

Control Number' 45848



Item Number' 24

Addendum StartPage. 0

**SOAH DOCKET NO. 473-16-5011.WS  
DOCKET NO. 45848**

RECEIVED

**CITY OF CELINA'S NOTICE OF  
INTENT TO PROVIDE WATER AND  
SEWER SERVICE TO AREA  
DECERTIFIED FROM AQUA TEXAS,  
INC. IN DENTON COUNTY**

§  
§  
§  
§  
§

**BEFORE THE PUBLIC UTILITY**

2016 AUG 22 PM 2:21  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**COMMISSION OF TEXAS**

**AQUA TEXAS' OBJECTIONS TO CITY OF CELINA'S DIRECT TESTIMONY AND  
EXHIBITS AND MOTION TO STRIKE**

Aqua Texas, Inc. d/b/a Aqua Texas ("Aqua") files these objections to the City of Celina's Direct Testimony and Exhibits ("Objections") and in support would show as follows.<sup>1</sup>

**I. SUMMARY OF OBJECTIONS AND MOTION TO STRIKE**

Aqua requests that certain portions of the direct testimony by Jason S. Jones, P.E. offered by the City of Celina be stricken and that one of his exhibits, CEL 102 (his filed 'appraisal') also be stricken or admitted with limitations discussed herein. Many of the topics Mr. Jones discusses in the offered direct testimony fall outside his expertise, and the 'appraisal' report filed is not a true 'appraisal' as required by TWC §13.254. Admitting many of these statements and Exhibit CEL 102 without limitation will substantially and unjustly prejudice Aqua. Thus, Aqua is compelled to seek the relief described herein.

**II. TESTIMONY TO BE STRICKEN**

Aqua Texas objects to and requests that the following direct testimony of **Jason S. Jones, P.E.** offered on behalf of the City of Celina be stricken:

---

<sup>1</sup> These objections are timely filed according to the schedule set forth in SOAH Order No. 2 (April 12, 2016).

<b>Obj.</b>	<b>Testimony</b>	<b>Subject Matter</b>	<b>Basis to Strike</b>
1	Page 6, Lines 27-28	Offering Jason S. Jones as an expert witness	<p>Expert testimony required and witness not qualified to provide expert opinion on all particular subject matters discussed throughout testimony. TEX. R. EVID. 702.</p> <p>Lay opinions not within witness's expertise are not helpful and not relevant to determining facts in issue. TEX. R. EVID. 401, 402, and 701.</p>
2	Page 7, Lines 22-23	Law Review Article	<p>Expert testimony required and witness not qualified to provide expert opinion on particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Lay opinions based on article not within witness's expertise are not helpful and not relevant to determining facts in issue. <i>See</i> TEX. R. EVID. 401, 402 and 701.</p> <p>Law review article is not relevant to determining facts. TEX. R. EVID. 401 and 402.</p>
3	Page 9, Lines 1-3.	Question concerning tangible property.	<p>Assumes facts not in evidence. TEX. R. EVID. 401, 402, and 611. Counsel's question misquotes the witness.</p> <p>Leading and suggestive. TEX. R. EVID. 611.</p>
4	Page 9, Lines 8-9.	Testimony as to whether Aqua Texas has any 'real property interests at all.	<p>Lack of proper foundation. TEX. R. EVID. 401, 402 and 611.</p> <p>Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Witness did not review or evaluate all Aqua Texas real property interests, is not qualified to do so, and the overly broad scope of such an inquiry is not relevant to determining facts at issue. TEX. R. EVID. 401, 402, 701, and 702.</p>

