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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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**GREEN VALLEY SUD'S RESPONSE TO CITY OF CIBOLO'S OBJECTIONS TO AND
MOTION TO STRIKE PREFILED DIRECT TESTIMONY**

Green Valley Special Utility District ("Green Valley" or "GVSUD") files this its Response to the City of Cibolo's Objections to and Motion to Strike the Prefiled Direct Testimonies (*sic*) of David "Pat" Allen, Garry Montgomery, P.E., CFM, Joshua M. Korman, and Stephen H. Blackhurst, P.E., and in support thereof, respectfully submits as follows.

I. INTRODUCTION

The objections to Green Valley's prefiled direct testimony should be overruled in their entirety. Cibolo has objected to virtually every line of the testimony of Green Valley's four witnesses.¹ The overwhelming majority of Cibolo's objections are based squarely on its counsel's disagreement with Green Valley's position on the merits regarding the threshold issue of what should constitute "property" under TWC § 13.255 for the purpose of this proceeding.² This issue is one of first impression for the Commission, and Green Valley's testimony describing the engineering and

¹ Cibolo's objections are so extensive that they require a two-page table of contents.

² Green Valley notes that the Commission's Supplemental Preliminary Order contains a number of typographical errors in that the Order inadvertently references TWC § 13.254, whereas this proceeding only involves decertification under TWC § 13.255.

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planning undertaken by Green Valley to implement wastewater in its CCN service area informs the Commission in deciding this issue. While Green Valley respects that Cibolo has a different viewpoint regarding this fundamental issue, the fact that Cibolo disagrees with Green Valley's position is an insufficient basis for objecting to and moving to strike Green Valley's testimony and exhibits. Were this not the case, there likely would be no evidence in any contested case hearing before SOAH that survived objections.

Moreover, many of Cibolo's objections dispute the qualifications of Green Valley's witnesses to offer certain expert opinions and statements included in their testimony even though it is well within the scope of their expertise, education, experience and personal knowledge. Cibolo's objections, in their most favorable light, merely go to the weight of the testimony, not its admissibility. A more skeptical and perhaps accurate view is that Cibolo's objections are disingenuous, particularly in light of Cibolo's offering of a single, singularly unqualified witness in Mr. Rudy Klein to opine on irrelevant policy and legal issues and reach conclusions far beyond the scope of his expertise.

To summarize, Cibolo characterizes its own objections as falling into two broad categories: (a) that portions of Green Valley's testimony characterize items as "property" should be struck because Cibolo disagrees these items should be so characterized; and (b) that Green Valley's witnesses "are wholly unqualified to testify as experts on the topics for which they provide their opinions."³ Cibolo's remaining objections could be accurately characterized as a scattershot approach in which Cibolo throws out random objections in the hope that one might stick. Each and every one of these objections has no merit and should be overruled. For the ALJ's convenience, and because Cibolo has failed to number its objections, provide a table summarizing its objections, and

³ Cibolo Objections at 4.

repeatedly objects to the same testimony in numerous sections of its pleading, Green Valley will address Cibolo's overarching objections as well as its specific objections in the order in which they are first raised by Cibolo, utilizing the same outline form presented in Cibolo's pleading.

II. RESPONSE TO CITY OF CIBOLO'S OBJECTIONS

The ALJ should overrule each of Cibolo's objections as groundless as follows:

III. THE DIRECT TESTIMONY OF DAVID "PAT" ALLEN

A. Mr. Allen's Testimony Addressing Green Valley's Efforts to Implement Wastewater Service in its Territory is Both Relevant and Admissible.

- Page 5, line 21 through line 24, ending with "application ("Application")."

Page 10, line 20 through page 11, line 7 in its entirety, including GVSUD-1 at GVSUD 100140-100254

Page 11, line 9 through page 12, line 1, ending with "authorized mission."

Page 12, line 7 through page 15, line 5, ending with "to construct the system."

- Page 16, line 19 through page 17, line 17, in their entirety.

The above-referenced passages that Cibolo seeks to strike are directly relevant to the central issue in this phase of the proceeding, which is the identification of "what property, if any will be rendered useless or valueless to GVSUD by the decertification sought by the City of Cibolo (the "City") in this proceeding?" Quite apparently, GVSUD and Cibolo hold different views as to what constitutes "property" for the purposes of TWC §13.255. Unfortunately, neither the legislature nor the Commission have provided specific guidance. GVSUD's theory, supported by its direct testimony, is that TWC §13.255 was intended to provide just and adequate compensation to retail public utilities resulting from a partial or whole CCN decertification which requires a broad reading

and interpretation of what is “property.”⁴ This proceeding, along with similar related proceedings, will likely have a lasting effect on this fundamental issue.

The portions of Mr. Allen’s testimony that Cibolo seeks to strike are simply those that characterize its property interests in a manner contrary to Cibolo’s preference for the strictest reading of “property” in its attempt to appropriate portions of Green Valley’s wastewater CCN at no cost. If anything, the fact that the parties differ as to this fundamental issue *proves* the relevance of this testimony and provided the impetus for the Commission’s referral of this issue to SOAH due to its perception that “determining what property, if any, is rendered useless and valueless by decertification will likely be fact intensive, lending itself to the contested-case process at SOAH.”⁵ Cibolo’s disingenuous efforts to paint all testimony with which it disagrees as “irrelevant” should be rejected as contrary to the Commission’s directive.

