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APPLICATION OF FOREST GLEN §  
UTILITY COMPANY FOR § BEFORE THE  
AUTHORITY TO CHANGE RATES § STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

**OBJECTIONS TO PREFILED TESTIMONY OF FLEMING MITCHELL**

COMES NOW, Forest Glen Utility Company ("FGU" or "Applicant") and files these Objections to Prefiled Testimony of Fleming Mitchell and in support thereof, would respectfully show the following:

**I. BACKGROUND**

On May 18, 2018, the State Office of Administrative Hearings ("SOAH") held the Prehearing Conference in this matter and named parties, including Intervenor Fleming Mitchell. According to the Public Utility Commission of Texas' ("PUC" or "Commission") Interchange Service, Intervenor Mitchell filed his Prefiled Testimony ("PFT") and Exhibits on August 9, 2018. SOAH Order No. 2 mandates that objections to Intervenor's Direct Testimony be filed no later than August 16, 2018. Accordingly, FGU's Objections are timely filed.

**II. OBJECTIONS**

**a. Purpose of Testimony, page 1.** FGU objects to the referenced testimony on multiple bases. First Intervenor Mitchell has not provided any evidence that he is an expert. As a lay or fact witness, his speculative opinions or inferences about the reasonableness of the rate and flat (versus volumetric) rates are not rationally based nor helpful to a determination of facts in issue.<sup>1</sup> As a fact witness, this witness must only testify to factual matters on which the witness has personal knowledge.<sup>2</sup> Intervenor Mitchell has not shown any personal knowledge of the facts but merely stated in a conclusory fashion that the rates (which have never been raised since the inception of the subdivision) are "beyond reasonable" and "unfair."

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<sup>1</sup> TEX R. CIV. EVID. 701.

<sup>2</sup> TEX R. CIV. EVID. 602; *Reid Rd. MUD v. Speedy Stop Food Stores*, 337 S.W.3d 846, 851-52 (Tex. 2011).

Second, Mr. Mitchell's testimony relating to a flat versus volumetric rate is irrelevant to the subject matter of this hearing.<sup>3</sup> "To be relevant, the [evidence] must tend to make the existence of a *material* fact more or less probable than it would otherwise have been."<sup>4</sup> FGU was authorized to charge a flat not volumetric rate when the Texas Commission on Environmental Quality ("TCEQ") issued FGU's Certificate of Convenience and Necessity and Tariff in 2012. Whether costs are billed as a flat rate or based upon volume is not germane to the subject of this proceeding, which is whether the increase in FGU's sewer rate from \$35 to \$65/month is just and reasonable. The testimony offered does not relate to a material fact in this matter, and the Administrative Law Judge ("ALJ") should strike it from the record.

**b. Testimony, pages 1-2.** FGU objects to the referenced testimony on the basis of relevance.<sup>5</sup> Intervenor Mitchell's statements regarding a dual system and water consumption for yards relates to reuse water that does not fall under the jurisdiction of the Commission. FGU's reuse system is an unregulated utility and unrelated to FGU's sewer service, its Cost of Service supporting the requested increase, and the rate change application that is the subject of this hearing. Intervenor's reference to briefing by Ruben Correa with Wall Homes is also hearsay.<sup>6</sup>

## **V. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Forest Glen Utility Company respectfully requests that the ALJ sustain FGU's objections and enter an order excluding and striking Intervenor Mitchell's PFT as noted above at the hearing for this matter, and such and further relief to which it may be entitled.

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<sup>3</sup> TEX R. CIV. EVID. 401-402.

<sup>4</sup> *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added).

<sup>5</sup> TEX R. CIV. EVID. 401-402.

<sup>6</sup> TEX R. CIV. EVID. 801.

Respectfully submitted,

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By: Helen S. Gilbert

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**ATTORNEYS FOR FOREST GLEN  
UTILITY COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 16th of August 2018.

By: Helen S. Gilbert  
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