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deducted from the revenue requirement used to set Forest Glen's wastewater rates. Ms. Loockerman's testimony concurs with the recommendation and further recommends that Forest Glen correct their accounting practices to record the reclaimed water revenues as other revenues. The testimony of all three Staff witnesses directly relates to setting the revenue requirement for this application, and does not offer any opinion or recommendation as to the rates Forest Glen charges for reclaimed water.

The Commission employs staff to review rate/tariff change applications for compliance with the Texas Water Code (TWC), rules adopted by the Commission, and Commission precedent. Expertise in evaluating compliance with these statutes and rules does not require a specific type of training, experience, or education. Texas Rule of Evidence 702 does not restrict expert testimony to those with formal training. Instead, it allows a person to testify as an expert witness so long as: (1) the person is qualified by knowledge, skill, experience, training, or education; (2) the proposed testimony provides scientific, technical, or other specialized knowledge; and (3) the testimony will assist the trier of fact to determine a fact issue.¹ Additionally, the agency's rulings in admitting expert testimony are within its broad discretion and will not be disturbed on appeal.²

Staff witnesses Charles, Bednarski, and Loockerman are qualified to render the respective conclusions regarding utility plant, revenue requirement, and accounting practices contained in their testimonies. Mr. Charles is a licensed professional engineer and Ms. Loockerman is a certified public accountant. Combined, all three witnesses have more than thirty-five years of experience in the utility industry and have filed testimony in twenty-six contested cases. Based on their knowledge, skill, experience, training, and education, the testimony presented by Staff's witnesses is properly classified as expert testimony.

III. REPLY TO OBJECTIONS

The testimonies of Staff witnesses Greg Charles, Fred Bednarski, and Debi Loockerman are relevant because each discusses issues related to Staff's recommendation to treat the net income from the sale of reclaimed water as other revenue that should be deducted from Forest Glen's

¹ Tex. R. Evid. 702.

² *Austin Chevrolet, Inc. v. Motor Vehicle Bd.*, 212 S.W.3d 425, 432 (Tex. App.—Austin 2006, pet. denied).

revenue requirement in this case. Texas Water Code (TWC) § 13.182 mandates that the Commission ensure that the rates charged by an investor-owned utility are just and reasonable. In order to calculate just and reasonable rates, “other revenues” are deducted from the utility’s overall revenue requirement to calculate the revenue requirement that is used to design rates.³ Schedule II-3 of the rate/tariff change application for class B utilities requests information about other revenues and expenses passed through.⁴ Examples of revenues that fall within the other revenues category include fees for purchased water that are collected from customers via a separate pass-through rate⁵ and fees to install water taps, which are treated as customer contributions in aid of construction.⁶ Deducting other revenues ensures that a utility’s base rates only recover allowable expenses and return on invested capital as required by Commission rules.⁷

The portions of the testimony of each witness that Forest Glen has objected to support Staff’s recommendation that the net income generated by the sale of reclaimed water to Forest Glen’s wastewater customers should be deducted from the revenue requirement at issue in this application as other revenue. Mr. Charles explains that the used and useful assets in the wastewater treatment plant—assets that are used to calculate Forest Glen’s depreciation expense⁸ and are included in the rate base on which Forest Glen earns a return⁹—are not related solely to Forest Glen’s wastewater utility because they generate the effluent that is then treated and sold by Forest Glen’s reuse utility.¹⁰ Relying on this opinion, Mr. Bednarski explains that is proper to treat the net income generated by the sale of this reclaimed water as other revenues because Forest Glen’s customers are paying to treat the same water twice: first they pay to treat wastewater, and create effluent, through their wastewater rates, and then they pay for the treated effluent through their

³ Class B Rate/Tariff Change Application at Schedule I-1 Revenue Requirement Summary, line 35 (Sept. 17, 2015).

⁴ *Id.* at Schedule II-3 Other Revenues & Expenses Passed Through (Sept. 17, 2015).

⁵ *Id.* at Schedule II-3(a) Purchased Water or Other Pass Through Expenses.

⁶ *Id.* at Schedule II-3(b), line 1.

⁷ 16 TAC § 24.31(a).

⁸ *Id.* § 24.31(b)(1)(B).

⁹ *Id.* § 24.31(c)(2).