Moreover, Mr. Allen’s overview of the history of the steps and investments taken by Green Valley place the identification of property by other Green Valley witnesses in context and, as a result, serve to ensure that the ALJ and Commission are fully-informed of the circumstances in which they reach their decisions. While this initial phase of the proceeding is limited to the referred issues, Mr. Allen’s overview testimony is intended to serve as a foundation for the *entire* proceeding. At best, Cibolo’s objections go to the weight that should be accorded the evidence and not to its relevance or admissibility. Mr. Allen’s testimony is both relevant and admissible, Cibolo’s objections notwithstanding.

⁴ E.g., *State v. Public Util. Comm’n*, 883 S.W.2d 190, 199-200 (Tex. 1994) (finding that “property” means anything that is “the subject of ownership, corporeal or incorporeal, *tangible or intangible*, visible or invisible, real or personal.”)(emphasis in original)(citations omitted).

⁵ Supplemental Preliminary Order at 2 (July 20, 2016).

B. Mr. Allen's Testimony Does Not Improperly Address Compensation Factors.

- Page 5, line 14, beginning with "including its undertakings" through line 16, ending in "certificated area."

Page 5, line 21 through page 6, line 1, ending in "useless and valueless"

Page 6, line 5, beginning with "that should" through line 6, ending with "TWC §13.255."

Page 7, lines 7 and 8 in their entirety, including Exhibit GVSUD-1 at 100459-100461

Wastewater Invoices, and 100455: summary of Legal Costs (June 27, 2016)

Page 10, the words "and compensation" in line 7

Page 10, lines 9-10, stating "and compensable"

Page 11, line 23, beginning with "As I explain below," through page 12, line 5 in its entirety

Page 12, line 11, beginning with "I will provide", through line 16 in its entirety

Page 14, line 19 through page 16, line 4 in its entirety

- Page 16, line 6 through line 17 in its entirety

Green Valley incorporates its response to objections in Section III.A., None of the above-referenced portions of Mr. Allen's testimony address compensation factors as Cibolo alleges. They simply identify what Green Valley considers to be its property interests. Each of these passages falls squarely within Preliminary Issue No. 9 in that they identify what Green Valley considers to be property for purposes of this proceeding. Cibolo's argument at its essence is that anything that Green Valley identifies is irrelevant if it is contrary to Cibolo's view of what constitutes property. In other words, any testimony that differs from Cibolo's *litigation position* is either irrelevant or prejudicial to its case.

Cibolo’s objections make this crystal clear. Cibolo first relies on a Commission Order in a *different* proceeding, involving *different* parties and a *different* statutory proceeding in an attempt to define the scope of *this* proceeding.⁶ Green Valley does not understand Cibolo’s reliance on an order in another proceeding and Cibolo does not offer any basis for such reliance. Cibolo next argues that the referenced testimony should be struck based on its conclusory assertion that “GVSUD has no property that will be rendered useless or valueless by decertification.”⁷ Cibolo next argues that GVSUD’s investments are not property interests and that “applying for a wastewater discharge permit, contracting with an engineering firm to develop a wastewater master plan, and the like are not an investment” and concludes, without offering any legal or factual support, that Green Valley’s “expenditures are void of any cognizable property interest.”⁸

In short, Cibolo repeatedly argues that if testimony is inconsistent with Cibolo’s litigation position, it is irrelevant. Contrary to Cibolo’s argument, Mr. Allen does not testify that the investments made by Green Valley (of which he is personally aware and in which he was directly involved) constitute “property.” Rather, Mr. Allen simply identifies and provides this information to Green Valley’s fully-qualified expert witness, Mr. Korman, who, along with Green Valley witness Stephen Blackhurst, identifies Green Valley’s expenditures as property consistent with the Commission’s Supplemental Preliminary Issue No. 9.

C. Mr. Allen is Fully-Qualified to Provide the Commission with Factual Information regarding Green Valley as it Relates to The Issues in This Proceeding.

- Page 5, line 13, beginning with “an overview” through line 16, ending with “certificated area.”

⁶ Cibolo Objections at 8-9 (quoting and referencing *City of Lampasas Notice of Intent to Provide Water Service to Area Decertified from Kempner Water Supply Corporation*, PUC Docket No. 46140, Preliminary Order (July 20, 2016).

⁷ *Id.* at 9.

⁸ *Id.* at 9-10.

Page 5, line 21 through page 6, line 6 in its entirety

Page 9, line 19, beginning with “Mr. Montgomery” through line 20 in its entirety

Page 10, line 1, beginning with “Mr. Korman” through line 3 in its entirety

Page 12, line 1, beginning with “Those significant” through line 5 in its entirety

Page 17, lines 19 through 22

- Page 18, line 1 through line 6 in its entirety

Cibolo’s spurious assertion that Mr. Allen is not qualified to offer the above-referenced testimony should be rejected. To illustrate the absurdity of Cibolo’s objections, the following summarizes the passages to which Cibolo objects:

- The first passage to which Cibolo objects simply summarizes Mr. Allen’s testimony: “[Mr. Allen provides] an overview of Green Valley’s history, including its undertakings and significant investment in planning, developing and implementing a wastewater system to service its customers in Green Valley’s certificated area.”

