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APPLICATION OF FOREST GLEN
UTILITY COMPANY FOR
AUTHORITY TO CHANGE RATES

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STATE OFFICE OF ADMINISTRATIVE
HEARINGS

PUBLIC UTILITY COMMISSION
FILING CLERK

OBJECTIONS TO THE DIRECT TESTIMONY OF FRED BEDNARSKI III

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

I. BACKGROUND

On August 23, 2018, Fred Bednarski, financial examiner 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, 2018¹ to object to Staff's testimony. Accordingly, FGU's Objections are timely filed.

II. OBJECTIONS

Adjustments to the Revenue Requirement, Section VI, p. 17, lines 2-12. FGU objects to the referenced testimony on the basis of relevance.² "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."³ Mr. Bednarski's 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.⁴ The Commission lacks any regulatory authority over FGU's

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

² Tex. R. Civ. Evid. 401-402.

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

⁴ 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

separate reclaimed water utility, which is not a “retail public utility,”⁵ 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.⁶ 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 other revenue deducted, excess net profit, expenses, capital, or any other aspect of FGU’s reclaimed water utility from the record.

Additionally, FGU objects to the referenced testimony, because Mr. Bednarski has provided no evidence that 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.⁷ His assertion that the ratepayers are “paying twice to treat the same water”⁸ is not only pure speculation that is not rationally based nor helpful⁹ to a determination of facts in issue in this case which relate solely to sewer services, but it is inaccurate, assuming facts not in evidence. As FGU witness Steven Greenberg testified, reclaimed water is a combination of treated effluent and well water from a groundwater well, and the sale of non-potable groundwater is also not regulated by the Commission.¹⁰ Additionally, if Mr. Bednarski is being offered as a fact witness on the issue of non-potable water, he has similarly failed to provide testimony on factual matters to which he

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).

⁵ *Id.* at § 13.002(19).

⁶ 30 Tex. Admin. Code ch. 210.

⁷ Tex. R. Civ. Evid. 702.

⁸ Direct Testimony of Fred Bednarski III, p. 17, lines 6-7.

⁹ Tex. R. Civ. Evid. 701.

¹⁰ Direct Testimony of Steven Greenberg, p. 3, lines 18-22.

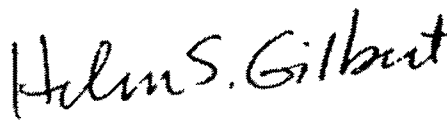
has personal knowledge, since he has no personal knowledge of the WWTP or how FGU operates its reclaimed water utility.¹¹

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 Fred Bednarski III's 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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¹¹ Tex. R. Civ. Evid. 602; *Reid Rd. MUD v. Speedy Stop Food Stores*, 337 S.W.3d 846, 851-52 (Tex. 2011).

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: Helen S. Gilbert
Helen S. Gilbert