¹⁰ Direct Testimony of Greg Charles at 6:13-23 (Aug. 23, 2018) (Charles Direct).

reuse rates.¹¹ Finally, Ms. Loockerman's testimony is limited to a recommendation that Forest Glen should adjust its accounting practices to combine the financials of both the waste water and reuse operations and record the reuse revenues as other revenues.¹²

Forest Glen appears to assert that any testimony addressing reuse in any way does not relate to a material fact in this proceeding because the Commission does not have jurisdiction over the sale of non-potable water.¹³ However, *none* of the testimony to which Forest Glen objects addresses anything about the actual rates Forest Glen charges for reuse, the just and reasonableness of these rates, or the individual components that go into setting these rates. Instead, Staff's testimony focuses on why the net income generated by the sale of reclaimed water should be deducted from the revenue requirement used to set Forest Glen's wastewater rates as other revenue. Pursuant to Issue No. 3 identified in the Preliminary Order adopted by the Commission, the amount of Forest Glen's revenue requirement is a material fact in this case.¹⁴

In addition, Forest Glen's arguments that Staff witnesses Mr. Charles, Mr. Bednarski, and Ms. Loockerman are not offering expert testimony is spurious. Disagreement with the testimony of a witness is not grounds for objecting to the witness's expertise. Mr. Charles's testimony directly rebuts the testimony of Forest Glen's witness Steven Greenberg, which states that the assets included in Schedule III-3 of the application are related solely to the wastewater utility.¹⁵ Mr. Charles's response to this statement is not speculative because he clearly explains: (1) Forest Glen treats effluent, which it then sells as reclaimed water; (2) the effluent that is treated is a product of the wastewater service paid for by Forest Glen's customers; and (3) Forest Glen cannot provide this service without the wastewater treatment assets included in Schedule III-3.¹⁶ As a licensed

¹¹ Direct Testimony of Fred Bednarski III at 17:1-8 (Aug. 23, 2018) (Bednarski Direct).

¹² Direct Testimony of Debi Loockerman at 7:2-8:10 (Aug. 23, 2018) (Loockerman Direct).

¹³ Objections to Direct Testimony of Debi Loockerman at 1-2 of 4 (Sept. 4, 2018); Objections to the Direct Testimony of Fred Bednarski III at 1-2 of 4 (Sept. 4, 2018); Objections to the Direct Testimony of Greg Charles at 1-2 of 4 (Sept. 4, 2018).

¹⁴ Preliminary Order at 3 of 7 (Jun. 14, 2018) ("What revenue requirement will give the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses while preserving the utility's financial integrity.").

¹⁵ Direct Testimony of Steven Greenberg at 5:4-7 (Jul. 18, 2018).

¹⁶ Charles Direct at 6:16-23.

professional engineer and an employee of the Commission's Water Utility Regulation Division, he has the knowledge, skill, experience, training, and education to support his statement that wastewater treatment plants produce effluent,¹⁷ and personal knowledge of how Forest Glen operates its reuse utility is not required to understand that it is treating the effluent generated by the wastewater treatment plant and selling it as reclaimed water.

Mr. Bednarski's testimony is not speculative because it is based on Mr. Charles's expert opinion that the wastewater treatment assets are not related solely to Forest Glen's wastewater utility.¹⁸ Combining this determination with his knowledge, skill, experience, training, and education about how used and useful assets are used to calculate both the depreciation expense included in the cost of service and the return a utility earns on invested capital,¹⁹ he concludes that Forest Glen's customers are paying to treat the same water twice.²⁰ Furthermore, if the reclaimed water sold by Forest Glen is a combination of treated effluent and treated well water, then this argument is grounds for contesting the amount of net income from reclaimed water that Staff has deducted as other revenues; it is not grounds for striking Mr. Bednarski's testimony or the testimony of Mr. Charles.

Finally, Ms. Loockerman's testimony does not require any engineering expertise because it is limited to her review of Forest Glen's financials.²¹ As a licensed certified public accountant with almost thirty years of experience in the utility industry, recommendations on accounting practices are well within her knowledge, skill, experience, training, and education.²² Furthermore, Ms. Loockerman concurs with the testimony of Mr. Charles and Mr. Bednarski,²³ but she does not rely on it as Forest Glen claims.²⁴ Therefore, Ms. Loockerman testimony is expert testimony that

¹⁷ Tex. R. Evid. 702.

¹⁸ Bednarski Direct at 17:3-5.

¹⁹ Tex. R. Evid. 702.

²⁰ Bednarski Direct at 17:3-7.

²¹ Loockerman Direct at 7:2-6.

²² Tex. R. Evid. 702.

²³ Loockerman Direct at 7:7-13.

further supports treating the net income derived from reclaimed water sales as other revenues and deducting it from Forest Glen's revenue requirement.

IV. CONCLUSION

For the reasons stated above, Forest Glen's objections to the direct testimony of Debi Loockerman, Fred Bednarski, and Greg Charles should be overruled and Forest Glen's request to exclude or strike the testimony of these witnesses related to reuse should be denied.

Dated: September 10, 2018

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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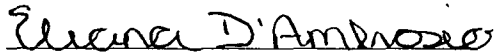


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on September 10, 2018, in accordance with 16 Texas Administrative Code § 22.74.


Eleanor D'Ambrosio