUD’s property interests and whether such property can be rendered useless or valueless by decertification, it is before SOAH in this proceeding despite GVSUD’s insistence otherwise. Such objection should be overruled.

2. *Relevant regionalization testimony and exhibits should not be excluded under TRE 403.*

GVSUD also cites TRE 403 as a basis for excluding this portion of Mr. Klein’s testimony. 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 assertion that regionalization is a “complex” issue appears 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 thereof, the attached regulations that are consistent with his opinion on the scope of CCMA’s authority in this region,

⁴ See, 30 Texas Administrative Code (“TAC”), Chapter 351 (containing such designated entities).

⁵ See, 30 TAC §§ 351.61, 351.62, and 351.65.

and the attached exhibit delineating CCMA's regional area, all serve 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. In addition, contrary to GVSUD's assertion that the issue is complex, the regionalization issue in this instance is, in fact, quite straightforward given the clarity of the regulations involved. Even assuming that the issue is complex, GVSUD underestimates the unique expertise SOAH ALJs have in understanding such an issue. Unlike a jury, an ALJ is not likely to confuse the relevant issues and facts. As a result, this objection should be overruled.

3. *Exhibit F does not require authentication under TRE 901.*

Finally, GVSUD's objection that Exhibit F should be struck because it is not properly authenticated should also be overruled. Exhibit F, as explained by Mr. Klein, is a screen shot, i.e., a picture, of a map created from the Texas Parks and Wildlife Department's online watershed viewer. The map in the picture depicts the Cibolo Creek Watershed, which is a geographic designation. A document can be considered authentic if a sponsoring witness vouches for its authenticity.⁶ Further, pictures or photographs relevant to an issue in a case are admissible when the photograph or picture portrays facts relevant to an issue and can be verified by a witness as being a correct representation of the facts.⁷ Here, Mr. Klein's testimony provides a proper foundation for such map, explains that the image in Exhibit F shows the outline of the Upper Cibolo Creek Watershed,⁸ and that Exhibit F is a fair and accurate representation of the watershed view page for the Upper Cibolo Creek Watershed.⁹ He is of course subject to cross-examination on such map.

⁶ See *In re G.F.O.*, 874 S.W. 2d 729, 731 (Tex. App.—Hous. [1st Dist.] 1994, no pet.).

⁷ See *Kroger Co. v. Milanes*, 474 S.W. 3d 321, 342 (Tex. App.—Hous. [14th Dist.] 2015, no pet.).

⁸ Klein Testimony, page 21, lines 1-4.

⁹ Klein Testimony, page 21, lines 11-14.

Finally, the City requests the ALJ to take judicial notice of Exhibit F pursuant to TRE 201(b)(2) as its contents are a verifiable fact that can be accurately and readily determined from sources – namely the state agency from which it was obtained (among others) – whose accuracy cannot reasonably be questioned.

For these reasons, all of Mr. Klein's testimony and Exhibits E and F are relevant, not prejudicial, and otherwise admissible; and GVSUD's Objections thereto should be overruled in their totality.

B. Mr. Klein is qualified to offer expert testimony regarding all matters contained in his direct testimony and exhibits.

Mr. Klein, P.E., is an expert witness qualified to testify on all matters contained in his direct testimony, and GVSUD's Objections to those cited portions of Mr. Klein's testimony should be overruled. 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. Klein has all of those credentials. Mr. Klein is an expert witness for identifying, evaluating, and quantifying property – in particular, wastewater collection and treatment facilities – that is used and useful to GVSUD pursuant to the Supplemental Preliminary Order and SOAH Order No. 2 limiting the issues in this proceeding. Making such determinations is primarily an engineering exercise. More particularly, it is an exercise for an engineer with experience in the wastewater industry who fundamentally understands wastewater collection and treatment systems and the process to construct such systems.

Mr. Klein has exhaustively established his credentials as such a qualified expert. With over 30 years of experience in both the private and public sector in designing and operating

wastewater systems, preparing cost estimates for wastewater systems, valuing utility property post-construction, preparing applications for new and renewed TPDES permits, and preparing applications for certificates of convenience and necessity ("CCN"), combined with his formal education, Mr. Klein qualifies as an expert under TRE 702.

