



Control Number: 49189



Item Number: 159

Addendum StartPage: 0

**PUC DOCKET NO. 49189**  
**SOAH DOCKET NO. 473-19-6297.WS**

<b>APPLICATION OF THE CITY OF</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>AUSTIN FOR AUTHORITY TO</b>	§	
<b>CHANGE THE WATER AND</b>	§	
<b>WASTEWATER RATES FOR NORTH</b>	§	
<b>AUSTIN MUNICIPAL UTILITY</b>	§	
<b>DISTRICT NO. 1, NORTHTOWN</b>	§	
<b>MUNICIPAL UTILITY DISTRICT,</b>	§	<b>OF</b>
<b>TRAVIS COUNTY WATER CONTROL</b>	§	
<b>AND IMPROVEMENT DISTRICT NO.</b>	§	
<b>10, AND WELLS BRANCH</b>	§	
<b>MUNICIPAL UTILITY DISTRICT IN</b>	§	
<b>WILLIAMSON AND TRAVIS</b>	§	
<b>COUNTIES</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**NORTH AUSTIN MUNICIPAL UTILITY DISTRICT NO. 1, NORTHTOWN  
MUNICIPAL UTILITY DISTRICT, TRAVIS COUNTY WATER CONTROL &  
IMPROVEMENT DISTRICT NO. 10, AND WELLS BRANCH MUNICIPAL UTILITY  
DISTRICTS' OBJECTIONS TO AND MOTION TO STRIKE  
DIRECT TESTIMONY AND ATTACHMENTS OF JOSEPH H. GONZALES**

**TABLE OF CONTENTS**

I.	BACKGROUND .....	3
II.	PROCEDURAL BASIS.....	4
III.	OBJECTIONS TO DIRECT TESTIMONY.....	6
	A. Gonzales Testimony at page 17, lines 2 through 6, line 13 through 16, line 21 through 23; at page 18, lines 1 through 13, lines 16 through 23; at page 20, lines 5 through 6, lines 12 through 23; at page 21, lines 2 through 10, lines 19 through 21; at page 22, lines 11 through line 14. (All answers are responsive to the following question).....	6
	B. Gonzales Testimony at page 29, lines 18 through 21. ....	8
	C. Gonzales Testimony at page 29 through 30, lines 23 through 7 (p. 30). ....	9
	D. Gonzales Testimony at page 30, lines 11 through 22. ....	9
	E. Gonzales Testimony at page 32, lines 12 through 22. ....	10
	F. Gonzales Testimony at page 37, lines 7 through 10. ....	11
	G. Gonzales Testimony at page 37 through 38, lines 22 through 3 (p. 38). ....	12
	H. Gonzales Testimony at page 38, lines 5 through 11 and lines 13 through 14. ....	13
	I. Gonzales Testimony page 39, lines 12 through 15. ....	13

159

J.	Gonzales Testimony at page 40, lines 14 through 15 and lines 20 through 22. ....	14
K.	Gonzales Testimony at page 47, lines 5 through 7. ....	15
L.	Gonzales Testimony at page 48, lines 21 through 23. ....	16
M.	Gonzales Testimony at page 55, lines 10 through 12. ....	16
IV.	OBJECTIONS TO ATTACHMENTS .....	17
A.	Attached Schedule II-C-8 .....	17
B.	Attached Schedule V-4(1) to Gonzales Testimony. ....	18
C.	Attached Schedule V-4 to Gonzales Testimony .....	20
V.	PRAYER.....	22

**APPLICATION OF THE CITY OF** §  
**AUSTIN FOR AUTHORITY TO** §  
**CHANGE THE WATER AND** §  
**WASTEWATER RATES FOR NORTH** §  
**AUSTIN MUNICIPAL UTILITY** §  
**DISTRICT NO. 1, NORTHTOWN** §  
**MUNICIPAL UTILITY DISTRICT,** §  
**TRAVIS COUNTY WATER CONTROL** §  
**AND IMPROVEMENT DISTRICT NO.** §  
**10, AND WELLS BRANCH** §  
**MUNICIPAL UTILITY DISTRICT IN** §  
**WILLIAMSON AND TRAVIS** §  
**COUNTIES** §

**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

## Page 3 of 23

October 23, 2019, establishes a deadline of November 1, 2019, for filing objections to the City's Direct Testimony.<sup>3</sup> Therefore, this Objection and Motion to Strike is timely filed.

