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CITY OF CELINA'S NOTICE OF § BEFORE THE PUBLIC UTILITY  
INTENT TO PROVIDE WATER AND §  
SEWER SERVICE TO AREA §  
DECERTIFIED FROM AQUA TEXAS, § COMMISSION OF TEXAS  
INC. IN DENTON COUNTY §

**AQUA TEXAS' CONSOLIDATED RESPONSE TO DIRECT TESTIMONY  
OBJECTIONS AND MOTIONS TO STRIKE BY CITY OF CELINA AND  
COMMISSION STAFF**

Aqua Texas, Inc. d/b/a Aqua Texas ("Aqua") files this consolidated response to the City of Celina's ("City" or "Celina") Objections to Pre-filed Testimony,<sup>1</sup> which includes a motion to strike certain pre-filed direct testimony offered by Aqua,<sup>2</sup> and to Commission Staff's Objections to and Motion to Strike Portions of City of Celina and Aqua Texas, Inc.'s Direct Testimony.<sup>3</sup> In support, Aqua would show as follows.

**I. INTRODUCTION**

The objections to Aqua Texas' pre-filed direct testimony should be overruled. The majority of objections dispute the qualifications of Aqua Texas' witnesses to offer certain expert opinions and statements included in their testimony even though it is well within the scope of their expertise. Some portions of the testimony are fact-based and also well within their personal knowledge and experience. At best, the objections go to the weight of the testimony, not its admissibility. At worst,

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<sup>1</sup> City of Celina's Objections to Pre-filed Testimony (August 22, 2016) (Docket Item No. 23) ("Celina Objections").

<sup>2</sup> The objections indicate opposition to Aqua exhibits, but substantively assert no such objections within the pleading. Therefore, any such objections by Celina should be overruled.

<sup>3</sup> Commission Staff's Objections to and Motion to Strike Portions of City of Celina and Aqua Texas, Inc.'s Direct Testimony (August 22, 2016) (Docket Item No. 22) ("Commission Staff Objections").

in Celina's case, the objections are disingenuous, particularly in light of the legal brief Celina has offered in this docket purporting to be expert testimony from a non-qualified witness.

## **II. RESPONSE TO CITY OF CELINA'S OBJECTIONS**

Celina has asserted two sets of objections. First, Celina raises a general objection to the expert witness status of Stephen H. Blackhurst, P.E. and Darryl G. Waldock. Second, Celina asserts general grounds for specific objections and asserts same with respect to the pre-filed direct testimony from these same two expert witnesses. All objections are unfounded and should be overruled.

### **A. Expert Status of Stephen H. Blackhurst, P.E. and Darryl G. Waldock – Procedural Objection**

Celina's first issue is an assertion that Steve Blackhurst, P.E. and Darryl G. Waldock were not tendered as expert witnesses and are presumed to be lay witnesses. This presumption is incorrect. TEX. R. EVID. 702 states, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."<sup>4</sup> Neither PUC nor SOAH rules require a formal tendering of witnesses as experts to permit testimony for which expertise is required. Nor was any requirement for expert witness designations or reports included in the procedural schedule or a SOAH order issued for this docket. Therefore, no such formal tender is required although Celina is free to challenge testimony for which expertise is required based on the witnesses' qualifications.

Here, each witnesses' specialized knowledge, skill, experience, training, and education reflected in their respective direct testimonies and resume exhibits lay the foundation for them to

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<sup>4</sup> See also 16 TAC §22.221(a) which incorporates the Texas Rules of Evidence for PUC proceedings, but is broader in what may be used to ascertain facts in some situations.

provide their expert opinions and statements that require expertise.<sup>5</sup> Elsewhere, the witnesses provide factual statements within their personal knowledge that do not require special expertise. Both witnesses testify as to the purpose of their testimony and present a summation of what their testimony entails.<sup>6</sup> For the expert testimony provided, the above considerations show that Aqua has properly offered Steve Blackhurst and Darryl Waldock as expert witnesses sufficiently to overcome Celina's procedural objection to their expert status.

To the extent the Court requires Aqua to more formally tender Mr. Waldock and Mr. Blackhurst as expert witnesses, Aqua requests the Court so direct. Aqua offers to supplement its direct testimony accordingly with a formal tender before tendering the experts for cross examination at the hearing on the merits.

