



Control Number: 49189



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OF

DIRECT TESTIMONY AND ATTACHMENTS OF DAN WILKERSON

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

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

**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 DAN WILKERSON**

TO THE HONORABLE JUDGE SIANO AND JUDGE DREWS:

COME NOW, North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility District (collectively, the "Districts") and file this Objection to and Motion to Strike the Direct Testimony and Attachments of Dan Wilkerson and would respectfully show the following:

I. BACKGROUND

The City of Austin dba Austin Water ("City" or "AW") filed with the Public Utility Commission ("Commission") a Statement of Intent to Change Rates for Wholesale Water and Wastewater Service on April 15, 2019 (the "Application").¹ Included in the City's Application is the Direct Testimony and Attachments of Dan Wilkerson.² SOAH Order No. 9, issued on October

¹ Statement of Intent to Change Rates for Wholesale Water and Wastewater Service (April 15, 2019).

² *Id.* at 294.

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

II. LEGAL BACKGROUND

Rule 403 provides the basis for excluding otherwise relevant testimony: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." The rule seeks to curtail abuse of the evidentiary system in civil court by providing a check on what can be admitted. Otherwise, for any given case, there would be a massive amount of information and evidence that could be admitted.

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."⁴ The lay witness must have personal knowledge of the matter and may not rely on what another has said about an experience.⁵ Rule 701 further bars speculative lay opinion testimony because the witness has no specialized knowledge or personal experience.⁶

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."⁷ The burden is on the proponent of the witness to show that they are an expert in their particular field.⁸ A witness may qualify as an expert if they have the sufficient

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

⁴ Tex. R. Civ. Evid. § 701.

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

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

⁷ Tex R. Civ. Evid. § 702.

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

knowledge, skill, experience, training, or education.⁹ However, generalized experience in a particular may not qualify the witness as an expert.¹⁰ Occupational status alone generally will not suffice to show that a particular witness is qualified as an expert witness.¹¹

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

⁹ 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.).

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

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

(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."¹²

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."¹³

III. OBJECTIONS TO DIRECT TESTIMONY

A. Wilkerson Testimony at page 7, lines 15 through 17.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

These additional revenues after Docket No. 42857 rates were implemented would have prevented AW from having an insufficient revenue requirement.

The Districts object to the referenced testimony because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Wilkerson is a Principal of Associated Power Analysts. He is not an expert on debt service coverage or utility rate design. By testifying as he did above, Mr. Wilkerson 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. Wilkerson is not an expert on debt service coverage or utility rate design his opinion testimony must be: "(a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony

¹² Tex. R. Civ. Evid. § 801.

¹³ Tex. R. Civ. Evid. § 802.

or to determining a fact in issue.” Tex. R. Civ. Evid. 701. Mr. Wilkerson 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 debt service coverage or utility rate design.

The Districts further object to the referenced testimony because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion regarding debt service coverage or utility rate design. Mr. Wilkerson is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

B. Wilkerson Testimony at page 8, lines 2 through 3.

Q. WILL YOU ALSO BE ADDRESSING OTHER IMPORTANT ASPECTS OF DSC IN YOUR TESTIMONY?

Without the GFT the wholesale customers did not provide their appropriate share of DSC.

The Districts object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Waley to provide his opinion regarding AW’s debt service coverage.

C. Wilkerson Testimony at page 8, lines 8 through 10.

Q. WILL YOU BE ADDRESSING THE LACK OF DEBT SERVICE COVERAGE PRODUCED BY CURRENT WHOLESALE REVENUES?

Thus, the retail customers have subsidized the wholesale customers. This outcome may not have been intended by the decision in Docket No. 42857.

The Districts object to the referenced testimony because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Waley to provide his opinion regarding AW’s debt service coverage.

D. Wilkerson Testimony at page 9, lines 11 through 13.

Q. IS AUSTIN WATER ONE OF SEVERAL DEPARTMENTS IN THE CITY OF AUSTIN?

By having many departments share support services, the City reaches high economies of scale with resultant savings that it passes along to all of its customers.

The Districts object to the referenced testimony because it is prohibited hearsay under Tex. R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Waley to provide his opinion regarding Austin's services cost to its customers.