## II. PROCEDURAL BASIS

Rule 701 governs the role of opinion testimony by lay witnesses and specifies that “if the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.”<sup>4</sup> The lay witness must have personal knowledge of the matter and may not rely on what another has said about an experience.<sup>5</sup> Rule 701 further bars speculative lay opinion testimony because the witness has no specialized knowledge or personal experience.<sup>6</sup>

Rule 702 states: “A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.”<sup>7</sup> The burden is on the proponent of the witness to show that they are an expert in their particular field.<sup>8</sup> A witness may qualify as an expert if they have the sufficient knowledge, skill, experience, training, or education.<sup>9</sup> However, generalized experience in a particular field may not qualify the witness as an expert.<sup>10</sup> Occupational status alone generally will not suffice to show that a particular witness is qualified as an expert witness.<sup>11</sup>

---

<sup>3</sup> SOAH Order No. 9, Memorializing Second Prehearing Conference; Adopting Second Revised Procedural Schedule at 2 (October 23, 2019).

<sup>4</sup> Tex. R. Civ. Evid. § 701.

<sup>5</sup> See *Bigby v. State*, 892 S.W.2d 864, 888 (Crim. App. 1994).

<sup>6</sup> *E-Z Mart Stores, Inc. v. Havner*, 832 S.W.2d 368, 374 (Tex. App. —Texarkana 1992, den.).

<sup>7</sup> Tex R. Civ. Evid. § 702.

<sup>8</sup> *General Motors Corp. v. Iracheta*, 161 S.W.3d 462, 470 (Tex. 2005).

<sup>9</sup> See, e.g., *Negrini v. State*, 853 S.W.2d 128, 130-31 (Tex. App.—Corpus Christi 1993, no pet.); *Massey v. State*, 933 S.W.2d 141, 156-57 (Crim. App. 1996); *Sciarrilla v. Osborne*, 946 S.W.2d 919 (Tex. App.—Beaumont 1997, den.).

<sup>10</sup> Cf. *Houghton v. Port Terminal R.R. Ass’n*, 999 S.W.2d 39, 49 (Tex. App.—Houston [14th Dist.] 1999, no writ).

<sup>11</sup> *Broders v. Heise*, 924 S.W.2d 148, 153-53 (Tex. 1996).

Rules 801 and 802 lay out the definition of hearsay and prohibit hearsay from admission as evidence. Rule 801 states:

**“(a) Statement.** “Statement” means a person’s oral or written verbal expression, or nonverbal conduct that a person intended as a substitute for verbal expression.

**(b) Declarant.** “Declarant” means the person who made the statement.

**(c) Matter Asserted.** “Matter asserted” means:

- (1) any matter a declarant explicitly asserts; and
- (2) any matter implied by a statement, if the probative value of the statement as offered flows from the declarant’s belief about the matter.

**(d) Hearsay.** “Hearsay” means a statement that:

- (1) the declarant does not make while testifying at the current trial or hearing; and
- (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

**(e) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

**(1) A Declarant-Witness’s Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

**(A)** is inconsistent with the declarant’s testimony and:

- (i)** when offered in a civil case, was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; or
- (ii)** when offered in a criminal case, was given under penalty of perjury at a trial, hearing, or other proceeding—except a grand jury proceeding—or in a deposition;

**(B)** is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

**(C)** identifies a person as someone the declarant perceived earlier.

**(2) An Opposing Party’s Statement.** The statement is offered against an opposing party and:

- (A)** was made by the party in an individual or representative capacity;
- (B)** is one the party manifested that it adopted or believed to be true;
- (C)** was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy."<sup>12</sup>

Rule 802, meanwhile, states: "Hearsay is not admissible unless any of the following provides otherwise: (a) a statute; (b) these rules; or (c) other rules prescribed under statutory authority. Inadmissible hearsay admitted without objection may not be denied probative value merely because it is hearsay."<sup>13</sup>