**B. Expert Status of Stephen H. Blackhurst, P.E. and Darryl G. Waldock – Substantive Objections**

Celina argues that Mr. Blackhurst and Mr. Waldock may only offer their direct testimony presented as fact witnesses based on their qualifications. However, as discussed above, they are qualified to opine as experts where necessary within their testimonies.

Celina admits “Mr. Waldock is an expert in utility operations,” but that his “qualifications do not equate to expertise in either of the issues that the [PUC] has requested that we address.”<sup>7</sup> Mr. Waldock's special expertise as a utility operator and long-standing Aqua Manager, together with his personal knowledge of Aqua's service efforts for the decertified property, has direct bearing on what may or not be Aqua property rendered useless or valueless by the decertification. Further, he is

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<sup>5</sup> Direct Testimony of Stephen H. Blackhurst, P.E. (“Blackhurst Direct”), at 1-6 and Exhibit AT-8 (“Blackhurst Resume”); Direct Testimony of Darryl G. Waldock (“Waldock Direct”), at 1-5 and Exhibit AT-7 (“Waldock Resume”).

<sup>6</sup> See Blackhurst Direct, at 6-7; see Waldock Direct, at 5-6.

<sup>7</sup> Celina Objections, at 2-3.

qualified to offer an opinion based on his expertise as to how he views the reports filed in this docket in terms of sufficiently including Aqua property rendered useless or valueless. Well before the decertification at issue here, Mr. Waldock managed the “real world” daily operations and property interests for the subject location in various capacities for nearly two decades.<sup>8</sup> Perhaps better than anyone, Mr. Waldock understands what property is useful and valuable in connection with Aqua’s water and wastewater service operations in Aqua’s North Region that includes the decertified property. 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 Aqua after the decertification. The weight of Mr. Waldock’s opinions on the ultimate issues is for the Court to decide, but (1) Mr. Waldock’s expertise on the issues he discusses should not be questioned; and (2) Mr. Waldock’s testimony is highly relevant and helpful to ruling on the referred issues.<sup>9</sup>

Celina similarly admits “Mr. Blackhurst has an impressive background as being knowledgeable of regulatory process involving retail water utilities,” but objects to considering Mr. Blackhurst an expert for certain purposes.<sup>10</sup> Mr. Blackhurst clearly qualifies as an expert witness for all purposes in his direct testimony, but, as with Mr. Waldock, 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 Court.<sup>11</sup>

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<sup>8</sup> Waldock Direct, at 3-4.

<sup>9</sup> TEX. R. EVID. 702.

<sup>10</sup> Celina Objections, at 3.

<sup>11</sup> Compare Blackhurst Direct, at 1-6; Exhibit AT-8, with TEX. R. EVID. 702.

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 rules<sup>12</sup> 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 Mr. Blackhurst's experience and expertise. In particular, Mr. Blackhurst has special expertise in the area of certificate of convenience and necessity (CCN) and TWC § 13.254 administration. Mr. Blackhurst served 14 years as the Utility Rates & Services Section Manager for the Texas Natural Resources Conservation Commission (TNRCC) (TCEQ's predecessor). The CCN decertification and compensation process set forth in Texas Water Code (TWC) § 13.254 was first added to TWC § 13.254 in 1997 through SB 1 (75th(R)) during Mr. Blackhurst's tenure as a TNRCC Manager. Mr. Blackhurst's duties at TNRCC included participating in the legislative and rulemaking processes that resulted in the first version of that process. In fact, Mr. Blackhurst *wrote* many of those rules—a task which required acquiring an understanding of *legislative intent*. Mr. Blackhurst also served Aqua for over a decade, assisting Aqua 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. While at Aqua, Mr. Blackhurst

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<sup>12</sup> Much of what Celina 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."

represented Aqua in the process that led to changes now present in TWC §13.254 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. Waldock is highly qualified to offer the expert opinions he offers, and Mr. Blackhurst has nearly a quarter-century of expertise interpreting, complying, implementing—and even *writing*—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 §13.254 and what is now 16 TAC §24.113 (originally 30 TAC §291.113). Not only is Mr. Blackhurst qualified to opine as to history and meaning of the decertification/compensation rules and their applicability here, but, arguably, no one else is more qualified. Celina’s challenges to Mr. Waldock’s and Mr. Blackhurst’s qualifications to provide the expert opinion testimonies provided should be overruled.