E. Wilkerson Testimony at page 9, lines 16 through 22.

Q. IS THE REQUIREMENT TO PROVIDE ADEQUATE WATER RESOURCES A DIFFICULT ONE?

Yes. The State of Texas has experienced a steady population growth for decades. The goal of municipalities to ensure adequate water resources into the future is a daunting one. AW has worked with water planning entities within the State to ensure that the customers of AW can have the water they will need. Water is life itself, so this task is both essential and difficult. In procuring the needs of the future, there is risk both in procuring more resources than necessary and in not procuring enough. AW has taken this responsibility very seriously.

The Districts object to the referenced testimony because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Wilkerson is a Principal of Associated Power Analysts. He is not an expert on debt service coverage or utility rate design. Mr. Wilkerson 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. Wilkerson is not an expert on debt service coverage or utility rate design 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. Wilkerson 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 debt service coverage or utility rate design.

The Districts further object to the referenced testimony because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion regarding debt service coverage or utility rate design. Mr. Wilkerson is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

F. Wilkerson Testimony at page 10, lines 3 through 9.

Q. ARE THERE ALSO CHALLENGES IN PROVIDING WASTEWATER SERVICES?

Yes. Regulatory agencies, both State and Federal, are continually updating and changing the requirements for discharging water into rivers and streams, and for the disposal of sludge. AW must make operational changes and capital expenditures in order to comply. These continual changes, which represent cost increases in many instances, must be covered by rate changes to ensure adequate cash flow. All of this is occurring in an economic climate that has allowed Travis County and the counties around it to grow rapidly.

The Districts object to the referenced testimony because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Wilkerson is a Principal of Associated Power Analysts. He is not a licensed engineer experienced in water and wastewater utility design, an expert on debt service coverage or utility rate design, nor an attorney. Mr. Wilkerson 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. Wilkerson is not an expert on debt service coverage or utility rate design 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. Wilkerson 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 utility engineering, nor is he an expert on debt service coverage or utility rate design, nor is he an attorney.

The Districts further object to the referenced testimony because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion regarding water and wastewater utility engineering, nor is he an expert on debt service coverage or utility rate design, nor is he an attorney. Mr. Wilkerson is offering an opinion that is not rationally based on his perception, because has no foundation on which to base his opinion.

G. Wilkerson Testimony at page 10, lines 15 through 16.

Q. THE COMMISSION HAD REASON TO CONSIDER WHETHER ELECTRIC MUNICIPALLY-OWNED UTILITIES (MOUS) SHOULD BE PERMITTED A RETURN ON THEIR INVESTMENT, OR ITS EQUIVALENT?

Yes, it has. A number of municipal utilities participate in the ERCOT transmission cost recovery regime established by the Commission.

The Districts object to the referenced testimony and exhibit on the basis of relevance. Tex. R. Civ. Evid. 401-402. "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." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, namely water and wastewater rates, and should be stricken.

H. Wilkerson Testimony at page 10, line 19 through page 11, line 2.

Q. ARE MUNICIPAL ELECTRIC TRANSMISSION OWNERS ALLOWED A RATE OF RETURN IN THEIR TRANSMISSION COST OF SERVICE?

Yes, they are. When the Commission created the design for transmission rates in 1996 it included a rate of return for all transmission owners. Over the course of the next seven years the final form of the rate design was vetted at the Commission and in the courts. Ultimately, municipal electric transmission owners were allowed a return, or its equivalent, on their prudently invested capital. The calculation of the rate of return is based on the municipality's DSC. For more than fifteen years now, Austin Energy and all other municipal transmission owners, have earned a rate of return from all of the electric transmission customers in ERCOT.

The Districts object to the referenced testimony and exhibit on the basis of relevance. Tex. R. Civ. Evid. 401-402. "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." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony

and exhibit offered do not relate to a material fact in this matter, namely water and wastewater rates, and should be stricken.

I. Wilkerson Testimony at page 11, lines 5 through 9.

Q. THE RATE OF RETURN MONITORED IN ANY WAY TO SEE HOW THE INCOME IS USED?

No. The transmission owner is allowed to use the return for operating cash, dividends, capital expenditures, salary enhancements, or any way it sees fit. The municipal electric utilities who own transmission facilities may transfer some or all of the return to their respective General Funds. The principal of a return on investment is in no way tied to how the money is used, but instead is seen as a necessary part of business.

The Districts object to the referenced testimony and exhibit on the basis of relevance. Tex R. Civ. Evid. 401-402. "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." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, namely water and wastewater rates, and should be stricken.