<b>Obj.</b>	<b>Testimony</b>	<b>Subject Matter</b>	<b>Basis to Strike</b>
5	Page 9, Line. 11	Testimony that Aqua also had no personal property.	<p>Lack of proper foundation. TEX. R. EVID. 401, 402 and 611.</p> <p>Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Witness did not review or evaluate all Aqua Texas personal property interests, is not qualified to do so, and the overly broad scope of such an inquiry is not relevant to determining facts at issue. TEX. R. EVID. 401, 402, 701, and 702.</p>
6	Page 9, Line 14.	Portion of question stating, 'What you just described is tangible personal property.	<p>Leading, suggestive, and the question assumes facts not in evidence. TEX. R. EVID. 611.</p> <p>Witness does not characterize personal property discussed as tangible or intangible.</p>
7	Page 9, Line 14-25.	Testimony concerning tangible/intangible personal property	<p>Expert testimony required and witness not qualified to provide expert opinion on particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Lay opinions based on witness's perception of intangible property not within witness's expertise are not helpful and not relevant to determining facts in issue. TEX. R. EVID. 401, 402, 701 and 702.</p>
8	Page 9, Line 26 through Page 10, Line 19	Opinion testimony as to whether Intervenor's arguments have merit.	<p>(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Lay opinions based on witness's perception of Intervenor experts' arguments not within witness's expertise are not helpful and not relevant to determining facts in issue. TEX. R. EVID. 401, 402, 701 and 702.</p>

<b>Obj.</b>	<b>Testimony</b>	<b>Subject Matter</b>	<b>Basis to Strike</b>
9	Page 10, Lines 20-21	Question	Assumes facts not in evidence. TEX. R. EVID. 401, 402 and 611.  Not Relevant. TEX. R. EVID. 401, 402.
10	Page 10, Lines 22-25	Testimony concerning other decertification cases involving Aqua Texas.	Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.  Lay opinions based on witness's perception of prior cases cited not within witness's expertise or personal knowledge, not helpful, and not relevant to determining facts in issue. TEX. R. EVID. 401, 402, 701 and 702.  Lacks proper foundation. TEX. R. EVID. 401, 402 and 611.
11	Page 11, Lines 24-25.	Testimony concerning proximity in time of Aqua decertification to other cases and representation about Aqua's conclusions.	Not relevant. TEX. R. EVID. 401, 402.  Lacks proper foundation. TEX. R. EVID. 401, 402 and 611.
12	Page 12, Lines 25-26.	Testimony about nature of wastewater permit.	Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed (statement of law). TEX. R. EVID. 702.
13	Pages 13, Line 11 through Page 16, Line 26.	Question and testimony concerning lost economic opportunity.	Expert testimony required and witness not qualified to provide expert opinion (here, witness provides both legal argument and testimony concerning lost economic opportunity issue) on the particular subject matter discussed. TEX. R. EVID. 702.  Lay opinions based on witness's perception of lost economic opportunity issue not within witness's expertise or personal knowledge, not helpful, not relevant to determining facts in

Obj.	Testimony	Subject Matter	Basis to Strike
			<p>issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.</p> <p>Lacks proper foundation. TEX. R. EVID. 401, 402, and 611.</p>
14	Page 14, Lines 8 through 12.	Testimony speculating as to the intent of the Texas Legislature	<p>Lacks proper foundation. TEX. R. EVID. 401, 402 and 611.</p> <p>Speculative. TEX. R. EVID. 401, 402 and 611.</p> <p>(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. See TEX. R. EVID. 702.</p> <p>Lay opinions based on witness's perception of legislative intent not within witness's expertise or personal knowledge, not helpful, not relevant to determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.</p>
15	Page 15, Line 2-3.	Testimony opining about TCEQ precedent.	<p>Not relevant. TEX. R. EVID. 402.</p> <p>(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Lay opinions based on witness's perception of TCEQ precedent not within witness's expertise, not helpful, not relevant to determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.</p>
16	Page 15, Line 5-12.	Testimony opining as to the purpose for CCNs and policy issues.	<p>(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Lay opinions based on witness's non-expert perception of public policy issues not helpful, not relevant to determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401,</p>