**C. Celina’s General Objections Alleged in “Grounds for Specific Objections to Pre-filed Testimony” Must be Overruled**

Celina has included a section setting forth “Grounds for Specific Objections to Pre-filed Testimony.” To the extent there are objections contained herein that are not reflected in Celina’s “Specific Objections to Pre-filed Testimony” section, they are not specific enough to be sustained and must be overruled.

**D. Celina’s “Specific Objections to Pre-filed Testimony” Must be Overruled**

Celina’s objections and motion to strike certain testimony by both Mr. Waldock and Mr. Blackhurst are without merit. Please see discussions in Sections A and B above regarding the qualifications of Mr. Waldock and Mr. Blackhurst for all Celina objections relating to their expert status. Aqua further responds to all Celina’s specific objections as follows.

**1. Objections to Mr. Waldock's Testimony – Page 10, Lines 9-12**

The identified testimony is both proper expert opinion testimony based on Mr. Waldock's specialized operations knowledge from working as a Manager for Aqua and an expression of facts within Mr. Waldock's personal knowledge in that same capacity. Mr. Waldock has the personal experience and expertise to offer an evaluation as to whether the wastewater permit was of any continued use or value to Aqua Texas after the decertification. This testimony should be admitted whether Mr. Waldock is accepted as an expert on the topic or not. Regardless of how this statement is classified, the matter discussed is entirely within the scope of Mr. Waldock's personal experience and expertise. Therefore, Celina's objection and motion to strike the identified statement in Mr. Waldock's testimony as "improper opinion testimony" should be overruled.

**2. Objections to Mr. Waldock's Testimony – Page 12, Lines 14-16**

The identified testimony is both proper expert opinion testimony based on Mr. Waldock's specialized operations knowledge from working as a Manager for Aqua, an expression of facts within Mr. Waldock's personal knowledge in that same capacity, and a statement expressing his opinion about the scope of information and documents he personally provided to Aqua's appraiser during this case. Celina is free to disagree with Mr. Waldock's assessment of the information and documents he provided, but this testimony should be admitted whether Mr. Waldock is accepted as an expert on the topic or not. Regardless of how this statement is classified, the matter discussed is entirely within the scope of Mr. Waldock's personal experience and expertise. Therefore, Celina's objection and motion to strike the identified statement in Mr. Waldock's testimony as "improper opinion testimony" should be overruled.



### **3. Objections to Mr. Blackhurst's Testimony – Page 8, Lines 9-12.**

The identified testimony is both proper expert opinion testimony based on Mr. Blackhurst's specialized knowledge as a prior regulator and an expression of facts within Mr. Blackhurst's personal knowledge in that same capacity. Mr. Blackhurst has the personal experience and expertise to offer his opinion as to why the statutory language in question was added. This testimony should be admitted whether Mr. Blackhurst is accepted as an expert on the topic or not. "[F]acts . . . upon which an expert bases and opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing."<sup>13</sup> "If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."<sup>14</sup> If the statement is characterized as a lay opinion, which it is not, it is "rationally based on the perception of the witness and . . . helpful to a clear understanding of the witness' testimony or the determination of a fact in issue."<sup>15</sup> The statement is offered as one of an expert, but, regardless of classification, the matter discussed is entirely within the scope of Mr. Blackhurst's personal experience and expertise. Mr. Blackhurst is providing this statement based on his understanding from working with the historic statute and rule at issue here two decades ago as a regulator.

Further, the testimony is not speculation without basis and 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."<sup>16</sup> "If there is some

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<sup>13</sup> TEX. R. EVID. 702.

<sup>14</sup> TEX. R. EVID. 702.

<sup>15</sup> TEX. R. EVID. 701.

<sup>16</sup> TEX. R. EVID. 401.

logical connection either directly or by inference between the evidence and a fact to be proved, the evidence is relevant.”<sup>17</sup> 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 Celina’s objection. There is no danger of unfair prejudice or confusion of issues and Celina’s objection goes to weight rather than admissibility.

Celina’s objections and motion to strike the identified statement in Mr. Blackhurst’s testimony as “improper opinion testimony” and as speculation should be overruled. This testimony is helpful to the Court and should be admitted.