Similarly, the second passage to which Cibolo objects provides a straightforward summary of his testimony regarding the central issue in this proceeding: the identification of property that will be affected by Cibolo’s proposed decertification.

The third passage simply introduces and summarizes the testimony of Green Valley’s retained engineer.

The fourth passage states Green Valley’s position that the property it identifies throughout its testimony will be rendered useless and valueless.

The fifth passage to which Cibolo objects consists *entirely of a question* and *not* testimony. Thus Cibolo here argues that Mr. Allen is not qualified to ask a question which he does not ask.

The sixth and final question consists solely of Mr. Allen’s testimony that he is not aware of whether Cibolo has requested the transfer of property and that he is not qualified to opine regarding the legal aspects of this question. Thus, Cibolo objects on the basis that Mr. Allen is unqualified to testify that he is in fact unqualified to testify.

As Mr. Allen testifies, he has served as Green Valley's General Manager for a decade and served as Green Valley's Operations Manager for an additional decade prior to assuming the General Manager role.⁹ He has personally been involved in and, in fact, personally directed Green Valley's efforts to implement wastewater service in its certificated service area.¹⁰ Well before the decertification at issue here, Mr. Allen managed the "real world" daily operations and property interests of Green Valley for two decades. Perhaps better than anyone, Mr. Allen understands what property is useful and valuable in connection with Green Valley's planning, designing and permitting endeavors related to the provision of wastewater service. He certainly has the personal experience and expertise to offer an evaluation as to whether the appraised property is of any continued use or value to Green Valley upon decertification. The weight of Mr. Allen's opinions on the ultimate issues is for the ALJ to determine, but (1) Mr. Allen's expertise on the issues he discusses should not be questioned; and (2) Mr. Allen's testimony is highly relevant and helpful to ruling on the referred issues.¹¹

If Mr. Allen is not qualified to testify regarding Green Valley's history, and the planning, engineering and other investments Green Valley has made, then no person would be qualified to testify regarding any subject matter. Mr. Allen is qualified under TRE 702 through his "knowledge" and "experience" to "testify in the form of an opinion or otherwise." Cibolo's TRE 702-based objections are specious and harassing. Each of these objections should be overruled.

D. Testimony Regarding Green Valley's Expenditures Relating to Wastewater Service is Admissible.

- Page 5, line 12, in its entirety through line 16, ending with "certificated area."

⁹ Direct Testimony of David "Pat" Allen at page 1, line 17 through page 4, line 14.

¹⁰ *Id.*

¹¹ TEX. R. EVID. 702.

Page 5, line 21 through page 6, line 6 in its entirety

Page 9, line 19, beginning with “Mr. Montgomery” through line 20 in its entirety

Page 12, line 1, beginning with “Those significant” through line 5 in its entirety

Green Valley incorporates by reference its responses to Cibolo’s objections in Parts III.A. and III.C. The four passages of testimony to which Cibolo here purports to object based on lack of Mr. Allen’s personal knowledge are four of the *very same* passages that Green Valley has summarized and responded to in Section III.C., above.

E. As General Manager of Green Valley, Mr. Allen is Qualified to Introduce the Other Green Valley Testifying Witnesses and Summarize Green Valley Governance Documents.

- Page 5, line 16, beginning with "I further provide" through line 18 in its entirety

Page 6, line 11 , beginning with "some of which" through page 7, line 8 in its entirety, including Exhibit GVSUD-1 at GVSUD 100041-100139, 100140-100254, 100256-100342, 100343-100368, 100369-100418, 100432-100454, 100459-100461 , and 100455

Page 8, line 13 through page 10, line 10 in its entirety

Page 11, line 23, beginning with “and” through line 24 ending with “in detail”

Page 12, line 13, beginning with “Green Valley witness” through line 16 in its entirety

Page 14, line 4, beginning with “which I co-sponsor” through line 5 ending with “Mr. Montgomery and”

Page 15, line 10, beginning with “and they” through line 11 in its entirety, including Exhibit GVSUD-1 at GVSUD 100432-100454

Page 15, the words “, in conjunction with RCE,” on line 19

Page 15, line 20, beginning with “and those” through line 22 in its entirety, including Exhibit GVSUD-1 at GVSUD 100256-100418

Page 16, line 13, beginning with “and those costs” through line 16, ending with (GVSUD 100455).”, including Exhibit GVSUD-1 at GVSUD 100455

Cibolo’s objections to the above-listed passages consist wholly of Mr. Allen’s introduction of the additional three witnesses who provide testimony on behalf of Green Valley in this phase of the proceeding. Astonishingly, Cibolo contends with regard to this testimony that Mr. Allen, Green Valley’s General Manager, somehow has no personal knowledge regarding the subject matter of each witness’ testimony. Further, Cibolo argues that Mr. Allen’s summary of Green Valley’s witness testimony, even if based on Mr. Allen’s personal knowledge, does not constitute the “best evidence” of the testimony that Mr. Allen summarizes.¹²

Green Valley respectfully submits that Mr. Allen is fully aware of the content of the testimony of witnesses Green Valley has retained. The sole purpose of the above-referenced testimony was to provide the ALJ and Commission with a roadmap to aid in understanding the identity of Green Valley’s witnesses and upon which subject matters those witnesses are testifying. Green Valley readily agrees that the respective testimony of Messrs. Montgomery, Korman and Blackhurst are the “best evidence” of their testimony, but Green Valley is perplexed that Cibolo would take such umbrage with Mr. Allen’s testimony. If the ALJ desires, Green Valley offers to provide an affidavit testifying to Mr. Allen’s personal knowledge of the witnesses that Green Valley retained and the content of their testimony, but a better approach would be to leave this issue to potential cross-examination.