1. *Mr. Klein is qualified to provide expert testimony regarding appraisals and the nature of all of Green Valley's property, thus his testimony regarding the City's Appraisal and the Appraisal itself are relevant and admissible in this proceeding. (Objections 2-9, 13, 14, 17, 19, 21, 22)*¹⁰

The ALJs should overrule GVSUD's Objections to these portions of Mr. Klein's testimony and Exhibit C of his testimony. As to Mr. Klein's testimony, while it is true that Mr. Klein does not specifically call himself an appraiser, the presumption that only an "certified" appraiser can express an opinion about GVSUD's property rendered useless and valueless by decertification is incorrect. The purpose of Mr. Klein's testimony, as specifically limited in this phase of the proceeding, is to, based on his extensive experience in the wastewater industry: (1) identify what GVSUD property, if any, is rendered useless or valueless by decertification (particularly that property related to wastewater collection and treatment); and (2) determine whether the appraisals submitted in this docket were limited to valuing property identified as useless or valueless. In short, the purpose of this hearing does not address the potential value of property that has been rendered useless and valueless, but rather, whether such property even exists.

- a. *Mr. Klein is qualified to testify regarding property rendered useless or valueless by decertification.*

¹⁰ The testimony cited by GVSUD's Objection again attempts to include testimony that is not related to the Objection. Specifically, GVSUD's Objection 17 to page 26, lines 15-24 and Objection 19 to page 28, lines 12-18 attempt to include testimony that is not related to this Objection. Similar portions of Objection 21 to page 31, line 11 through page 33, line 11 are not related to the Objection.

In this context, a person like Mr. Klein, who has worked in this industry for over 30 years, designed and approved designs for wastewater utility infrastructure, prepared TPDES permit applications and renewals, developed cost estimates for wastewater utility infrastructure projects, inventoried and provided cost estimates of existing wastewater utility infrastructure, and prepared CCN applications, is more than capable of evaluating what property GVSUD has and whether decertification will render it useless or valueless. Because identification of relevant property in this instance is fundamentally an engineering exercise (or in the very least, an exercise of someone who is an expert in wastewater utility function, design, and cost), qualification as a “certified” appraiser certainly is not required. An appraiser, on the other hand, by definition, appraises (i.e., places a dollar value on) something: in this case, utility property that has been identified as being rendered useless and valueless. When a person buys a house, the purchaser would not expect the appraiser to identify the property the purchaser is buying. The appraiser is directed by someone else (the purchaser, the real estate agent, or a surveyor) to identify the property to be appraised. GVSUD’s own appraisal is evidence of the function of an appraiser versus the function of an engineer (or other person with applicable knowledge) to identify the relevant property in this matter, where GVSUD’s appraisal relies on information and calculations prepared by GVSUD’s engineers.¹¹

At this stage of the proceeding, compensation based on the value of the property rendered useless and valueless is explicitly not to be considered. Rather, the purpose of this proceeding is only to identify such property.¹² Therefore, Mr. Klein’s robust experience with wastewater

¹¹ See Direct Testimony of Rudolph “Rudy” F. Klein, IV, P.E., Exhibit D, at 73 (containing an engineering report that is used to determine compensation).

¹² Preliminary Order, City of Lampasas Notice of Intent to Provide Water Service to Area Decertified from Kempner Water Supply Corporation in Lampasas County, PUC Docket No. 46140, SOAH Docket No. 473-16-6049.ws (Sept. 23, 2016) (explaining that “the SOAH ALJ should hold a hearing on the first phase of this docket and determine what property has been rendered useless or valueless. The ALJ should issue a [proposal for decision] on that issue to allow the Commission to make the determination that is required under TWC § 13.254(d): what

utilities is more meaningful, reliable, and on point than a general appraiser who does not have experience with the very specialized nature of wastewater utilities and thus the property (or, in this case, the lack thereof) that will be rendered useless or valueless by decertification.