#### **4. Objections to Mr. Blackhurst’s Testimony – Page 10, Lines 18-20.**

The identified testimony is both proper expert opinion testimony based on Mr. Blackhurst’s specialized knowledge as a prior regulator and participant in the referenced legislative process, plus an expression of facts within Mr. Blackhurst’s personal knowledge in that same capacity. Mr. Blackhurst has the personal experience and expertise to offer his opinion as to what prompted the legislative effort in 1997 referenced. This testimony should be admitted whether Mr. Blackhurst is accepted as an expert on the topic or not. “[F]acts . . . upon which an expert bases and opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing.”<sup>18</sup> “If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”<sup>19</sup> If the statement is characterized as a lay opinion, which it is not, it is “rationally based on the perception of the witness and . . . helpful to a clear understanding of the witness’ testimony or the determination

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<sup>17</sup> *PPC Transp. v. Metcalf*, 254 S.W.3d 636, 642 (Tex. App.–Tyler 2008, no pet.).

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

<sup>19</sup> TEX. R. EVID. 702.

of a fact in issue.”<sup>20</sup> The statement is offered as one of an expert, but, regardless of classification, the matter discussed is entirely within the scope of Mr. Blackhurst’s personal experience and expertise. Mr. Blackhurst is providing this statement based on his understanding from working with the historic statute and rule at issue here two decades ago as a regulator and his involvement with the 1997 legislative change he discusses.

Celina’s objections and motion to strike the identified statement in Mr. Blackhurst’s testimony as “improper opinion testimony” should be overruled. This testimony is helpful to the Court and should be admitted.

**5. Objections to Mr. Blackhurst’s Testimony – Page 11, Lines 3-5 and Page 12, Lines 1-6**

The identified testimony is both proper expert opinion testimony based on Mr. Blackhurst’s specialized knowledge as a prior regulator and an expression of facts within Mr. Blackhurst’s personal knowledge in that same capacity. Mr. Blackhurst has the personal experience and expertise to provide the opinion offered expressing thoughts about the property interests that influenced the 1997 statute. This testimony should be admitted whether Mr. Blackhurst is accepted as an expert on the topic or not. “[F]acts . . . upon which an expert bases and opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing.”<sup>21</sup> “If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”<sup>22</sup> If the statement is characterized as a lay opinion, which it is not, it is “rationally based on the perception of the witness and . . . helpful

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<sup>20</sup> TEX. R. EVID. 701.

<sup>21</sup> TEX. R. EVID. 702.

<sup>22</sup> TEX. R. EVID. 702.

to a clear understanding of the witness' testimony or the determination of a fact in issue."<sup>23</sup> The statement is offered as one of an expert, but, regardless of classification, the matter discussed is entirely within the scope of Mr. Blackhurst's personal experience and expertise. Mr. Blackhurst is providing this statement based on his understanding from working with the historic statute and rule at issue here two decades ago as a regulator.

Further, the testimony is not speculation without basis and 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."<sup>24</sup> "If there is some logical connection either directly or by inference between the evidence and a fact to be proved, the evidence is relevant."<sup>25</sup> 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 Celina's objection. There is no danger of unfair prejudice or confusion of issues and Celina's objection goes to weight rather than admissibility.

Celina's objections and motion to strike the identified statements in Mr. Blackhurst's testimony as "improper opinion testimony" and as speculation should be overruled. This testimony is helpful to the Court and should be admitted.

**6. Objections to Mr. Blackhurst's Testimony – Page 14, Line 22 to Page 16, Line 9**

Mr. Blackhurst's opinion concerning the 2005 statutory changes to TWC §13.254 is highly relevant to this proceeding and should not be excluded. The identified testimony is proper expert opinion testimony based on Mr. Blackhurst's specialized knowledge both as a prior regulator and

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<sup>23</sup> TEX. R. EVID. 701.

<sup>24</sup> TEX. R. EVID. 401.

<sup>25</sup> *PPC Transp. v. Metcalf*, 254 S.W.3d 636, 642 (Tex. App.—Tyler 2008, no pet.).