### **III. OBJECTIONS TO DIRECT TESTIMONY**

**A. Gonzales Testimony at page 17, lines 2 through 6, line 13 through 16, line 21 through 23; at page 18, lines 1 through 13, lines 16 through 23; at page 20, lines 5 through 6, lines 12 through 23; at page 21, lines 2 through 10, lines 19 through 21; at page 22, lines 11 through line 14. (All answers are responsive to the following question).**

***Q. CAN YOU PROVIDE AN OVERVIEW OF DISALLOWANCES IN THE COMMISSION'S ORDER ON REHEARING IN DOCKET NO. 42857 THAT AW INCLUDED WITHIN THE PROPOSED WHOLESALE REVENUE REQUIREMENTS?***

*As further discussed in the Direct Testimonies of David Anders, Steve Coonan and Richard Giardina, reclaimed water is an important component of AW's water resource planning and water supply management. As such, all water customers, including customers not connected to the reclaimed system, benefit from the reclaimed system since it extends AW's available water supply. page 17, lines 2 through 6*

*As discussed in the Direct Testimony of David Anders, it is appropriate for all customer classes, both retail and wholesale, to be allocated a portion of swap and commercial paper administrative debt issuance costs since all customers benefit from lower borrowing costs as a result of AW's swap and commercial paper program. page 17, lines 13 through 16*

*The City of Austin Watershed Protection Department protects lives, property, and the environment of the community by reducing the impact of flood, erosion, and water pollution. page 17, lines 21 through 23*

*All properties within the City, including residential, multifamily, and commercial properties are assessed the drainage charge. This charge is calculated individually for*

---

<sup>12</sup> Tex. R. Civ. Evid. § 801.

<sup>13</sup> Tex. R. Civ. Evid. § 802.

*each property, based on the amount and percent of impervious cover. Less impervious cover means a lower drainage charge. **page 18, lines 1 through 13***

*Each of these properties are assessed a drainage fee based upon the specific properties amount and percent of impervious cover as prescribed in the calculation methodology applied to all properties within the City. The drainage fee for AW properties is a valid operating cost which should be recovered from all customer classes. **page 18, 16 through 23***

*Based on AW's consultant recommendation and the input from the retail and wholesale customers during the 2017 COS Study, the AW Executive Team recommended the allocation of the Drainage Utility Fees to all customer classes including wholesale customers. **page 20, lines 5 through 6***

*As discussed in the Direct Testimony of David Anders, reserves are a critical feature in any water utility financial plan. Protecting the financial integrity of a utility through the use of reserves is a standard practice of utilities which benefits all customer classes. In addition, cash reserves are one of many key financial benchmarks reviewed by rating agencies in assessing credit • worthiness in issuing revenue bonds. Strong reserves also contribute to stronger credit ratings, thus reducing financing costs in the issuance of debt. All customer classes benefit from the reserves and therefore should be allocated these costs. **page 18, lines 18 through 23***

*Since the reclaimed system benefits all customer classes, AW has not separately identified administrative costs for the reclaimed system and has included these costs in AW's revenue requirement. **page 20, lines 5 through 6***

*As discussed in the Direct Testimony of David Anders, since decommissioning, the buildings located at the former wastewater plant are used by AW for various treatment support functions, emergency wastewater flow diversion, and for storage of treatment plant and infrastructure assets. In addition, the Govalle buildings and site continue to be used as training facilities for AW's pipeline and treatment staff. Various training staff office out of the Govalle administrative building. Training for treatment and pipeline staff, including confined space entry training, equipment maintenance training, backhoe training, and various other training for AW staff, is held at Govalle. **page 20, lines 12 through 20***

*The current use of Govalle as described above benefits all customers of AW. These costs should be allocated to all customer classes; as such AW recommends the allocation of Govalle costs to all customer classes, including wholesale customers. **page 20, lines 21 through 23***

*The Berl Handcox Water Treatment Plant (WTP) (formerly referred to as WTP No. 4), is the newest of three water treatment plants in the City's water system. The construction of the Handcox WTP was initiated in 2009 and was completed when the plant went online in November 2014. The 50 million gallons daily (MGD) plant serves primarily into the north and northwest portions of AW's system within the City's Desired Development Zone (DDZ). With the Handcox WTP online, the water system efficiency for serving customers*



*throughout our system has been enhanced. The Handcox WTP is currently a critical part of AW's integrated water system and will continue to be so well into the future. page 21, lines 2 through 10*