<b>Obj.</b>	<b>Testimony</b>	<b>Subject Matter</b>	<b>Basis to Strike</b>
			<p>402, 701 and 702.</p> <p>Speculative and prejudicial. TEX. R. EVID. 401, 402 and 611.</p> <p>Lacks proper foundation. TEX. R. EVID. 401, 402 and 611.</p>
17	Page 15, Line 22 through Page 16, Line 15	Testimony about lost economic opportunity and 'facilities' definition, including reference to law review article.	<p>(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Lay opinions offered are not within witness's expertise, not helpful, not relevant to determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.</p>
18	Page 16, Line 17-20.	Testimony speculating as to Aqua Texas' investors' expectations based on other decertification dockets.	<p>(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Lay opinions offered are not within witness's expertise, not helpful, not relevant to determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.</p> <p>Lacks proper foundation. TEX. R. EVID. 401, 402 and 611.</p> <p>Speculative. TEX. R. EVID. 401, 402 and 611.</p> <p>Not relevant. TEX. R. EVID. 402.</p>
19	Page 16, Lines 22-26	Legal analysis of compensation rules and factors' intent and applicability to lost economic opportunity.	<p>Expert testimony required and witness not qualified to provide expert opinion (here, witness provides both legal argument and testimony concerning lost economic opportunity) on the particular subject matter discussed. TEX. R. EVID. 702.</p> <p>Lay opinions offered are not within witness's expertise, not helpful, not relevant to</p>

Obj.	Testimony	Subject Matter	Basis to Strike
			determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.
20	Page 17, Line 6	Legal analysis of wastewater permit as property.	(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.  Lay opinions offered are not within witness's expertise, not helpful, not relevant to determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.
21	Page 18, Lines 7-11	Legal analysis.	(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.  Lay opinions offered are not within witness's expertise, not helpful, not relevant to determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.
22	Page 18, Lines 23 through Page 19, Line 20.	Legal analysis.	(Pure legal argument) Expert testimony required and witness not qualified to provide expert opinion on the particular subject matter discussed. TEX. R. EVID. 702.  Lay opinions offered are not within witness's expertise, not helpful, not relevant to determining facts in issue, and are prejudicial to Aqua. TEX. R. EVID. 401, 402, 701 and 702.  Lacks proper foundation. TEX. R. EVID. 401, 402 and 611.

## II. ARGUMENT

Most of the objections set forth above are based on the facts that City of Celina has offered direct testimony from a professional engineer, Mr. Jason S. Jones, P.E. on topics for which he is not qualified to testify as an expert. As it relates to expert testimony, Rule 702 of the Texas Rules of Evidence states:



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

The witness must be qualified to give an expert opinion ‘by knowledge, skill, experience, training, or education.’<sup>2</sup> In deciding if a witness is qualified as an expert, courts must ensure that those who purport to be experts have expertise in the actual subject they are offering an opinion about.<sup>3</sup>

Texas case law counsels that a witness with general experience in a particular field of expertise is not necessarily qualified to discuss every matter that might be included in that field. ‘Trial courts must ensure that those who purport to be experts truly have expertise concerning the actual subject about which they are offering an opinion.’<sup>4</sup> For example, a witness with chemistry and engineering degrees was not qualified to testify about wax migration and contamination in tires and its effect on tire failure because he had no training or experience relating to tire chemistry or design.<sup>5</sup> Similarly, a railroad engineer having ‘some expertise’ in engine brakes was not qualified to testify about braking defects because nothing connected the engineer’s experience and training in braking defects.<sup>6</sup> In the face of proper challenge, an expert must be proved to have qualification in the specific issue before the court.<sup>7</sup> Once a party objects to an expert’s testimony, the party

---

<sup>2</sup> *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 637 (Tex. 2009).

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

<sup>4</sup> *Gammill v. Jack Williams Chevrolet*, 972 S.W.2d 713, 719 (Tex. 1998) (“Just as not every physician is qualified to testify as an expert in every medical malpractice case, not every mechanical engineer is qualified to testify as an expert in every products liability case.”).

<sup>5</sup> *Id.* at 806-07.

<sup>6</sup> *Houghton v. Port Terminal R.R.* 999 S.W.2d 39, 48-49 (Tex. App.–Houston 14<sup>th</sup> Dist.] 1999, no pet.).

<sup>7</sup> *In the Interest of M.D.S.* 1 S.W.3d 190, 203 (Tex. App. Amarillo 1999)(citing *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 719-20 (Tex. 1998) (jet fighter engineer not qualified to give expert testimony on automobile seat belt design)).

sponsoring the expert bears the burden of responding to each objection and showing that the testimony is admissible by a preponderance of the evidence.<sup>8</sup> See *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 557 (Tex. 1995).