Additionally, Mr. Klein need not be a certified appraiser to testify as an expert on this matter in this case or to evaluate an appraisal. Even if the qualifications of appraisers were relevant at this stage of the proceeding, TWC § 13.255 does not require the City's Appraisal at Exhibit C to be prepared by a "certified" appraiser.¹³ GVSUD mischaracterizes the nature of TWC § 13.255(l), which does not require any special certification to qualify as an appraiser or to review appraisals, and which does not define the terms "appraiser" or "appraisal."

b. Exhibit C is a report reviewed by Mr. Klein to form an expert opinion.

Pursuant to TRE 703, as an expert witness, Mr. Klein may base his opinions on facts or data that are "perceived by, reviewed by, or made known to the expert before the hearing." Mr. Klein testified that, at the request of the City, he reviewed the appraisal prepared by Jack Stowe with NewGen Strategies and Solutions, LLC, and filed in this PUC Docket for purposes of valuing any property rendered useless and valueless by decertification in this proceeding.

property has been rendered useless or valueless as a result of the decertification. The Commission will then issue an interim order to memorialize that determination *After the Commission issues the interim order, there will be a determination of compensation* based on the value of the property the Commission has determined to have been rendered useless or valueless. If appraisals are necessary and if the Commission appoints a third-party appraiser under TWC § 13.254(g-1), . . . then the case may be returned to SOAH for a hearing on the second phase of this matter, particularly if the compensation determination is contested and becomes a fact-intensive inquiry. . . . After conclusion of the second phase, whether or not the second phase is referred to SOAH, the Commission will issue a final order regarding compensation for property rendered useless or valueless as a result of decertification.") (emphasis added).

¹³ To the extent GVSUD is attempting to challenge Mr. Stowe's qualifications as an expert appraiser, such efforts are inappropriate at this time as the City has not yet offered Mr. Stowe as an expert witness in this proceeding. Regardless, in similar dockets before the PUC, Mr. Stowe has been appointed by the Commission as an independent third-party appraiser even though he is not a "certified" appraiser. Independent Appraisal, Mustang Special Utility District Notice of Intent to Provide Water Service to Land Decertified from Aqua Texas, Inc., PUC Docket No. 45450 (Feb. 16, 2016); Independent Appraisal, Mustang Special Utility District Notice of Intent to Provide Water Service to Land Decertified from Aqua Texas, Inc., PUC Docket No. 45462 (Feb. 16, 2016).

The City's Appraisal, therefore, is a report that Mr. Klein may and did use to form his opinion as it confirms his experience as someone who designs wastewater utilities and performs cost estimates thereof that no property is rendered useless or valueless by decertification, which is precisely the type of materials that experts reasonably rely on in forming an opinion as allowed by TRE 703. In the context of this proceeding, and as contemplated by applicable laws, an appraisal of existing property is precisely the type of information that must be reviewed to determine whether an appraisal was limited to property that is rendered useless and valueless. GVSUD's baseless assertion otherwise is both unreasonable and inconsistent with the very purpose of this proceeding.

Even if the City's Appraisal is inadmissible hearsay – which, for the reasons described below, it is not – Mr. Klein may still base his testimony on the City's Appraisal. Under TRE 703, an expert witness may base an opinion on facts or data that are not admissible in evidence, provided that the inadmissible facts or data are of a type reasonably relied upon by experts in the particular field.¹⁴ More importantly, nothing in the TREs require the author of any document be made available in a hearing for another expert to rely upon said document.

c. Exhibit C is relevant and admissible.

The City's Appraisal, attached to the prefiled testimony as Exhibit C, is likewise relevant and admissible; GVSUD's conclusory and baseless Objections to the contrary should be overruled. As previously explained, the City's Appraisal serves as a valuation of property rendered useless and valueless by decertification; because no such property exists, the Appraisal is not in a typical dollar valuation format. In other words, because there is no property to value, the City's Appraisal, unlike GVSUD's Appraisal, does not discuss compensation, which, in any

¹⁴ *Martinez v. State*, 311 S.W.3d 104, 112 (Tex. App. — Amarillo 2010, pet. ref'd).

case, is inappropriate at this stage.¹⁵ Rather than acknowledge that there is no property rendered useless and values, GVSUD's Objections instead attempt to make conclusory and unreasonable assertions that the City's Appraisal is not actually an appraisal.