*The plant, which is an integrated part of our central water system, is used and useful for providing service, particularly to the north and northwest areas of the system, both inside and outside the city. page 21 and 22, lines 19 through 1 (p. 22)*

*The Council's decision for the City and AW to purchase 100 percent renewable energy sources as a part of the Climate Action plan is a valid operating cost for AW. These climate protection efforts benefit all customer classes. page 22, lines 11 through 14*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. He is not an attorney, engineer, reclaimed water expert, nor environmental scientist. By testifying as he did above, Mr. Gonzales is offering his opinion on a matter for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an attorney, engineer, reclaimed water expert, nor environmental scientist, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perceptions, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above issues opined in his testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**B. Gonzales Testimony at page 29, lines 18 through 21.**

***Q. PLEASE DESCRIBE AW'S O&M EXPENSES.***

*Based on AW's consultant recommendation and the input from the retail and wholesale customers during the 2017 COS Study, the AW Executive Team recommended a cash financing of capital projects target of 50 percent to reduce the amount of new bond issues and annual debt service costs.*

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception, because he has no foundation on which to base his opinion because he was not a member of the executive team.

**C. Gonzales Testimony at page 29 through 30, lines 23 through 7 (p. 30).**

***Q. PLEASE DESCRIBE AW'S O&M EXPENSES.***

*The Reclaimed Water Fund allows AW to provide water for non-potable purposes to its customers without incurring raw water treatment costs. In addition, reclaimed water takes a significant amount of stress off of the City's main sources of water, lakes Austin and Travis. Since wastewater is treated whether it's reused or discharged back into the Lower Colorado River, the City does not incur additional treatment costs to create reclaimed water. The reclaimed system is a drought resistant water supply that extends potable drinking water supplies and helps defer the need for additional water supply. All customers benefit from the reduced water supply efforts and therefore all customers should be allocated these costs.*

The Districts object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion because he was not a member of the executive team.

**D. Gonzales Testimony at page 30, lines 11 through 22.**

***Q. PLEASE DESCRIBE AW'S O&M EXPENSES.***

*The mission of the Economic Development Department (EDD) is to develop and lead innovative programs that increase the prosperity of the City's businesses and diverse neighborhoods, creating a cultural and economic environment that enhances the vitality of the community. This department leverages the City's cultural, economic, and business assets to create economic prosperity for all citizens while preserving its culture and environment. EDD's efforts are focused on the activity centers, corridors, regional centers, town centers, neighborhood centers, and small area plans where the City is expected to grow in the next 30 years, as well as areas which call for new approaches to regenerate*

*communities... to support activities that benefit AW, including business growth, economic incentive payments, small business loans, and business retention.*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on a matter for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on public administration matters and economic development incentives, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**E. Gonzales Testimony at page 32, lines 12 through 22.**

***Q. PLEASE DESCRIBE AW’S O&M EXPENSES.***

*Regional Radio System maintains a high measure of reliability for users within Austin/Travis County, Williamson County and other jurisdictions. It also provides cost effective maintenance services in support of AW’s two-way radio communication and other vehicular equipment needs.*

*Combined Transportation, Emergency & Communications Center (CTECC) operation is a partnership between the City, Travis County, Texas Department of Transportation, and Capital Metropolitan Transportation Authority. CTECC improves emergency response coordination and cooperation by providing a centralized public safety facility sustaining the operations of shared, critical emergency communications and transportation management for the region. CTECC’s primary goal is to receive and process emergency 9-1-1 calls for service and emergency*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water.

By testifying as he did above, Mr. Gonzales is offering his opinion on communications or radio systems, a matter for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on communication or radio systems, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**F. Gonzales Testimony at page 37, lines 7 through 10.**

***Q. PLEASE EXPLAIN WHICH COST ALLOCATION METHODOLOGY AW USES TO DETERMINE WATER RATES BY CUSTOMER CLASS.***

*Water systems are designed to have sufficient capacity to meet the average and peak system demands of their customers. This means that the water treatment plants, pumpage facilities, and the pipeline infrastructure must be oversized to meet the maximum demands of its customers.*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on water system design and oversizing, matters for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an engineer he is not an expert on water system design or oversizing, therefore, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**G. Gonzales Testimony at page 37 through 38, lines 22 through 3 (p. 38).**