The prefiled direct testimony of Jason S. Jones, P.E. contains statements regarding property appraisals, the nature of and universe of Aqua's property interests, Aqua's lost economic opportunity position, and legal analyses. Mr. Jones has not demonstrated that he has a sufficient background to discuss these matters. Thus, Mr. Jones is not qualified to provide expert testimony as to these matters.

**A. Mr. Jones is not qualified to provide expert opinion testimony on *all* issues (Objection 1).**

The water Code makes clear that an 'independent *appraiser*' and '*appraisals*' are required for determining compensation.<sup>9</sup> Thus, it follows that in order to offer expert opinion as to appraisals or prepare an 'appraisal, one must be qualified to serve as an appraiser.

Mr. Jones is an engineer, not a certified appraiser. Mr. Jones states that his field of work includes engineering and environmental science. Jason S. Jones Prefiled Testimony at p. 2. His prior job titles include project engineer, drainage engineer, and research scientist. *Id.* p. 3. In his most general testimony as to his qualifications, Mr. Jones states that he has been involved in planning, management, design, and administrative services to those with water distribution systems. *Id.* p. 4. The only experience Mr. Jones claims with regard to preparing appraisals is simply, preparing 'appraisals. His experience does not indicate holding a license to perform 'appraisals. Neither his testimony nor his report filed as CEL102 describe what 'appraisal' standards were used. In eminent domain proceedings, expert testimony is usually needed to determine the market value

---

<sup>8</sup> *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 557 (Tex. 1995).

<sup>9</sup> TWC §§13.254(d)-(g-1)(emphasis added).

of condemned property.<sup>10</sup> TWC §13.254 sets up a process that is similar to eminent domain proceedings in terms of the use of appraisals to value just and adequate compensation needed for property taken as the result of a decertification.

While Mr. Jones has prepared ‘appraisals’ for CCN decertification proceedings in the past, based on information and belief, his qualifications to prepare and file such ‘appraisals’ have never been challenged. While Mr. Jones may testify to some extent as to certain engineering aspects associated with utility facilities, such as identifying facilities used in connection with water or wastewater distribution and estimating its value, he is not qualified to opine as to proper identification of all tangible and intangible utility property sufficiently to classify its legal nature and appraise the full just and adequate compensation required for a decertified CCN holder under the Texas Water Code. Simply, Mr. Jones is not qualified to opine as to all property that may be considered rendered useless or valueless due to a decertification. Nor is Mr. Jones qualified to opine as to the valuation of all such property (even though that issue is not before the ALJ here). Nothing in Mr. Jones’ background or professional experience testimony, or his resume, suggests otherwise. *See Jason S. Jones Prefiled Testimony pp. 2-4, Exhibit CEL 101 (resume).*

Thus, Mr. Jones should not be admitted as an expert witness to opine as to all the issues in this hearing discussed in his testimony and exhibits. In fact, much of his testimony should be stricken. His ‘appraisal’ should be admitted for a limited purpose within his expertise and should not be viewed as an ‘appraisal’ per the Texas Water Code. Rather, it should be properly viewed as a report identifying and valuing property identifiable by Mr. Jones based on his expertise and not a complete ‘appraisal. Portions of Mr. Jones’s testimony that falls outside his expertise must be

---

<sup>10</sup> *See Guadalupe-Blanco River Auth. v. Kraft*, 77 S.W.3d 805, 807–810 (Tex. 2002)(noting that “[a]ppraisal expertise is a form of ‘specialized knowledge used to assist the trier of fact to determine a fact in issue’ and therefore must satisfy relevance and reliability requirements. . . *Southwestern Bell Tel. Co. v. Radler Pavilion*, 77 S.W.3d 482, 485–487 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).

stricken and he should not be permitted to opine as an expert on every issue included in his testimony or report (CEL 102) discussed therein as requested by City of Celina.