Regardless of whether GVSUD believes the City's appraisal to be an appraisal or not, one purpose of this hearing is to determine whether the appraisals submitted, however defined, were limited to property rendered useless or valueless by decertification. The City submitted Exhibit C as its appraisal. At this point in the proceeding, such appraisal is clearly relevant evidence of whether it is limited to property rendered useless or valueless. Again, GVSUD is attempting to draw in valuation issues and to attack the methodology and qualifications of the appraiser before it is appropriate to do so. It appears that GVSUD is objecting without any regard for the referred issues in this first hearing. In any event, the fact is, if no property is found to be useless or valueless, then a proceeding to determine proper compensation, and the appraisal methodologies associated therewith, become a moot point.

Therefore, all of GVSUD's Objections to Mr. Klein's testimony and Exhibit C should be overruled.

2. *Mr. Klein is qualified to provide expert testimony relating to the state's regionalization policy and the nature of property. (Objections 1, 2, 11, 12, 15, 16, 17, 18, 20, 21, 23 24).*¹⁶

GVSUD's above-listed Objections that Mr. Klein's testimony relating to regionalization and the nature of property should be stricken as purely legal opinion should be overruled. As discussed in more detail, below, Mr. Klein is absolutely qualified to provide such opinions, and such Objections again attempt to hide evidence that would undermine GVSUD's position.

a. Testimony regarding regionalization policies is not legal opinion.

¹⁵ See *supra* note 12 (citing recent precedent from the Commission regarding the bifurcated hearing process).

¹⁶ Again, the testimony cited by GVSUD does not correspond to the nature of the Objection made. Specifically, GVSUD's Objection 24 is not related to the Objection that is asserted by GVSUD.

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 thereof a legal opinion; 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, which is precisely what Mr. Klein did. This is particularly true of a wastewater engineer, who must routinely read, evaluate, and apply regulations. 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 prepares and files TPDES permit applications, which includes a section specifically related to the regionalization policy,¹⁷ is capable of being knowledgeable of TCEQ's regionalization policy and to have an opinion on the application of that policy. This knowledge is not just theoretical; Mr. Klein testified to his decades-long, specific experience in the application of the regionalization policies and how TCEQ implements such policies.¹⁸

GVSUD, again, mischaracterizes Mr. Klein's testimony. Mr. Klein does not purport to interpret the applicable regionalization regulations; he merely explains what his understanding of

¹⁷ TCEQ Application Form TCEQ-10053 (September 1, 2016), TCEQ Domestic Technical Report 1.1 TCEQ-10054, Section 1.B (September 1, 2016) (previously TCEQ Application Form TCEQ-10053 (July 14, 2014), TCEQ Domestic Technical Report 1.1 TCEQ-10054, Section 1.B (July 14, 2014)).

¹⁸ Klein Testimony, page 7, lines 4-17; page 17, lines 1-15.

that policy is given his prior experience with that policy and applies that understanding to this case.¹⁹ GVSUD's reference to the Executive Director's opinion on the City's position on regionalization not only has no bearing on Mr. Klein's ability to testify on such a matter, it is also a disingenuous characterization of that case.²⁰ In any event, Mr. Klein has 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. GVSUD's Objections thereto should thus be overruled.

b. Testimony regarding the nature of property not purely legal.

Additionally, GVSUD's presumption that only an attorney can characterize the nature of property is incorrect and undermines its own case. The primary purpose of this phase of the proceeding is to determine what property, if any, has been rendered useless or valueless by decertification. To make this determination, Mr. Klein, out of necessity, must make a determination of what he thinks constitutes "property" and how, or if, that property is rendered useless and valueless. Again, this is not a purely legal determination, and, in the context of wastewater utility infrastructure, is a determination better suited for an engineer with specialized experience in this industry, such as Mr. Klein. GVSUD's assertion to the contrary undermines its own case because there is no indication that its appraisers or engineers have any legal training that justifies their determination of what constitutes property under GVSUD's unsupported standard for making such a determination, and yet they did.