***Q. HOW DOES AW DERIVE ITS WATER CUSTOMER CLASS DEMAND PARAMETER?***

*The use of customer peaking factors is a common methodology identified by the AWWA M1 Manual in order to equitably allocate each customer class a portion of the system-wide max day and max hour demands. A peaking factor is the ratio of a customer's or customer class maximum demand over average demand.*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on engineering design factors (peaking factors) and ratemaking, matters for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on ratemaking or engineering, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**H. Gonzales Testimony at page 38, lines 5 through 11 and lines 13 through 14.**

***Q. WHICH TYPE OF PEAKING FACTOR METHODOLOGY DOES AW USE?***

*There are two different types of peaking factor calculation methodologies—coincident and noncoincident—and the determination of the appropriate methodology is based on the diversity of the customer classes. The rationale for supporting the use of Noncoincident Peaking (NCP) factors is that the benefits of diversity in customer class consumption patterns should accrue to all classes in proportion to their use of the system and not be allocated primarily to a particular class that happens to peak at a time different from other users of the system... all of the classes benefit from the NCP factor calculation methodology because their consumption patterns vary by day and month.*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on engineering and ratemaking, matters for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on ratemaking or engineering, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**I. Gonzales Testimony page 39, lines 12 through 15.**

***Q. HOW DOES AW DERIVE ITS WASTEWATER CUSTOMER CLASS DEMAND PARAMETER?***

*The use of BOD and TSS strengths is a common methodology identified by the WEF (Water Environment Federation) Financing and Charges for Wastewater Systems Manual' in order to equitably allocate a portion of treating BOD and TSS loadings to each customer class.*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on engineering and ratemaking, matters for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on ratemaking or engineering, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception, because has no foundation on which to base his opinion.

**J. Gonzales Testimony at page 40, lines 14 through 15 and lines 20 through 22.**

***Q. PLEASE DESCRIBE WHERE TO FIND THE COST ALLOCATION IN THE COS MODELS.***

*The primary function of the COS rate models are to equitably allocate the revenue requirements by customer class based on their usage characteristics of the system... The new COS rate models were built by Raftelis to transparently illustrate the process used to determine the cost of providing water and wastewater services for each customer class.*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on engineering and ratemaking, matters for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on ratemaking or engineering, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in

understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**K. Gonzales Testimony at page 47, lines 5 through 7.**

***Q. WHAT ARE THE REVENUE REQUIREMENTS FOR THE FOUR WHOLESALE CUSTOMERS IMPACTED BY THIS FILING?***

*Customer class revenue requirements for the four wholesale customers impacted by this filing are shown in Table 5 below:*

Table 5

Adjusted Test Year Revenue Requirements			
Customer	Water Revenue Requirements	Wastewater Revenue Requirements	Total Revenue Requirements
North Austin MUD	\$1,708,916	\$1,226,475	\$2,935,391
Northtown MUD	\$1,397,578	\$1,281,932	\$2,679,510
Water District 10	\$4,569,066	N/A	\$4,569,066
Wells Branch MUD	\$2,355,245	\$2,007,825	\$4,363,070

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on ratemaking or water system planning, matters for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on ratemaking or water system planning, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.



The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception, because has no foundation on which to base his opinion.

**L. Gonzales Testimony at page 48, lines 21 through 23.**

***Q. HOW DOES AW STABILIZE POTENTIALLY VOLATILE VOLUMETRIC WATER SERVICE REVENUE?***

*These innovative changes have not only improved AW's financial metrics but reinforced the City's position as a leader in conservation based pricing.*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on municipal financing outside Austin, a matter for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on municipal financing outside Austin, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**M. Gonzales Testimony at page 55, lines 10 through 12.**

***Q. HOW IS THE ADJUSTED REVENUE REQUIREMENT IMPACTED BY AW'S FINANCIAL POLICIES?***

*While there are many factors that contribute to an entity's overall credit rating, credit rating agencies place a heavy emphasis on an entity's level of cash reserves, and DSC.*

The Districts object to the referenced testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on credit ratings, a matter for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on credit ratings, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