**B. Mr. Jones is not qualified to provide expert opinion testimony concerning lost economic opportunity (Objections 13, 17, and 19).**

In testimony covered by the above-noted objections, Mr. Jones opines as to what lost economic opportunity is, and whether it should be considered in connection with analyzing compensation due to a utility in a TWC §13.254 decertification case. Mr. Jones is not qualified to provide expert opinion testimony concerning lost economic opportunity as part of a proper appraisal. Lost economic opportunity involves analyzing company financial information, project investment information, and market factors specific to the location where the decertification occurred. These matters are not typically within the expertise of engineers, such as Mr. Jones. Also, neither Mr. Jones' background or professional experience testimony, nor his resume, suggests he may otherwise be qualified to provide expert opinion testimony as to lost economic opportunity.<sup>11</sup> Therefore, Mr. Jones is not qualified to offer the objectionable testimony as an expert and it will not assist the trier of fact.<sup>12</sup> Such opinions amount to no more than lay opinions and are not relevant or helpful.<sup>13</sup> Accordingly, Mr. Jones' opinion testimony concerning lost economic opportunity should be stricken.

**C. Mr. Jones is not qualified to provide expert opinion testimony concerning the nature of all Aqua Texas' property (Objections 3-7, 12, and 16).**

In testimony covered by the above-noted objections, Mr. Jones testifies as to status of certain property as tangible or intangible, and opines as to the significance of each in connection with whether property has been rendered useless or valueless as a result of decertification. Mr. Jones

---

<sup>11</sup> See Section A *supra*.

<sup>12</sup> TEX. R. EVID. 702.

<sup>13</sup> TEX. R. EVID. 401, 402, 701 and 702.

further testifies as to whether Aqua Texas has real or personal property interests ‘at all’ and provides other commentary on the nature of property in this case, including Aqua Texas’ CCN and wastewater permit. Neither Mr. Jones’ background or professional experience testimony, nor his resume, suggests he is qualified to opine as to these matters.<sup>14</sup> Therefore, Mr. Jones is not qualified to offer the objectionable testimony as an expert and it will not assist the trier of fact.<sup>15</sup> Such opinions amount to no more than lay opinions and are not relevant or helpful.<sup>16</sup>

**D. Mr. Jones is not qualified to provide expert legal opinion (Objections 2, 4-5, 7-8, 10-12, and 14-22).**

In numerous sections of his testimony (encompassed in the above-noted objections), Mr. Jones testifies as to: (1) the legal status of certain property as tangible or intangible, and opining as to the legal significance of each; (2) the legal merit of Aqua Texas’ positions; (3) the legislative intent of the expedited release and compensation rules in the Water Code; (4) interprets the law generally, along with representing opinions included in certain legal articles as law; and (5) opines as to the applicability of various other decertification cases and the extent of their precedential effect as a matter of law. The above-noted sections of Mr. Jones’ testimony concern legal issues that the ALJ, and ultimately the Commission, will decide. While these issues may be appropriate for closing briefs, Mr. Jones is not a lawyer. His engineering background and experience does not qualify him to provide expert legal opinion testimony.<sup>17</sup> Nothing else in his background nor professional

---

<sup>14</sup> See **Section A** *supra*.

<sup>15</sup> TEX. R. EVID. 702.

<sup>16</sup> TEX. R. EVID. 401, 402, 701 and 702.

<sup>17</sup> An expert cannot testify about an opinion on a pure question of law. *Greenberg Traurig of N.Y. P.C. v. Moody*, 161 S.W.3d 56, 94 (Tex. App.–Houston[14th Dist.] 2004, no pet.); *Upjohn v. Rylander*, 38 S.W.3d 600, 611 (Tex. App.–Austin 2000, pet. denied). While an expert witness may offer an opinion on a mixed question of law and fact, the expert may only do so if the opinion is confined to relevant issues and is based on proper legal concepts. See *Birchfield v. Texarkana Mem’l Hosp.* 747 S.W.2d 361, 365 (Tex. 1987). Here, Mr. Jones has offered pure legal conclusions or analyses where Aqua has objected.

experience testimony, or his resume, suggests otherwise. Therefore, Mr. Jones is not qualified to offer the objectionable testimony as an expert and it will not assist the trier of fact.<sup>18</sup> Such opinions amount to no more than lay opinions and are not relevant or helpful.<sup>19</sup>

### **III. REQUEST FOR LIMITED ADMISSIBILITY OF EXHIBIT**

Aqua submits that certain sections of Mr. Jones' testimony should be stricken as discussed above due to Mr. Jones's qualifications evidenced by Ex. CEL 101 and statements about same offered within Mr. Jones's testimony. For similar reasons, Aqua requests that the 'appraisal' offered as CEL 102 be either stricken or admitted with limitations because Mr. Jones's direct testimony and qualifications expressed therein indicate it should not be admitted as an expert TWC 'appraisal' on all Aqua property potentially rendered useless or valueless in Docket No. 45329.