Mr. Klein does not need to be a legal expert to form the opinion that items GVSUD's appraisers claim as being "property," are speculative until they actually exist and are owned or

¹⁹ If knowledge and opinions on TCEQ policies required legal expertise, most of TCEQ Staff charged with evaluating compliance with policies and the issuance of permits would be unqualified to testify in any matter relating to TCEQ policies.

²⁰ The Executive Director ("ED") does not reject the regionalization concept. The ED's discussion of regionalization is only the Executive Director's Response to Public Comments, and that matter is not yet final, and reliance on any policy position taken therein is inherently unreliable, and in any case, not the opinion of the TCEQ Commissioners.

possessed by GVSUD. In this case, his knowledge of wastewater systems, not any legal training, best prepares him for determining whether the item is appropriately considered property rendered useless or valueless by decertification. It is thus apparent that GVSUD's extreme Objections as to the characterization of the property should likewise be overruled.

c. Exhibit E is admissible under TRE 703.

For the reasons described herein, GVSUD's Objection to Exhibit E should be overruled. Exhibit E is admissible under TRE 703 because it is something that Mr. Klein has relied on specifically in forming his opinion, and regulations are something that any expert in wastewater utilities must rely on in order to prepare TPDES permits and otherwise ensure compliance with applicable standards. Moreover, for the reasons described above in Section II.A, Exhibit E is relevant in determining what property has been rendered useless and valueless by decertification.

Although not specifically referenced in this Objection, GVSUD, in its arguments, also claims that the City's Appraisal contained in Exhibit C is purely legal opinion and the author is not an attorney qualified to make such an opinion. First, the appraiser, like an engineer, can and must apply policies contained in regulations in order to perform their job; this is not a legal interpretation, but rather the application of their understanding of what could be characterized as a legal principal. Furthermore, the discussion in the City's Appraisal of regulations and TCEQ policies is functionally no different than GVSUD's Appraisal, which explicitly states that the appraisal was prepared in reliance on TWC § 13.255 and evaluates the alleged property within the context of the compensation factors set forth in TWC § 13.255(g). Thus, to the extent GVSUD is using the conclusions in the City's Appraisal as a basis to exclude Exhibit C, that Objection should be overruled.

C. Application of Response to GVSUD's Table of Specific Objections.

For the reasons discussed in Subsections II.A. and II.B., above, the City responds to each of GVSUD's specific Objections, as follows:

Obj.	Subject Matter	Response
1	Regionalization Page 10, Lines 19-20	The state's regionalization policy, when properly implemented, will limit what property can be rendered useless and valueless and is thus relevant in this proceeding. The testimony does not render a legal opinion about the regionalization policy, but instead explains Mr. Klein's experience with and understanding of that policy and how it applies in this case. The testimony is thus relevant and admissible under TRE 401, 402, and 403.
2	Appraisal, Exhibit C Page 11, Lines 8-22	The City's Appraisal is admissible as a report reviewed by Mr. Klein to form an expert opinion pursuant to TRE 703. Exhibit C is an appraisal demonstrating that there is no GVSUD property to provide the typical dollar valuation format. As such, the appraisal is both relevant and admissible. TWC § 13.255 does not require either Mr. Klein or the author of the City's Appraisal to be a "certified" appraiser or to make the Appraisal's author witness in this proceeding. Mr. Klein otherwise qualifies as an expert witness on the cost of wastewater property. The City's Appraisal is not purely legal opinion as it necessarily requires some determination of what constitutes property. Exhibit C is not inadmissible hearsay. In any event, an expert may rely on hearsay under TRE 703. Experts such as Mr. Klein routinely rely on appraisals and classification of properties. Therefore, testimony based in reliance on Exhibit C is both relevant and admissible.
3	Appraisal, Exhibit C Page 12, Line 17	The City incorporates its response to Objection 2.
4	Appraisal, Exhibit C Page 12, Line 18	The City incorporates its response to Objection 2.
5	Appraisal, Exhibit C Page 14, Lines 5-7	The City incorporates its response to Objection 2.
6	Appraisal, Exhibit C Page 14, Lines 10-11	The City incorporates its response to Objection 2.
7	Appraisal, Exhibit C Page 14, Line 14	The City incorporates its response to Objection 2.