J. Wilkerson Testimony at page 11, lines 11 through 15.

Q. THE RATE OF RETURN IN TCOS APPROPRIATE?

Absolutely. As in the discussion above, each entity who owns transmission facilities in ERCOT is allowed a reasonable return, set by the Commission, in order to incentivize and compensate owners who accept the risk of building and owning the facilities. There is no guarantee that this ownership would yield more than a loss or break even, excepting the return calculated in TCOS.

The Districts object to the referenced testimony and exhibit on the basis of relevance. Tex R. Civ. Evid. 401-402. "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." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, namely water and wastewater, and should be stricken.

K. Wilkerson Testimony at page 11, line 18.

Q. WHAT IS THE RELEVANCE OF THE TREATMENT OF THIS ISSUE IN THE ELECTRIC UTILITY SPHERE TO THIS CASE?

The principles are the same between water and electric utility regulation.

The Districts object to the referenced testimony and exhibit on the basis of relevance. Tex. R. Civ. Evid. 401-402. "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." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, namely water and wastewater, and should be stricken.

L. Wilkerson Testimony at page 12, line 17 and lines 21 through 22.

Q. DID AW'S WHOLESALE CUSTOMERS PROVIDE THEIR FAIR SHARE OF DSC DURING THE TEST YEAR?

No, they did not... The wholesale customers did not pay an equitable portion of DSC for either water or wastewater service.

The Districts object to the referenced testimony because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Wilkerson is a Principal of Associated Power Analysts. He is not an expert on debt service coverage or utility rate design. Mr. Wilkerson 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. Wilkerson is not an expert on debt service coverage or utility rate design 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. Wilkerson 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 debt service coverage or utility rate design.

The Districts further object to the referenced testimony because it is prohibited hearsay under Tex. R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion regarding debt service coverage or utility rate design. Mr. Wilkerson is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

M. Wilkerson Testimony at page 13, lines 3 through 5.

Q. DOES THE CALCULATION OF DSC RATIO IN THE YEARS SINCE THE 2015 ORDER AT THE COMMISSION DEMONSTRATE THIS?

The wholesale water and wastewater revenue requirements of AW for the four petitioners have not included a GFT.

Mr. Wilkerson assumes facts not in evidence and therefore his opinion is irrelevant. Even if it were determined that Mr. Wilkerson's testimony regarding what might have happened is relevant, it is in violation of Rule 403 of the Texas Rules of Civil Evidence, which states that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues." Mr. Wilkerson's exploration of theoretical changes to the debt service coverage given a particular set of circumstances is clearly confusing the issues and irrelevant to this proceeding. Mr. Wilkerson's statement regarding theoretical changes to debt service coverage should be stricken from the record.

N. Wilkerson Testimony at page 13, lines 17 through 22.

Q. DID THE DSC PROVIDED BY THE RELEVANT WHOLESALE CUSTOMERS MEET THE REQUIREMENTS OF AUSTIN WATER'S FINANCIAL POLICY?

The other customers of AW had to subsidize the revenue necessary to meet AW's targeted DSC ratio... When the DSC ratio is less than 1.0, as has been the case for water service to the Petitioners, those customers did not pay sufficient revenues to recover the costs to serve them.

Mr. Wilkerson assumes facts not in evidence and therefore his opinion is irrelevant. Even if it were determined that Mr. Wilkerson's testimony regarding what might have happened is relevant, it is in violation of Rule 403 of the Texas Rules of Civil Evidence, which states that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues." Mr. Wilkerson's exploration of theoretical changes to the debt service coverage given a particular set of circumstances is clearly confusing the issues

and irrelevant to this proceeding. Mr. Wilkerson's statement regarding theoretical changes to debt service coverage should be stricken from the record.

O. Wilkerson Testimony at page 14, lines 3 through 6.

Q. IS THE LACK OF DSC FROM THE WHOLESALE CUSTOMERS SURPRISING?

No. After AW's previous Commission wholesale rate appeal, the GFT was removed from the rates charged to the Petitioners, and a large share of the income which produces the DSC was removed. Without some replacement for this income, there was no practical way that the Petitioners would contribute to the needed DSC ratio.