¹² Cibolo Objections to Green Valley Testimony at 13-15.

F. Mr. Allen's Reference to Parties that have Expressed Interest in Receiving Wastewater Service is Both Relevant and Admissible.

- Page 7, line 7 in its entirety, including GVSUD-1 at GVSUD 100459-100461
Wastewater Invoices (2009-2016)
Page 10, line 20 through page 11, line 7 in its entirety
Page 11, line 25, beginning with "to its customers/constituents" through page 12, line 5 in its entirety
Page 12, line 10, specifically the reference to GVSUD's "current ... customers"
- Page 12, line 17 through page 13, line 1, ending with "future customers"

Cibolo next objects to the above-listed passages of Mr. Allen's testimony on the ground that it "impl[ies] that GVSUD currently has or has had wastewater customers" and that such testimony is somehow inexplicably prejudicial to Cibolo.¹³ To be clear, Green Valley does not have current nor has it in the past had wastewater customers. This fact is undisputed. Green Valley's testimony regarding its customer growth was intended to reference water customer growth, which is representative of the population growth both within its certificated water and wastewater service areas. However, to strike Green Valley's referenced exhibits on the basis of Cibolo's feigned confusion would indeed prejudice Green Valley's ability to provide evidence on the central issue of this proceeding.

The exhibits that Cibolo seeks to strike go directly to the identification of property that Green Valley contends will be rendered useless or valueless upon decertification. For example, the document entitled "Wastewater Invoices" consists of a list of and identification of the expenditures that Green Valley has incurred to implement wastewater service in all of its wastewater service

¹³ Cibolo Objections to Green Valley Direct Testimony at 15-17.

territory, including the portion that Cibolo is attempting to decertify. Green Valley certainly did not mean to imply charges to retail customers by its use of the term “Wastewater Invoices.” Had it so intended, it would have used the common term “Wastewater *Bills*.” Nomenclature aside, the passages and exhibits that Cibolo seeks to strike are directly relevant to this proceeding and Cibolo’s objections should be overruled.

G. Mr. Allen’s Discussion Regarding Green Valley’s Bylaws and Contract with River City Engineering is Relevant and Admissible.

- Page 11 , line 10, through line 23, ending with “earliest days”
Page 12, line 20, beginning with “To that end,” through page 13, line 1, ending with “future customers”

Leaving no stone unturned, Cibolo next objects to portions of Green Valley’s testimony that indicate that the steps it has taken to provide wastewater service in its CCN boundary are consistent with Green Valley’s stated purpose in its Bylaws and that the longstanding contractual arrangement (and attendant costs incurred under that contract) between Green Valley and River City Engineering is consistent with Green Valley’s stated purpose. This testimony is directly relevant to rebut Cibolo’s unsustainable assertion, both in this proceeding and in related proceedings before the TCEQ, that Green Valley is somehow not authorized to provide wastewater service within its CCN area. Green Valley rejects the assertion that “the City and the ALJ thus has no way of verifying the contents of such documents.”¹⁴ The referenced documents were filed in response to Cibolo’s discovery requests at Bates Nos. GVSUD 002552-002558 and GVSUD 002616-002633, respectively. Moreover, the expenditures incurred pursuant to the agreement with River City Engineering are detailed in the “Wastewater Invoices” documents discussed in III.F., above, which were included as addenda to Green Valley’s appraisal report filed with the Commission on June 28,

¹⁴ Cibolo Objections at 17.

2016 (Ex. GVSUD-1) as required by Commission Order No. 7. Certainly Cibolo does not contend that Green Valley incurred substantial costs in the planning and design of its wastewater system that it had no contractual obligation to pay. The invoices themselves are the best evidence of Green Valley's specific obligations under the contract with River City. Cibolo's objections based on lack of personal knowledge and the "best evidence" rule should be overruled.

IV. THE DIRECT TESTIMONY OF GARRY MONTGOMERY, P.E., CFM.

A. Testimony Describing the Steps Undertaken by Green Valley to Initiate Wastewater Service is Relevant to the Identification of Property in this Phase of the Proceeding.

- Page 4, line 22, beginning with "The primary purpose" through page 5, line 2, ending with "system"
- Page 5, line 16, beginning with "To assist" through line 20, ending with "certificated area"
- Page 9, line 4 through page 17, line 16 in its entirety
- Page 18, line 6 through line 19 in its entirety;

Green Valley herein incorporates its response to Cibolo's objections set forth in Section III.A. addressing Cibolo's identical objections to similar testimony provided by Green Valley witness David "Pat" Allen. Mr. Montgomery's testimony identifying, describing, and placing in context the steps that he and his firm, River City Engineering, have made on behalf of and under the direction of Green Valley to implement wastewater service in its service area are directly relevant to the preliminary issues in this phase of the proceeding. Cibolo's mere disagreement with Green Valley's legal position is an improper basis for a relevance objection and should be overruled.