Obj.	Subject Matter	Response
8	Appraisal Page 14, Lines 15-17	The City incorporates its response to Objection 2.
9	Appraisal Page 15, Line 5	The City incorporates its response to Objection 2.
10	Docket Filings Page 15, Line 6	Mr. Klein's testimony about his reliance on "the discovery requests and responses, and other filings in this matter" is neither vague nor ambiguous. In the context of his testimony, it is clear Mr. Klein is referring generally to all filings in PUC Docket No. 45702. Such filings are both relevant and admissible under TRE 401, 402, and 403. Regardless, pursuant to TRE 705, facts and data underlying an expert opinion are not required to be disclosed prior to or during testimony; although those underlying facts and data, however, may be required to be disclosed on cross-examination. GVSUD's Objection is therefore, at best, premature.
11	Regionalization Regulations Page 15, Lines 7-8	Experts may (and often must) rely on relevant regulations in forming their expert opinions; testimony made based on regulations does not constitute a purely legal opinion. Pursuant to TRE 70, Mr. Klein may base his testimony on such regulations as his testimony is limited to his experience with, understanding of, and application of these regulations to the facts of this case.
12	Regionalization Page 16, Line 21 through Page 22, Line 10	The City incorporates its response to Objection 1.
13	Appraisal Page 23, Line 6	The City incorporates its response to Objection 2.
14	Appraisal Page 23, Lines 19-20	The City incorporates its response to Objection 2.
15	Regionalization Page 25, Lines 5-9	The City incorporates its response to Objection 1.
16	Property Interest Pages 26, Lines 7-9	Testimony regarding the nature of property is not purely legal opinion. This phase of the proceeding necessitates some determination of what constitutes property; pursuant to TRE 702, Mr. Klein's knowledge and experience in the wastewater industry qualifies him to opine as to the nature of property and which of that property is rendered useless and valueless.
17	Regionalization Page 26, Lines 15-24	The City incorporates its response to Objection 1.
18	Regionalization Page 27, Line 21	The City incorporates its response to Objection 1.

Obj.	Subject Matter	Response
	through Page 28, Line 5	
19	Regionalization Page 28, Lines 12-18	The City incorporates its response to Objection 1.
20	Property Interest, Regionalization Page 29, Line 23 through Page 30, Line 9	The City incorporates its responses to Objections 1 and 16.
21	Property Interest, Regionalization Page 31, line 11 through Page 33, Line 11	The City incorporates its responses to Objections 1, 2, and 16.
22	Appraisal Exhibit C	The City incorporates its response to Objection 2.
23	Excerpts of 30 TEX. ADMIN CODE §§ 351.61, 351.62 and 351.65 Exhibit E	The City incorporates its responses to Objections 1 and 11.
24	TPWD Texas Watershed Viewer Map Exhibit F	The City incorporates its response to Objection 1. Therefore, Exhibit F is not inadmissible hearsay. In any event, an expert may rely on hearsay under TRE 703. The City is also not required to authenticate Exhibit F pursuant to TRE 901. Moreover, the City requests that judicial notice be taken of Exhibit F pursuant to TRE 201(b)(2).

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 prefiled testimony of the City, (2) deny the District's motion to strike, (3) take judicial notice of Rudy Klein's Exhibit F pursuant to TRE 201(b)(2), and (4) grant the City such other relief to which it may be entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



DAVID J. KLEIN
State Bar No. 24041257
dklein@lglawfirm.com

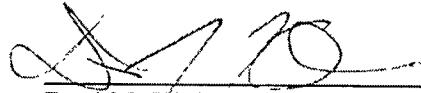
CHRISTIE DICKENSON
State Bar No. 24037667
cdickenson@lglawfirm.com

ASHLEIGH K. ACEVEDO
State Bar No. 24097273
aacevedo@lglawfirm.com

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 2nd day of November, 2016 to the parties of record.



David J. Klein