as a participant in the 2005 legislative process on behalf of Aqua. The testimony also represents an expression of facts within Mr. Blackhurst's personal knowledge in both capacities. Mr. Blackhurst has the personal experience and expertise to provide the opinion offered expressing thoughts about the 2005 statutory changes. This testimony should be admitted whether Mr. Blackhurst is accepted as an expert on the topic or not. "[F]acts . . . upon which an expert bases and opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing."<sup>26</sup> "If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."<sup>27</sup> If the statement is characterized as a lay opinion, which it is not, it is "rationally based on the perception of the witness and . . . helpful to a clear understanding of the witness' testimony or the determination of a fact in issue."<sup>28</sup> The statement is offered as one of an expert, but, regardless of classification, the matter discussed is entirely within the scope of Mr. Blackhurst's personal experience and expertise. Mr. Blackhurst is providing this statement based on his understanding from working with the historic statute and rule at issue here two decades ago as a regulator and as a participant in the legislative process in 2005. His perspective is sourced from over two decades of experience dealing with the decertification statute, TWC Chapter 13, and implementing rules from multiple perspectives in both the public and private sectors. The foundation for this testimony is provided. The testimony is not offered as a legal opinion or conclusion as Celina alleges.

Further, the testimony is not speculation without basis and is relevant. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination

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<sup>26</sup> TEX. R. EVID. 702.

<sup>27</sup> TEX. R. EVID. 702.

<sup>28</sup> TEX. R. EVID. 701.

of the action more . . . or less probable than it would be without the evidence.”<sup>29</sup> “If there is some logical connection either directly or by inference between the evidence and a fact to be proved, the evidence is relevant.”<sup>30</sup> Mr. Blackhurst’s opinion based on his experiences working with both the historic and current statute and rule at issue both as a regulator, as part of the regulated community, and as a participant in the 2005 legislative process is highly relevant and has basis contrary to Celina’s objection. There is no danger of unfair prejudice or confusion of issues and Celina’s objection goes to weight rather than admissibility.

Finally, the testimony starting on Page 15, Line 20 highlighted by Celina is highly relevant to this case. The testimony offers Mr. Blackhurst’s “big picture” perspective on how the Commission should deal with the statutory provisions at issue here given the absence of clarifying rules. This perspective is sourced from over two decades of experience dealing with the decertification statute both as a regulator and in the private sector. The bifurcated hearing process commenced in this docket is the first of its kind. New policy is being developed in the midst of this proceeding. Mr. Blackhurst is simply offering his opinion as a former regulator and regulated stakeholder in an effort to assist the current regulators (*i.e.*, the Commission) and the Court. Mr. Blackhurst may be the best person available to offer this perspective.

Celina’s objections and motion to strike the identified statements in Mr. Blackhurst’s testimony should be overruled. This testimony is helpful to the Court and should be admitted.

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<sup>29</sup> TEX. R. EVID. 401.

<sup>30</sup> *PPC Transp. v. Metcalf*, 254 S.W.3d 636, 642 (Tex. App.—Tyler 2008, no pet.).

**7. Objections to Mr. Blackhurst's Testimony – Page 16, Line 11 to Line 19 and Page 17, Line 6 to Line 18**

Mr. Blackhurst's opinion concerning the property included in Aqua's appraisal reports is highly relevant to this proceeding and should not be excluded. The identified testimony is proper expert opinion testimony based on Mr. Blackhurst's specialized knowledge as a prior regulator, as a participant in the 2005 legislative process on behalf of Aqua, and as a past employee of Aqua. The testimony also represents an expression of facts within Mr. Blackhurst's personal knowledge in both capacities. Mr. Blackhurst has the personal experience and expertise to provide the opinion offered expressing thoughts about the property interests described in Aqua's appraisal report and the other reports filed in this docket. This testimony should be admitted whether Mr. Blackhurst is accepted as an expert on the topic or not. "[F]acts . . . upon which an expert bases and opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing."<sup>31</sup> "If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."<sup>32</sup> If the statement is characterized as a lay opinion, which it is not, it is "rationally based on the perception of the witness and . . . helpful to a clear understanding of the witness' testimony or the determination of a fact in issue."<sup>33</sup> The statement is offered as one of an expert, but, regardless of classification, the matter discussed is entirely within the scope of Mr. Blackhurst's personal experience and expertise. Mr. Blackhurst is providing this statement based on his understanding from working with the historic statute and rule at issue here two decades ago as a regulator, as a participant in the legislative process

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<sup>31</sup> TEX. R. EVID. 702.

<sup>32</sup> TEX. R. EVID. 702.

