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Addendum StartPage: 0

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

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**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
PUBLIC UTILITY COMMISSION
FILING CLERK
COMMISSION OF TEXAS**

**AQUA TEXAS' OBJECTIONS TO CITY OF CELINA'S CROSS-REBUTTAL
TESTIMONY OF PAUL HORNSBY AND CHRIS HORNSBY
AND MOTION TO STRIKE**

Aqua Texas, Inc. d/b/a Aqua Texas ("Aqua") files these objections to the City of Celina's Cross-Rebuttal Testimony of Paul Hornsby and Chris Hornsby and Exhibits ("Objections") and in support would show as follows.¹

I. INTRODUCTION

Celina's cross-rebuttal case represents an admission that Celina's sole direct testimony witness is not qualified to opine as to appraisal matters in this docket. However, that does not provide Celina carte blanche to use the agreed cross-rebuttal opportunity in this docket to offer new witnesses that have not even attempted to appraise or identify Aqua's specific lost property interests up to this point. Therefore, Aqua is compelled to object both generally and more specifically to Celina's pre-filed cross-rebuttal case as set forth below.

II. GENERAL OBJECTIONS TO CROSS-REBUTTAL TESTIMONY

A. Celina's Cross-Rebuttal Testimony/Exhibits are Improper.

Aqua agreed to an expedited hearing procedure in this docket, but Celina is attempting to unfairly take advantage of same by offering new appraiser witness testimony/exhibits in cross-rebuttal two weeks before our scheduled hearing on the merits when neither witness prepared the

¹ These objections are timely filed according to the schedule set forth in SOAH Order No. 2 (July 29, 2016).

appraisal Celina filed in this docket. This operates as surprise to Aqua. The cross-rebuttal testimony and exhibits offered by Celina critiquing Aqua's appraisal, filed June 13, 2016, should have been offered as part of Celina's direct case, filed August 16, 2016, over two months later. Celina opted not to take that approach. Celina's cross-rebuttal is a late attempt to overcome the fact that the sole testimony in its direct case was offered by an unlicensed appraiser. Now, Aqua's licensed appraiser has no opportunity to respond to Celina's cross-rebuttal appraiser testimony in pre-filed rebuttal. Therefore, the cross-rebuttal testimony of both Celina's witnesses should be struck. Alternatively, Aqua should be permitted to offer supplemental oral rebuttal at the hearing on the merits when it presents its pre-filed cross-rebuttal case.²

B. Celina Is Required to Specifically Identify Rebuttal Witness/Testimony/Exhibits.

16 TAC §22.225(b) requires that a witness offering prefiled written testimony on direct or rebuttal must: (1) swear to it under oath; and (2) submit to cross-examination (among other requirements). Thus, Aqua objects to Celina's attempt to prejudice Aqua's ability to cross-examine its witnesses by failing to clearly disclose with its rebuttal case filed September 2, 2016 which witness will be offering testimony and specifically what that witness is offering as his testimony. Instead, Celina has obscured this issue by offering two sets of testimony—one substantive, one not. Aqua is entitled to fair notice of whom it will be cross-examining and the testimony/exhibits each witness intends to offer. Celina's offer of testimony and exhibits by Chris Hornsby is presented as contingent on whether Paul Hornsby's schedule will permit him to appear at the hearing on the merits. Thus, the rebuttal testimony of both Celina's witnesses should be struck.

² 16 TAC §22.203.

