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

PUBLIC UTILITY COMMISSION

**OBJECTIONS TO THE DIRECT TESTIMONY OF GREG CHARLES**

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

**I. BACKGROUND**

On August 23, 2018, Greg Charles, engineer in the Water Utility Regulation Division of the Public Utility Commission of Texas' ("PUC" or "Commission") filed his Prefiled Direct Testimony ("PFT"). SOAH Order No. 2 established a deadline of September 3, 2018<sup>1</sup> to object to Staff's testimony. Accordingly, FGU's Objections are timely filed.

**II. OBJECTIONS**

**Reuse/Reclaimed Water, Section III, p. 6, lines 16-23.** FGU objects to the referenced testimony on the basis of relevance.<sup>2</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>3</sup> Mr. Charles' referenced testimony does not relate to a material fact in this case, which is an appeal of FGU's sewer rate under the Commission's limited authority as outlined in Chapter 13 of the Texas Water Code. Chapter 13 limits the Commission's jurisdiction to rate matters involving potable water and sewer services.<sup>4</sup> The Commission lacks any regulatory authority over FGU's separate

<sup>1</sup> The parties inadvertently agreed and the ALJ adopted September 3, 2018 as the deadline to file objections despite being a national holiday, Labor Day.

<sup>2</sup> Tex. R. Civ. Evid. 401-402.

<sup>3</sup> *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ).

<sup>4</sup> Tex. Water Code Ann. § 13.041(a). *See also Id.* at § 13.002(19) ("Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for *providing potable water service or sewer service, or both*, for compensation.") and § 13.002(20) ("Water and sewer utility," "public utility," or "utility" means

reclaimed water utility, which is not a “retail public utility,”<sup>5</sup> as the sale of reclaimed water, or non-potable water, does not fall under the jurisdiction of the Commission. Rather, regulation of reclaimed water falls under the jurisdiction of the Texas Commission on Environmental Quality (“TCEQ”), but this is limited to only the technical requirements for production and distribution.<sup>6</sup> In Texas, as specifically intended by the Legislature, the sale (i.e., rates) of reclaimed or non-potable water is not regulated by *any* state agency. Accordingly, the Administrative Law Judge (“ALJ”) should strike any and all testimony relating to the revenue, expenses, capital, or any other aspect of FGU’s reclaimed water utility from the record.

Additionally, FGU objects to the referenced testimony, because Mr. Charles has provided no evidence on exhibit GC-1 or elsewhere that, as an engineer, he has any expertise in the construction or operation of FGU’s (or any) wastewater treatment plant (“WWTP”) and its relationship with the reclaimed water operation.<sup>7</sup> He asserts that “the assets included in Schedule III-3 are related to *both* the wastewater and the reuse utility,”<sup>8</sup> but this is pure speculation that is not rationally based nor helpful to a determination of facts in issue in this case which relate solely to sewer services.<sup>9</sup> Not only does Schedule III-3 not include any reclaimed water assets, but Mr. Charles does not seem to be aware that the reclaimed water utility primarily utilizes groundwater from a groundwater well. Additionally, if he is being offered as a fact witness on the issue of non-potable water, Mr. Charles has similarly failed to provide testimony on factual matters to which he has personal knowledge, since he has no personal knowledge of the WWTP or how FGU operates its reclaimed water utility.<sup>10</sup>

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any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of *potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service* for the public. . .”). (emphasis added).

<sup>5</sup> *Id.* at § 13.002(19).

<sup>6</sup> 30 Tex. Admin. Code ch. 210.

<sup>7</sup> Tex. R. Civ. Evid. 702.

<sup>8</sup> Direct Testimony of Greg Charles, p. 6, lines 22-23.

<sup>9</sup> Tex. R. Civ. Evid. 701.

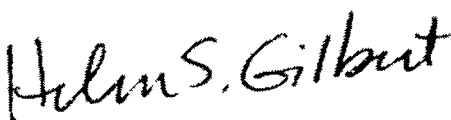
<sup>10</sup> Tex. R. Civ. Evid. 602; *Reid Rd. MUD v. Speedy Stop Food Stores*, 337 S.W.3d 846, 851-52 (Tex. 2011).

### III. PRAYER

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

Respectfully submitted,

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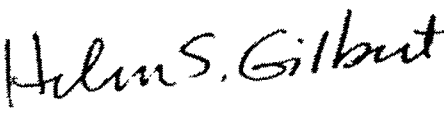
By:   
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Helen S. Gilbert

**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 4th of September 2018.

By:   
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Helen S. Gilbert