#### **IV. OBJECTIONS TO ATTACHMENTS**

##### **A. Attached Schedule II-C-8**

*Financial Tests Pertaining to Issuance of Revenue Bonds:*

*Debt Service Coverage Ratio:*

*The debt service coverage ratio is a key financial benchmark reviewed by rating agencies to indicate strength of financial margin to meet current debt service payments from current revenues after paying for operating costs. Debt service coverage ratio is calculated by total current revenues less operating expenses divided by total debt service.*

*Days Cash on Hand:*

*The days cash on hand, or liquidity, is a key financial benchmark reviewed by rating agencies to indicate financial flexibility to pay near-term obligations. Days*

*cash on hand is calculated by unrestricted cash divided by operating expenses divided by 365. (underlining added)*

...(table of data omitted)

Schedule II-C-8 is sponsored by Mr. Gonzales. The schedule purports to provide information regarding the financial tests and ratios for Austin Water. The Districts object to the underlined statements sponsored by Mr. Gonzales testimony, because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion regarding “key financial benchmarks reviewed by rating agencies” for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert in this area, his opinion testimony must be: “(a) rationally based on the witness’s perception; and (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding the above testimony.

The Districts further object to the underlined statements, because they are prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on the importance of “debt service coverage ratio” and “days cash on hand” to bond rating agencies, and he provides no testimony regarding his personal knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

**B. Attached Schedule V-4(1) to Gonzales Testimony.**

***Unaccounted for Water - Narrative***

*Austin Water provides water services to a variety of retail and wholesale customers spanning over 540 square miles to a service population of over one million customers. AW draws water from the Colorado River into three regional water treatment plants that have a combined maximum capacity of 335 million gallons per day. Drinking water is pumped from the plants into Austin's water distribution system, which has a total reservoir storage capacity of approximately 170 million gallons.*

*Austin Water performs a system water loss audit annually, using the Texas Water Development Board methodology. Non-revenue water is calculated, and quantified as real*

losses, apparent losses, and unbilled consumed water. Austin Water has comprehensive and aggressive programs to reduce non-revenue water, including active leak detection on both transmission and distribution mains, a meter replacement program and a meter accuracy study, the Renewing Austin initiative to replace and upgrade aging water lines, and multiple agreements to track unmetered water use for water withdrawn by City departments through hydrants. All customer connections supplied by Austin Water are metered. Water used for flushing and distribution system maintenance by Austin Water crews is calculated using flow durations, aperture size, and pressure, and is reported through the work order system. Water flushed by third parties for construction of new water mains is reported through meter reads required to close out construction permits. Theft is estimated according to TWDB methodology, and as a component of apparent losses is not used to reduce non-revenue water estimates. The Austin Water water loss audits from 2011-2017 have been reviewed for accuracy and validity by third party professionals under the AWWA Water Audit Data Initiative.

The annual water loss report and water loss audit submissions to the TWDB are prepared by a Project Manager II at Austin Water. The Project Manager II is primarily responsible for collecting data for the audit, ensuring that all uses of water are properly and accurately tracked, performing data validity reviews, and compiling the water loss audit according to TWDB standards.

Schedule V-4(1) is sponsored by Mr. Gonzales. The schedule purports to provide a narrative description of how Austin Water deals with unaccounted for water. The Districts object to the underlined statements, because they are opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinion on Austin Water's programs to address unaccounted for water, a matter for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on Austin Water's programs to address unaccounted for water, his opinion testimony must be: "(a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue." Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perception, nor do the statements aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding Austin Water's programs to address unaccounted for water.

The Districts further object to the underlined statements, because they are prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on Austin Water's program related to unaccounted for water, and he provides no testimony regarding his personal

knowledge about the matter. No foundation has been laid for Mr. Gonzales to provide his opinion. Mr. Gonzales is offering an opinion that is not rationally based on his perception because he has no foundation on which to base his opinion.

**C. Attached Schedule V-4 to Gonzales Testimony**

... (table data not shown)

- 8 \*Austin Water has chosen to provide the ILI in addition to percentage losses. Percentage losses is a poor
- 9 performance measurement, as it is driven by total consumption more than losses, and therefore can provide trends
- 10 that are misleading when considering water loss. The Infrastructure leakage Index is calculated according to TWDB
- 11 methodology and accounts for length of mains, number of connections, and system operating pressure and is
- 12 considered a superior performance measure by the AWWA M36 Water Loss Control manual.