Mr. Wilkerson assumes facts not in evidence and therefore his opinion is irrelevant. Even if it were determined that Mr. Wilkerson's testimony regarding what might have happened is relevant, it is in violation of Rule 403 of the Texas Rules of Civil Evidence, which states that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues." Mr. Wilkerson's exploration of theoretical changes to the debt service coverage given a particular set of circumstances is clearly confusing the issues and irrelevant to this proceeding. Mr. Wilkerson's statement regarding theoretical changes to debt service coverage should be stricken from the record.

P. Wilkerson Testimony at page 14, lines 9 through 19.

Q. IN SHORT, DO THE RETAIL AND WHOLESALE CUSTOMERS OF AW SUBSIDIZE THE PETITIONERS?

Yes. The retail customers have had to subsidize the Petitioners in two ways. First, with respect to water service, the revenues of the Petitioners do not cover the cost to serve them. When the DSC ratio is less than one (as is the case with the Petitioners), there is not enough net income to pay Petitioner's fair share of debt service. Second, for both water and wastewater service, Petitioners fell far short of the DSC ratio that was provided by retail customer revenues. Therefore, a shortfall of revenue from Petitioners reduced a key financial metric used by the rating agencies to determine the financial strength of AW. AW witness Dennis Whaley provides testimony on this point in more detail. Thus, Petitioners are currently benefiting from two subsidies in the water and wastewater rates required by the Commission's Order on Rehearing in Docket No. 42857.

Mr. Wilkerson assumes facts not in evidence and therefore his opinion is irrelevant. Even if it were determined that Mr. Wilkerson's testimony regarding what might have happened is relevant, it is in violation of Rule 403 of the Texas Rules of Civil Evidence, which states that

“evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues.” Mr. Wilkerson’s exploration of theoretical changes to the debt service coverage given a particular set of circumstances is clearly confusing the issues and irrelevant to this proceeding. Mr. Wilkerson’s statement regarding theoretical changes to debt service coverage should be stricken from the record.

Q. Wilkerson Testimony at page 17, line 1 through line 22.

Q. DID THE PFD ARGUE THAT THE TEXAS WATER COMMISSION HAD HELD THAT GFT APPLICABILITY WAS LIMITED?

Yes. The cited ruling by the Texas Water Commission (TWC) in 1989 stated, "The transfer amounts should be subfunctionalized within the water utility and are justifiable only to the extent necessary for the provision of adequate debt service coverage." On page 35, the PFD took the words of the TWC Order and used them to conclude that a GFT for anything other than reimbursement of administrative expenses should not be used. This conclusion ignored the phrase, "...to the extent necessary for the provision of debt service coverage." In fact, what AW is attempting to do is exactly that: design rates that provide adequate debt service coverage from the Petitioners. Wholesale water and wastewater rates should provide revenues that result in DSC from the Petitioners that equal that of AW's retail customers.

Q. DO YOU AGREE WITH THE TEXAS WATER COMMISSION'S RULING?

Yes, in part. The TWC was partially correct, as demonstrated above, that the GFT is necessary in wholesale water rates to provide the necessary DSC.

Q. SHOULD THE TWC ORDER HAVE BEEN USED IN DOCKET NO. 42857 TO ARGUE AGAINST THE GFT IN AUSTIN WATER'S RATE CASE?

No. Again, the disallowance based on the GFT in that case prevented the wholesale customers from providing their share of AW's DSC ratio, and in any event the language from the TWC Order did not support the exclusion of a GFT from wholesale water rates. It should have been recognized that the cash flow necessary to produce the required DSC was partially produced by the income from the GFT.

The Districts object to the referenced testimony and exhibit on the basis of relevance. Tex R. Civ. Evid. 401-402. "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." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter as Austin Water admits that it is not seeking a general fund transfer in this case and should be stricken.

R. Wilkerson Testimony at page 18, line 6 through 8.

Q. SHOULD AUSTIN WATER TRY TO MAINTAIN A DSC RATIO OF 1.85?

The AW policy of having a target DSC ratio of 1.85 is both reasonable and good financial practice. Our goal in Bryan was a DSC ratio of 2.0. 2.0 is considered a midrange target and 2.5 would be considered even stronger.

The Districts further object to the referenced testimony because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion on debt service coverage or utility rate design. Mr. Wilkerson is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

The Districts object to the referenced testimony and exhibit on the basis of relevance. Tex R. Civ. Evid. 401-402. "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." *Edwards v. TEC*, 936 S.W.2d 462, 466-67 (Tex. App. -- Fort Worth 1996, no writ) (emphasis added). The testimony and exhibit offered do not relate to a material fact in this matter, namely the DSC targets in Bryan, and should be stricken.