B. Mr. Montgomery's Testimony Introducing an Analysis of Increased Costs and Lost Revenues Resulting from Cibolo's Attempted Decertification Does Not Address Compensation Factors.

- Page 20, line 9 beginning with "That analysis" through page 21, line 22 in its entirety

- Page 22, line 1 through line 6 in its entirety

Green Valley incorporates its response to Cibolo's objections set forth in Section III.B. As an initial matter, the ALJ should reject Cibolo's attempt to characterize the above-referenced testimony as a discussion of compensation factors. It is not. Rather, the testimony consists of the introduction of an analysis that Mr. Montgomery provided to Green Valley witness Joshua Korman upon which Mr. Korman relied to identify property consistent with Green Valley's legal position regarding what constitutes property for the purposes of TWC § 13.255. Again, the mere fact that Green Valley's position regarding what constitutes property differs from Cibolo's legal theory does not make that testimony relevant. The very fact that the parties hold opposing views as to what constitutes property in this phase of the proceeding is indicative of the relevance of such testimony. Cibolo's objections to this testimony have no merit and should be overruled.

C. Testimony Addressing Cibolo's Efforts to Thwart Green Valley's TDPES Permit Application Is Directly Relevant to Green Valley's Identification of Property that Will be Rendered Useless or Valueless on Decertification.

- Page 15, line 17 through line 21 in its entirety

Mr. Montgomery has personal knowledge regarding Green Valley's attempts to implement its wastewater system, including the permitting process. The above-referenced passage consists of proper opinion testimony directly relevant to Green Valley's position as to what constitutes property for purposes of this phase of the proceeding, which consists of the investments made by Green Valley to obtain a TDPES permit at the TCEQ.

Notably, Cibolo does not object to any of the surrounding testimony addressing the history of investments made by Green Valley; Cibolo only cries foul when Cibolo's efforts to thwart Green Valley's efforts is brought into the spotlight. The proof of the relevance of Mr. Montgomery's testimony lies in Cibolo's attempt to rebut the *merits* of Green Valley's assertion. For example,

Cibolo's argument that "what the testimony fails to provide . . . is that the City's actions with respect to its protest of GVSUD's pending application for a discharge permit and seeking single certification by virtue of this proceeding *are rights to which the City is legally entitled.*"¹⁵ As Cibolo's own words reveal, the essence of its argument is that any testimony counter to Cibolo's legal position must therefore be irrelevant as a matter of law. The ALJ should reject this view of relevance and overrule Cibolo's objection.

D. Mr. Montgomery's Characterization of the Steps Taken by Green Valley to Implement Wastewater Service is Both Relevant and Admissible.

- Page 4, line 22, beginning with "The primary purpose" through page 5, line 2, ending with "system"
- Page 5, line 14, beginning with "Having" through line 16 to "in this regard."

Green Valley incorporates its responses to Cibolo's objections set out in Section III.B., above. In all candor, Green Valley does not understand the basis for Cibolo's objection to the above-listed testimony. While Cibolo claims that such testimony is somehow prejudicial and constitutes "disguised attempts to treat compensations [*sic*] issues as property," the testimony states: "The primary purpose of my testimony is to provide details regarding the steps and investments required to develop a wastewater treatment system" and "[h]aving been directly involved in the day-to-day activities related to wastewater system development for Green Valley, I am uniquely qualified to describe Green Valley's investments in this regard." Green Valley's use of the term "investments" is wholly consistent with its legal position regarding the nature of the property that will be rendered useless or valueless upon decertification. Cibolo's conspiracy theories notwithstanding, this testimony is relevant and admissible and Cibolo's objections should be overruled.

¹⁵ Cibolo Objections to Green Valley testimony at 20.

V. DIRECT TESTIMONY OF JOSHUA M. KORMAN

A. Mr. Korman is Eminently Qualified to Provide Expert Testimony Regarding the Identification of Property.

- Page 5, line 19, beginning with “I believe” through page 6, line 2 in its entirety

Page 8, line 2 through line 6 in its entirety

Page 11, line 14 through line 21 in its entirety

Page 12, line 9 through page 13, line 19 in its entirety

Page 14, line 1 through page 16, line 2 in its entirety
- Page 16, line 8 through line 12, ending with “requires compensation”

Cibolo’s objections based on the groundless notion that, as a licensed appraiser, Mr. Korman is somehow not qualified to identify property should be overruled. As an initial matter, Mr. Korman has previously provided testimony of the same nature before this ALJ in PUC Docket No. 45848, *City of Celina’s Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County*. There, Mr. Korman was recognized as an expert to identify property that will be rendered useless or valueless from a portion of a certificated service area, which was nearly identical to the issue before the Commission here.