Exhibit CEL 102 is an 'appraisal' in name only and should be properly viewed as an expert engineering valuation report on certain Aqua property rendered useless or valueless in Docket No. 45329, but not all such Aqua property. Certain property identification and valuation tasks appear to be outside the expertise of Mr. Jones. The document should not be viewed as an 'appraisal' performed by an 'appraiser' under standards applicable for same as required by TWC §13.254. But, while CEL 102 should not be viewed as an 'appraisal' prepared by a qualified 'appraiser' sufficient for full consideration under TWC §13.254, the document contains portions which may be admissible to show identification of some of Aqua's tangible and intangible water/wastewater utility property that happens to be within Mr. Jones's expertise. Valuation is not an issue in this phase of this now bifurcated proceeding and the appraisal may not be appropriate in the second phase. Aqua would like to reserve its right to object to the entirety of CEL 102 if offered in the second phase for

---

<sup>18</sup> TEX. R. EVID. 702.

<sup>19</sup> TEX. R. EVID. 401, 402, 701 and 702.

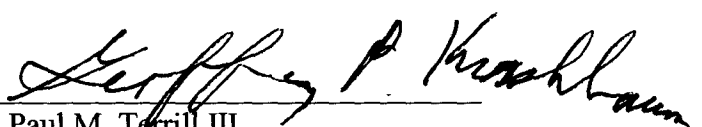
valuation purposes. However, here, if the ALJ decides that portions of CEL 102 are helpful to determining facts in this case, Aqua will not object to admission of Exhibit CEL 102 for that limited purpose.<sup>20</sup> Aqua will also agree that its offer of that document as Ex. AT-2 to show what property was identified by other parties (in response to Preliminary Order Issue #2 as referred) should be so limited. Otherwise, Ex. CEL 102 should be stricken and Aqua will agree to withdraw its offer of that document also.

#### IV CONCLUSION

For the reasons set out above, Aqua requests that the above-noted portions of Celina's direct testimony identified in these Objections and Motion to Strike be stricken. Aqua also requests that City of Celina Direct Exhibit CEL 102 be admitted with the requested limitations or, alternatively, stricken. Alternatively, if the ALJ finds declines to strike these portions of direct testimony or so limit the admission of Exhibit CEL 102, Aqua Texas requests that the ALJ accord such testimony and exhibit the appropriate weight.

Respectfully submitted,

By: \_\_\_\_\_

  
Paul M. Terrill III  
State Bar No. 00785094  
Geoffrey P. Kirshbaum  
State Bar No. 24029665  
TERRILL & WALDROP  
810 W 10<sup>th</sup> Street  
Austin, Texas 78701  
(512) 474-9100  
(512) 474-9888 (fax)

**ATTORNEYS FOR AQUA TEXAS, INC. D/B/A AQUA  
TEXAS**

---

<sup>20</sup> TEX. R. EVID. 105.

**CERTIFICATE OF SERVICE**

I hereby CERTIFY that on April 22, 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:

Andrew Barrett  
BARRETT & ASSOCIATES, PLLC  
3300 Bee Cave Road, Suite 650 #189  
Austin, Texas 78746

*via fax to: (512) 600-3899*

David Tuckfield  
THE AL LAW GROUP, PLLC  
12400 West Highway 71  
Suite 350-150  
Austin, Texas 78738

*via fax to: (512) 366-9949*

**ATTORNEYS FOR CITY OF CELINA**

Erika Garcia  
Public Utility Commission of Texas  
1701 N Congress PO Box 13326  
Austin, Texas 78711-3326

*via fax to: (512) 936-7268*

**ATTORNEY FOR COMMISSION STAFF**

  
\_\_\_\_\_  
Geoffrey P. Kirshbaum