<sup>33</sup> TEX. R. EVID. 701.

in 2005, and as an employee of Aqua with personal knowledge of the property interests described therein and their value to Aqua. His perspective is sourced from over two decades of experience dealing with the decertification statute, TWC Chapter 13, and implementing rules from multiple perspectives both public and private, plus his knowledge of Aqua's service efforts for the decertified property. The foundation for this testimony is provided. The testimony is not offered as a legal opinion or conclusion as Celina alleges. Nor does Mr. Blackhurst purport to have the ability to provide an appraisal. However, Mr. Blackhurst does have the ability to opine on the property interests included in the appraisal reports for the limited purpose of this initial hearing as the Commission has directed based on the expertise described herein.

Further, the testimony is not speculation without basis and 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."<sup>34</sup> "If there is some logical connection either directly or by inference between the evidence and a fact to be proved, the evidence is relevant."<sup>35</sup> Mr. Blackhurst's opinion based on his experiences working with both the historic and current statute and rule at issue both as a regulator, as part of the regulated community, and as a participant in the 2005 legislative process, plus his personal knowledge about Aqua's property interests gained while working for Aqua, is highly relevant and has basis contrary to Celina's objection. There is no danger of unfair prejudice or confusion of issues and Celina's objection goes to weight rather than admissibility.

This testimony is helpful to the Court and should be admitted. Celina's objections and motion to strike the identified statements in Mr. Blackhurst's testimony should be overruled.

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<sup>34</sup> TEX. R. EVID. 401.

<sup>35</sup> *PPC Transp. v. Metcalf*, 254 S.W.3d 636, 642 (Tex. App.—Tyler 2008, no pet.).



### III. RESPONSE TO COMMISSION STAFF'S OBJECTIONS

Commission Staff has objected to large portions of the Direct Testimony of Stephen H. Blackhurst, P.E. based solely on relevance.<sup>36</sup> Respectfully, all these relevance objections actually go to the weight and not the admissibility of the identified testimony.<sup>37</sup> 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.”<sup>38</sup> “If there is some logical connection either directly or by inference between the evidence and a fact to be proved, the evidence is relevant.”<sup>39</sup> The history and evolution of TWC § 13.254, in conjunction with the legislative purpose for TWC Chapter 13 as a whole, are highly relevant because these considerations inform the factual scope for what “property” may be rendered useless or valueless by a decertification under current TWC § 13.254 and implementing rules. There is also the issue of what specified factors or “other relevant factors” may be considered to inform that determination. There are many different types of property interests potentially at stake. This limited proceeding is requiring the Commission to identify the universe of potential property interests, determine which ones apply to Aqua’s specific decertification context, and then determine their factual use or value. New policy is being developed in the midst of this limited proceeding that may potentially affect future Aqua operations and other similarly situated retail public utilities. Mr. Blackhurst’s opinions based on his experiences working with both the historic and current statute and rule at issue both as a regulator, as part of the regulated community, and as a participant in the 2005 legislative process, plus his personal knowledge gained

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<sup>36</sup> TEX. R. EVID. 401; Commission Staff Objections, at 3-4.

<sup>37</sup> TEX. R. EVID. 401, 402.

<sup>38</sup> TEX. R. EVID. 401.

<sup>39</sup> *PPC Transp. v. Metcalf*, 254 S.W.3d 636, 642 (Tex. App.–Tyler 2008, no pet.).

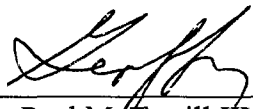

while working for Aqua, puts him in a unique position to offer a highly relevant perspective on these issues that the Commission should consider. That perspective is reflected in the identified testimony and it should not be excluded on the basis of relevance.

Commission Staff's objections and motion to strike identified statements in Mr. Blackhurst's testimony should be overruled. This testimony is helpful to the Court and should be admitted.

#### **IV. CONCLUSION AND PRAYER**

For the reasons set out above, Aqua Texas, Inc. d/b/a Aqua Texas respectfully requests the Honorable Administrative Law Judge overrule all objections to the Direct Testimony of Stephen H. Blackhurst, P.E. and Darryl G. Waldock and deny the motions to strike same. Aqua further requests that their complete testimony be admitted at the hearing on the merits.

Respectfully submitted,

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

## **CERTIFICATE OF SERVICE**

I hereby CERTIFY that on August 26, 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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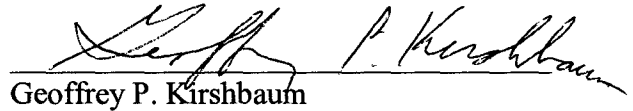
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