Moreover, the issue before the ALJ in this phase of the proceeding is *not* simply the identification of property. Rather, it is the identification of “what property, if any *will be rendered useless or valueless* to GVSUD by the certification sought by the City of Cibolo (the “City”) in this proceeding.”¹⁶ Property that will be rendered “valueless” or “worthless” property requires as a predicate that the property had value to begin with, and Mr. Korman is uniquely qualified to identify property with value. The Legislature *directed* that an independent appraiser provide a valuation of

¹⁶ Docket No. 45702, Supplemental Preliminary Order at 5 (July 20, 2016).

property that will be rendered useless or valueless on decertification for purposes of the TWC § 13.255 process,¹⁷ as has the Commission here.¹⁸ The legislature did not direct that a separate “property identification” expert be retained and submit a report. Mr. Korman is fully-qualified through his education and experience to perform both roles of the Commission’s bifurcated process and Cibolo’s objections should be overruled. Thus, Cibolo’s conclusory proposition that Mr. Korman must demonstrate his expertise with utilities is irrelevant to determining whether Mr. Korman is himself qualified to testify regarding the identification of property. There is no “best expert” standard for determining the qualifications of an expert to provide opinion testimony.¹⁹ The ALJ should overrule Cibolo’s objections regarding Mr. Korman’s qualifications to provide expert opinion testimony.

B. Mr. Korman’s Discussion of Compensation Factors is Properly Limited to his Identification of Property that Will be Rendered Useless and Valueless as the Result of Decertification.

- Page 6, line 17 through page 7, line 4 in its entirety

Page 8, line 4, beginning with “In the GVSUD” through line 5, ending with “that property.”

Page 8, line 8 through page 9, line 2 in its entirety, including Exhibit GVSUD-2

Page 9, line 16 through page 11, line 9 in its entirety

Page 11, line 20 through line 21 in its entirety

Page 12, line 9 through page 15, line 2 in its entirety

¹⁷ See TWC § 13.255(l).

¹⁸ Docket No. 45702, Order No. 7 at 1 (June 22, 2016).

¹⁹ See *Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009) (finding that Rule 702 does not determine qualification to offer expert testimony based on the level of the witness’ expertise and determining that “Differences in expertise bear chiefly on the weight to be assigned to the testimony by the trier of fact, not its admissibility.”)

Page 15, line 11, beginning with “That is why” through line 14 in its entirety

Page 15, line 17 through page 16, line 2

Page 16, line 11 , beginning with “As discussed” through line 18 in its entirety

Green Valley herein incorporates for all purposes its responses to Cibolo’s objections set forth in Sections III.B., IV.B, and V.A., above. Mr. Korman’s testimony in the above-listed passages is directly within the scope of this phase of the proceeding. While Green Valley agrees with Cibolo’s statement that this phase of the proceeding is limited to identification of property, the issue before the ALJ in this phase of the proceeding is *not* simply the identification of property as posited by Cibolo. Rather, it is the identification of “what property, if any *will be rendered useless or valueless* to GVSUD by the certification sought by the City of Cibolo (the “City”) in this proceeding.”²⁰ Property that will be rendered “valueless” or “worthless” property requires as a predicate that the property had value to begin with, and Mr. Korman is uniquely qualified to identify property with value.

While portions of Mr. Korman’s testimony make reference to what Cibolo characterizes as “compensation factors,” those references are made only in relation to their helpfulness in the identification of said property and placing Mr. Korman’s analysis in its proper context to assist the ALJ and Commission in reaching a determination in this phase of the proceeding. As Mr. Korman testifies, the compensation factors were utilized “to inform our determination about what types of property interests we should consider in our report.”²¹ Mr. Korman’s looking to the compensation factors as guidance in determining which property to include is well within the scope of this phase of the proceeding, yet Cibolo’s legal theory would have the Commission believe that the Legislature

²⁰ Supplemental Preliminary Order at 5 (July 20, 2016).

²¹ Korman Direct at page 11, lines 14-17.

intended the compensation factors to bear no relevance to the property identified as being rendered useless or valueless. While Green Valley will refrain from addressing the merits of Cibolo's theory, its position clearly defies logic.

Regarding the specific passages to which Cibolo objects, the following are illustrative. The first passage to which Cibolo objects merely restates the issue to be decided in a TWC § 13.255 proceeding.²² The second "objectionable" passage states that Mr. Korman's firm "both identified and placed a value on that property" but the very next sentence clarifies that his current testimony will be limited "to only identification of property that requires valuation in this proceeding."²³

Cibolo's third and fourth listed objections are to the appraisal report itself and the Uniform Standards of Appraisal Practice.²⁴ As Mr. Korman's testimony makes abundantly clear, his appraisal report, which was prepared and submitted on June 28, 2016 in this proceeding as *required* by the Commission is offered in this phase of the proceeding solely for the purpose of identifying property. Consistent with its "form over substance" approach as to all of its objections, Cibolo would apparently have Green Valley redact all amounts listed in the appraisal report that is *already on file with the Commission*.

The remaining passages of Mr. Korman's testimony to which Cibolo objects are consistent with those set forth above: they consist of descriptions of the process and applicable standards that Mr. Korman utilized to prepare his appraisal and a summary of his opinions regarding the "identification" issue before the ALJs and Commission in this phase. Each of these objections is baseless and should be overruled in their entirety.

²² Korman Direct at page 6; line 17 through page 7, line 4.

²³ *Id.* at page 8, line 4 through 6.

²⁴ *Id.* at page 8, line 9 through page 9, line 2, including Exhibit GVSUD 2 and page 9, line 16 through page 11, line 9.