III. SPECIFIC OBJECTIONS TO REBUTTAL TESTIMONY

A. Paul Hornsby Rebuttal Testimony to be Stricken

Subject to and without waiving the previously stated objections, Aqua objects to and requests that the following rebuttal testimony of Paul Hornsby offered on behalf of the City of Celina be stricken:

Testimony	Subject Matter	Basis to Strike
Page 8, Lines 24-27	Question asking the witness to speculate as to legislative intent.	Calls for speculation. ³ Question calls for an opinion based on witness's perception of legislative intent admittedly not within witness's expertise or personal knowledge; seeks unhelpful speculative information not relevant to determining facts in issue, and prejudicial to Aqua. ⁴ TEX. R. EVID. 401, 402, 403, 701 and 702.
Page 8, Lines 28 through, Page 9, Line 5	Testimony speculating as to the intent of the Texas Legislature.	Speculative and unfairly prejudicial. ⁵ This testimony concerns legal issues (legislative intent) that the ALJ, and ultimately the Commission, will decide. While these issues may be appropriate for closing briefs, Mr. Hornsby is not a lawyer. His background and experience does not qualify him to provide expert legal opinion testimony. ⁶ Nothing else in his background nor professional experience testimony, or his resume, suggests otherwise. Therefore, there is no proper foundation for his testimony. ⁷

³ TEX. R. EVID. 401, 402 and 611.

⁴ TEX. R. EVID. 401, 402, 403, 701, and 702.

⁵ TEX. R. EVID. 401, 402 and 403.

⁶ 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, Paul Hornsby has offered a pure legal conclusion.

⁷ TEX. R. EVID. 401, 402 and 602.

Testimony	Subject Matter	Basis to Strike
		Further, Mr. Hornsby is not qualified to offer the objectionable testimony as an expert and it will not assist the trier of fact. ⁸ Hr. Hornsby's opinions on legislative intent amount to no more than a lay perception of legislative intent not within his expertise or personal knowledge, and therefore are neither relevant nor helpful. ⁹
Page 7, Lines 19-22 and Page 11, Lines 21 through, Page 12, Line 6	Testimony regarding "impression" of Mr. Korman's testimony about USPAP standards.	Speculative, lacks proper foundation, not relevant, and is unfairly prejudicial. ¹⁰ Here, Mr. Hornsby provides testimony about an "impression" in Mr. Korman's testimony instead of what Mr. Korman's testimony actually states regarding application of USPAP standards. This is not helpful to the trier of fact. Moreover, this testimony is not relevant to identification of property and speaks instead to the appropriate appraisal method that should be used for property valuation. That is beyond the scope of this limited hearing according to the Commission's referred issues.

B. Chris Hornsby Rebuttal Testimony to be Stricken

Subject to and without waiving the previously stated objections, Aqua objects to and requests that the following rebuttal testimony of Chris Hornsby offered on behalf of the City of Celina be stricken:

Testimony	Subject Matter	Basis to Strike
Page 6, Lines 3-5	Testimony incorporating Paul Hornsby's opinions and testimony by reference.	If Chris Hornsby is permitted to adopt Paul Hornsby's testimony as his own, Aqua hereby incorporates the same objections above as objections to Chris Hornsby's testimony. Aqua notes that Chris Hornsby's stated qualifications to offer expert testimony on the subjects contained in Paul Hornsby's testimony are of the same variety as Paul Hornsby and similarly limited.

⁸ TEX. R. EVID. 702.

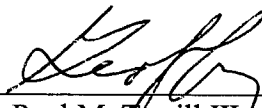

⁹ TEX. R. EVID. 401, 402, 701 and 702.

¹⁰ TEX. R. EVID. 401, 402, 403, 701 and 702.

IV. CONCLUSION

For the reasons set out above, Aqua requests that the Court: (1) sustain its objections; and (2) strike the above-noted portions of Celina's Cross-Rebuttal Testimony and Exhibits identified above. Alternatively, if the ALJ declines to strike these portions of testimony/exhibits, Aqua requests that the ALJ afford such testimony and exhibits 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. 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)

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

CERTIFICATE OF SERVICE

I hereby CERTIFY that on September 9, 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 email

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

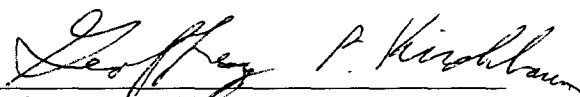
via fax to: (512) 366-9949

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