... (table data not shown)

*Austin Water provides water services to a variety of retail and wholesale customers spanning over 540 square miles to a service population of over one million customers. AW draws water from the Colorado River into three regional water treatment plants that have a combined maximum capacity of 335 million gallons per day. Drinking water is pumped from the plants into Austin's water distribution system, which has a total reservoir storage capacity of approximately 170 million gallons.*

*Austin Water performs a system water loss audit annually, using the Texas Water Development Board methodology. Non-revenue water is calculated, and quantified as real losses, apparent losses, and unbilled consumed water. Austin Water has comprehensive and aggressive programs to reduce non-revenue water, including active leak detection on both transmission and distribution mains, a meter replacement program and a meter accuracy study, the Renewing Austin initiative to replace and upgrade aging water lines, and multiple agreements to track unmetered water use for water withdrawn by City departments through hydrants. All customer connections supplied by Austin Water are metered. Water used for flushing and distribution system maintenance by Austin Water crews is calculated using flow durations, aperture size, and pressure, and is reported through the work order system. Water flushed by third parties for construction of new water mains is reported through meter reads required to close out construction permits. Theft is estimated according to TWDB methodology, and as a component of apparent losses is not used to reduce non-revenue water estimates. The Austin Water water loss audits from*

*2011-2017 have been reviewed for accuracy and validity by third party professionals under the AWWA Water Audit Data Initiative.*

*The annual water loss report and water loss audit submissions to the TWDB are prepared by a Project Manager II at Austin Water. The Project Manager II is primarily responsible for collecting data for the audit, ensuring that all uses of water are properly and accurately tracked, performing data validity reviews, and compiling the water loss audit according to TWDB standards.*

Schedule V-4 is sponsored by Mr. Gonzales. The schedule purports to show calculations for unaccounted for water and provides the same narrative description of how Austin Water deals with unaccounted for water as Schedule V-4(1). The Districts object to the underlined statements, because they are opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Gonzales is the Financial Manager III for Austin Water. By testifying as he did above, Mr. Gonzales is offering his opinions on Austin Water's programs to address unaccounted for water and calculation of water loss, matters for which he has no knowledge, skill, experience, training, or education that would qualify him as an expert. Given that Mr. Gonzales is not an expert on Austin Water's programs to address unaccounted for water or calculation of water loss, his opinion testimony must be: "(a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue." Tex. R. Civ. Evid. 701. Mr. Gonzales testimony does not explain the basis for his perceptions, nor does it aid in understanding his testimony or assist in determining a fact in issue, because he has no specialized knowledge regarding Austin Water's programs to address unaccounted for water and calculation of water loss.

The Districts further object to the underlined statements, because they are prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Gonzales states his opinion on calculation of water loss and Austin Water's program related to unaccounted for water, and he provides no testimony regarding his personal knowledge about these matters. No foundation has been laid for Mr. Gonzales to provide his opinions. Mr. Gonzales is offering opinions that are not rationally based on his perceptions because he has no foundation on which to base his opinions.

**V. PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Districts respectfully request that the Administrative Law Judges sustain Districts' objections, enter an order excluding and striking the Direct Testimony and Attachments of Joseph H. Gonzales as requested above and grant such other relief to which Districts may be entitled.

Respectfully submitted,



---

John J. Carlton

Randall B. Wilburn  
State Bar No. 24033342  
Helen S. Gilbert  
State Bar No. 00786263  
GILBERT WILBURN PLLC  
7000 North MoPac Blvd., Suite 200  
Austin, Texas 78731  
Telephone: (512) 535-1661  
Facsimile: (512) 535-1678

John J. Carlton  
State Bar No. 03817600  
Kelli A. N. Carlton  
State Bar No. 15091175  
The Carlton Law Firm, P.L.L.C.  
4301 Westbank Drive, Suite B-130  
Austin, Texas 78746  
Telephone: (512) 614-0901  
Facsimile: (512) 900-2855

**ATTORNEYS FOR DISTRICTS**

## **CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 1<sup>st</sup> day of November, 2019.

A handwritten signature in black ink, appearing to read 'J. Carlton', is written over a horizontal line.

John J. Carlton