S. Wilkerson Testimony at page 18, lines 14 through 17.

Q. HAS AUSTIN WATER HAD PAST COMMUNICATION WITH RATING AGENCIES ABOUT DSC?

The written reviews all mention financial metrics and particularly DSC. In 2017 S&P for instance suggested that AW could strengthen its coverage more in line with what would be expected from an AA+ rated entity

The Districts further object to the referenced testimony because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion on debt service coverage or utility rate design. Mr. Wilkerson is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

T. Wilkerson Testimony at page 19, lines 4 through 7.

Q. WHY IS THE DSC RATIO SO IMPORTANT IN RATING BONDS?

This cycle can become very damaging financially and has become the downfall of many businesses and cities. In such a scenario, the risk to bond investors is increased, and the bonds are rated downward.

The Districts further object to the referenced testimony because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion on debt service coverage or utility rate design. Mr. Wilkerson is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

U. Wilkerson Testimony at page 19, lines 21 through 23.

Q. COULD THE RULING BY THE COMMISSION IN DOCKET NO. 42857 HAVE AN ADVERSE EFFECT ON THE COST OF FUTURE BONDS THUS RAISING COSTS FOR ALL CUSTOMERS?

Yes. The ruling in Docket No. 42857 reduces the cash provided by wholesale customers for DSC. It is possible over the long run that this lack of cash flow from wholesale customers would cause bond ratings to suffer... Again, in my reading of the testimony, the PFD, and the Order on Rehearing, I did not find that there was a consideration of the effect on DSC of removing the GFT from wholesale rates. The focus of the GFT was otherwise, and the reduction of revenues which support DSC was an unintended consequence.

The Districts further object to the referenced testimony, because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion on debt service coverage. Mr. Wilkerson is offering an opinion that is not rationally based on his perception, because has no foundation on which to base his opinion.

Mr. Wilkerson assumes facts not in evidence and therefore his opinion is irrelevant. Even if it were determined that Mr. Wilkerson's testimony regarding what might have happened is relevant, it is in violation of Rule 403 of the Texas Rules of Civil Evidence, which states that

“evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues.” Mr. Wilkerson’s exploration of theoretical changes to the debt service coverage given a particular set of circumstances is clearly confusing the issues and irrelevant to this proceeding. Mr. Wilkerson’s statement regarding theoretical changes to debt service coverage should be stricken from the record.

V. Wilkerson Testimony at page 20, lines 10 through 19.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS CONCERNING THE APPROPRIATENESS OF INCLUDING ADDITIONAL REVENUES IN THE 2018 WHOLESALE RATES OF AUSTIN WATER TO INCREASE DSC.

The Commission would be right in testing the reasonableness of the amount of cash sought by AW so that DSC is not subsidized by one customer group or class to the benefit of another, but to deny the GFT altogether in 2015 had a consequence of creating insufficient DSC. An amount for DSC must be added to wholesale water and wastewater rates for the wholesale customers at issue in this case to ensure that those customers contribute the same DSC ratio as retail customers. A tenet of ratemaking is that every provider of services which comes before the Commission, whether the service is (or has been, under prior regulatory regimes) telephone, electric, water, or wastewater, is allowed a rate of return, or its equivalent, on investments made to provide the service.

The Districts further object to the referenced testimony because it is prohibited hearsay under Tex R. Civ. Evid. 801 and 802. Mr. Wilkerson 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. Wilkerson to provide his opinion on debt service coverage. Mr. Wilkerson is offering an opinion that is not rationally based on his perception because has no foundation on which to base his opinion.

The Districts object to the referenced testimony because it is opinion testimony prohibited under Tex. R. Civ. Evid. 701 and 702. Mr. Wilkerson is a Principal of Associated Power Analysts. He is not a licensed professional engineer experienced in water and wastewater utility design, nor an expert on debt service coverage or water and wastewater rates. Mr. Wilkerson 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. Wilkerson is not a utility engineer, nor an expert on debt service coverage or water and wastewater rates 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. Wilkerson 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 as he is not an utility engineer, nor an expert on debt service coverage or water and wastewater rates.

IV. PRAYER

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

Respectfully submitted,



John J. Carlton

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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 1st day of November, 2019.

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

John J. Carlton