C. Counsel's Questions to Mr. Korman Did Not Improperly Lead the Witness.

- Page 13, line 21 through page 15, line 2 in its entirety

Cibolo's "leading the witness" objection is specious. The question at issue and upon which Cibolo seeks to strike nearly two pages of testimony is as follows: "In your experience in eminent domain cases, can there be a taking for part of a property or property interest?" This is a straightforward question that can be answered in the affirmative or the negative. As with nearly all of Cibolo's 28 pages of objections, the objection is made for the purpose of harassment and increasing Green Valley's costs of defending its interests in this proceeding.

D. Mr. Korman's Characterization of Green Valley's Property Interest is Relevant and Admissible.

- Page 11 , line 14 through line 19 in its entirety.

The above-referenced passage was the subject of Cibolo's objections set forth in Section V.B., above, and Green Valley herein incorporates by references its responses in that section. In this passage, Mr. Korman explains the methodology that he utilized in determining what type of property interests should be considered in the appraisal report prepared by his firm, which included looking at the plain words of TWC § 13.255 and the related Commission Substantive Rule. Ironically, Cibolo objects on the ground that "Mr. Korman is not an attorney."²⁵ Mr. Korman's testimony is not offered as a legal conclusion. In Cibolo's own words in support of the admissibility of its own expert's opinions: "a person does not need to be an attorney to read the plain language of statutes and regulations."²⁶ Cibolo's objection should be overruled.

²⁵ Cibolo Objections at 25.

²⁶ Cibolo's Response to Green Valley's Objections and Motion to Strike at 14 (Nov. 2, 2016).

VI. DIRECT TESTIMONY OF STEPHEN H. BLACKHURST, P.E.

A. The Statutory History of TWC § 13.255 is Directly Relevant to the Identification of Property at Issue in this Proceeding.

- Page 7, line 8, beginning with “The purpose” through line 14 in its entirety
Page 8, line 3 through page 13, line 5 in its entirety
Page 13, line 10 through page 14, line 20 in its entirety
- Page 15, line 20 through page 16, line 4 in its entirety

Green Valley herein incorporates its responses to Cibolo’s objections to the testimony of Messrs. Allen, Montgomery and Korman set forth above in Sections III.B., IV.B., and V.B. The statutory history of TWC § 13.255 as set forth in Mr. Blackhurst’s testimony is directly relevant in that it educates the ALJ and Commission regarding the proper interpretation of the process set forth in the current version of TWC § 13.255. Cibolo’s relevance-based objections, which together with its objections set forth below in Section VI.B. *encompass every single line of the substantive portions of Mr. Blackhurst’s testimony*, should be overruled.

Mr. Blackhurst’s testimony is not speculation without basis and it is relevant. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more . . . or less probable than it would be without the evidence.”²⁷ “If there is some logical connection either directly or by inference between the evidence and a fact to be proved, the evidence is relevant.”²⁸ Mr. Blackhurst’s opinion based on his regulatory experience working with the historic statute and rule at issue here is highly relevant and has basis contrary to Cibolo’s objection. The core issue in this phase of the proceeding is to identify property that will be rendered useless or valueless should Cibolo’s application for decertification be granted and Mr.

²⁷ TEX. R. EVID. 401.

²⁸ *PPC Transp. v. Metcalf*, 254 S.W.3d 636, 642 (Tex. App.—Tyler 2008, no pet.).

Blackhurst's testimony speaks directly to that issue based on his direct involvement in the evolution of the statute. Within the past two months, Mr. Blackhurst's similar testimony regarding a nearly identical statutory provision was admitted into evidence in the pending proceeding in PUC Docket No. 45848.²⁹ As this proceeding, along with a small number of related cases, presents the ALJ and Commission with issues of first impression under the Commission's recently-acquired jurisdiction over water and wastewater utilities, any testimony that provides context and informs the Commission in its determinations should be welcome, particularly given the potential lasting effects of the Commission's determinations in these early cases.

B. Mr. Blackhurst is Eminently Qualified to Offer Expert Opinion Testimony Regarding TWC § 13.255.

- Page 7, line 17 through line 19 in its entirety
Page 8, line 3 through line 13 in its entirety
Page 11, line 1 through line 15 in its entirety
Page 12, line 4 through page 13, line 5 in its entirety
Page 13, line 10 through line 22 in its entirety
Page 14, line 1 through line 7, in its entirety
Page 15, line 1 through page 16, line 4 in its entirety
Page 16, line 6 through line 16 in its entirety
- Page 17, line 1 through line 13 in its entirety

Cibolo's objections to the qualifications of Green Valley witness Stephen Blackhurst are baseless and conclusory and should be overruled. Green Valley herein incorporates its responses to Cibolo's objections regarding: Mr. Allen's testimony at Section III.C.; Mr. Korman's testimony at

²⁹ See PUC Docket No. 45848, *City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County* (pending).

Section V.A.; and Mr. Blackhurst's testimony at Section VI.A. Cibolo acknowledges that "Mr. Blackhurst boasts a robust background of knowledge of regulatory processes involving retail water facilities," but objects to considering Mr. Blackhurst an expert for certain purposes.³⁰ Clearly, Cibolo failed to read Mr. Blackhurst's testimony and accompanying resume (Exhibit GVSUD-7).

As indicated in response to Cibolo's objections in Section VI.A., Mr. Blackhurst's testimony on similar matters was recently admitted in Docket No. 45848. Moreover, Mr. Blackhurst clearly qualifies as an expert witness for all purposes in his direct testimony, but also offers factual observations where appropriate based on his personal knowledge. Where expertise is required within his testimony, Mr. Blackhurst clearly has the specialized knowledge, skill, experience, training, and education to opine as to the matters discussed and assist the ALJ and Commission.³¹

This case is one of the first of its type to be referred to SOAH and one of only a handful administered by the Commission since CCN jurisdiction transferred from the Texas Commission on Environmental Quality ("TCEQ") in 2014. There are significant Texas policy considerations at stake in this evolving area of the law encompassed by the referred issues. Mr. Blackhurst's expertise and testimony includes a personal historical recount of the decertification statutes and rules³² from a number of different perspectives, two of which include over 10 years in the private sector and over 14 years on the regulatory side in Texas. Mr. Blackhurst's factual and opinion testimony concerning those matters are squarely within the scope of his experience and expertise. In particular, Mr. Blackhurst has special expertise in the area of CCN and TWC § 13.255 administration. Mr.

³⁰ Cibolo Objections at 26.

³¹ Compare Blackhurst Direct at 1-6 with TEX. R. EVID. 702.

³² Much of what Cibolo classifies as expert opinion testimony is actually a factual historical recount based on Mr. Blackhurst's personal experience. In other words, throughout his nearly 25 years of experience dealing with utility regulations including 14 years as a regulator, "he was there."

Blackhurst served 14 years as the Utility Rates & Services Section Manager for the Texas Natural Resources Conservation Commission (“TNRCC”). Prior to that, Mr. Blackhurst served for two years as the Assistant Director of Engineering for Water & Sewer Utilities at the PUC.

The CCN decertification and compensation process set forth in TWC §13.255 was included in TWC § 13.255 as early as 1987, and was refined through HB 1935 (74th(R)). during Mr. Blackhurst’s tenure as a TNRCC Manager.³³ Mr. Blackhurst’s duties at TNRCC included participating in the legislative and rulemaking processes that resulted in the first version of that process. Mr. Blackhurst also served a retail public utility for over a decade, assisting with environmental compliance for water and wastewater activities, such as interpreting and complying with TCEQ, and now PUC, rules and staff guidance documents, the Texas Water Code, the Texas Health and Safety Code, and federal rules and regulations for public drinking water, wastewater treatment, water/sewer utility rates and services. Mr. Blackhurst represented Aqua Texas, his former employer, in the process that led to changes now present in TWC §13.255 that occurred in 2005 through HB 2876 (79th(R)). This experience makes him an expert on key topics at hand and sufficiently qualified to offer opinions that will help decide ultimate issues in the same manner he was required to opine on them as a regulator.

In sum, under TEX. R. EVID. 702, Mr. Blackhurst has nearly a quarter-century of expertise interpreting, complying with, and administering the rules that are precisely within the scope of the subject matter of this case. Mr. Blackhurst has a unique perspective on the issues in this docket that specifically relate to the compensation process under TWC §13.255. Not only is Mr. Blackhurst qualified to opine as to history and meaning of the decertification/compensation rules and their

³³ Mr. Blackhurst’s testimony at page 8, lines 17-18 contains an incorrect reference to another bill and Green Valley will take appropriate steps to correct this portion of Mr. Blackhurst’s testimony.

applicability here, but, arguably, no one else is more qualified. Cibolo's challenges to Mr. Blackhurst's qualifications to provide the expert opinion testimonies provided should be overruled.

C. Counsel's Questions to Mr. Blackhurst were Not Leading.

- Page 13, line 10 through line 18 in its entirety
- Page 13, line 20 through page 14, line 7 in its entirety

Cibolo's "leading" objections have no merit and should be rejected. The two questions at issue are as follows:

"If part of a retail public utility's service area is removed, should it receive compensation under TWC §13.255 for part of its property if the remainder retains some value for service elsewhere?"

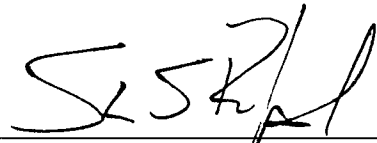
"How does the compensation factor of "necessary and reasonable legal expenses and professional fees" fit into the analysis of "property rendered useless or valueless?"

The first question asks a duly qualified expert witness for an opinion on a hypothetical which can be answered in the affirmative or the negative. There is nothing leading about the question. The second question simply follows prior questions in which Mr. Blackhurst established his familiarity with recent changes to TWC §13.255 and the implementation of provisions of that statute. Cibolo's objections should accordingly be overruled.

VII. CONCLUSION AND PRAYER

For the reasons set out above, Green Valley Special Utility District respectfully requests that the Honorable Administrative Law Judge overrule all objections to the Direct Testimony of David "Pat" Allen, Garry Montgomery, P.E., CFM, Joshua M. Korman, and Stephen H. Blackhurst, P.E. Green Valley further requests that its complete testimony be admitted at the hearing on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby CERTIFY that on November 16, 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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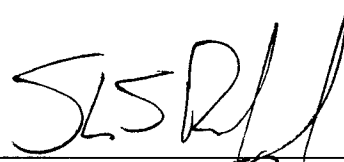
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