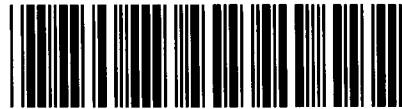


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OF

**DIRECT TESTIMONY OF TAB R. URBANTKE**

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

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

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 of Tab R Urbantke 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”).<sup>1</sup> Included in the City’s Application is the Direct Testimony and Attachments of Tab R. Urbantke.<sup>2</sup> SOAH Order No. 9, issued on

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

<sup>2</sup> *Id.* at 382 (hereinafter Direct Testimony of Tab R. Urbantke).

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

## **II. PROCEDURAL BASIS**

Rules 401 and 402 provides the basis for excluding irrelevant testimony. Expert testimony, like all testimony in a trial, must be relevant; otherwise, the testimony must be excluded. Rule 401—that is, evidence that “has any tendency to make a fact more or less probable than it would be without the evidence; and ... is of consequence in determining the action.” As stated in Rule 402, “Irrelevant evidence is not admissible.” Even if evidence is relevant and admissible for a proper purpose, it may still be excluded at the Court's discretion under Rule 403. Under Rule 403, “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

An expert's testimony should be relevant to the issues at hand. If an expert is testifying to facts that have no bearing on the case, an objection should be raised. However, even if an expert's testimony can be deemed relevant, the probative value still must outweigh any prejudicial effect or other adverse dangers that the testimony could cause.: “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.

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

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

#### **A. Urbantke Testimony at page 8, lines 10 through 13.**

##### ***Q. IS THE CITY ENTITLED TO REIMBURSEMENT OF RATE CASE EXPENSES INCURRED IN CONNECTION WITH THIS RATE CASE?***

*Furthermore, under 16 Tex. Admin. Code § 24.44(a)(TAC), a water utility may recovery rate case expenses, including attorneys' fees, incurred as a result of filing a rate-change application under TWC §§ 13.187 or 13.1871, if the expenses are just, reasonable, necessary, and in the public interest.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>4</sup> By testifying as he did above, Mr. Urbantke is offering his opinion regarding provisions of the Commission's rules and the Texas Water Code that specifically are not applicable to a retail water utility like the City. As the ALJs know, the City is a retail public utility,<sup>5</sup> not a utility,<sup>6</sup> under the definitions of the Texas Water Code. As the ALJs also know, 16 TAC § 24.44 and TWC §§ 13.1817 and 13.1871 do not apply to retail public utilities like the City. Mr. Urbantke's testimony regarding inapplicable statutes is irrelevant to the matter. Mr. Urbantke's exploration of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

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<sup>4</sup> Direct Testimony of Tab R. Urbantke at 5.

<sup>5</sup> TWC § 13.002(19) ("Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.).

<sup>6</sup> TWC § 13.002(23) ("Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others).

**B. Urbantke Testimony at page 8, line 13 through page 9, line 18.**

***Q. IS THE CITY ENTITLED TO REIMBURSEMENT OF RATE CASE EXPENSES INCURRED IN CONNECTION WITH THIS RATE CASE?***

*Additionally, TWC § 13.084 addresses the authority of the governing body of a municipality and provides as follows:.*

*The governing body of any municipality or the commissioners court of an affected county shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination of these experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility rate-making proceedings. The water and sewer utility engaged in those proceedings shall be required to reimburse the governing body or the commissioners court for the reasonable costs of those services and shall be allowed to recover those expenses through its rates with interest during the period of recovery.*

*Here, the City is the governing body and also controls the affected municipal water utility. The principle stated in TWC § 13.084 should still apply—a municipality participating in litigation regarding municipal water rates must be allowed to recover its reasonable costs for its participation, including attorneys fees, consulting fees, and other reasonable costs. And, the utility must be allowed to recover these costs through its rates.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>7</sup> By testifying as he did above, Mr. Urbantke is offering his opinion regarding provisions of the Commission's rules and the Texas Water Code that specifically are not applicable to a retail water utility like the City. As the ALJs know, TWC § 13.084 applies in the situation when a municipality is the governing authority with rate jurisdiction over an investor-owned utility located within the municipality. That section of the Water Code does not apply when the Commission has original rate jurisdiction as it does in the current rate matter. Mr. Urbantke's testimony regarding inapplicable statutes is irrelevant to the matter. Mr. Urbantke's exploration of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

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<sup>7</sup> Direct Testimony of Tab R. Urbantke at 5.

**C. Urbantke Testimony at page 9, lines 19 through 23.**

***Q. IS THE CITY ENTITLED TO REIMBURSEMENT OF RATE CASE EXPENSES INCURRED IN CONNECTION WITH THIS RATE CASE?***

*Along with the above-described standards, several other provisions in the TWC, the Public Utility Regulatory Act, and related Commission rules support the general proposition that utilities and municipalities should be allowed to recover reasonable rate case expenses.' This tenet is sound, accepted ratemaking, and should be followed here.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>8</sup> By testifying as he did above, Mr. Urbantke is offering his opinion regarding provisions of the Commission's rules, the Texas Water Code, and the Public Utility Regulatory Act that specifically are not applicable to a retail water utility like the City. As the ALJs know, PURA applied to electric rate cases, not water utility rate cases. Mr. Urbantke's testimony regarding inapplicable statutes is irrelevant to the matter. Mr. Urbantke's exploration of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

**D. Urbantke Testimony at page 11, line 1 through page 12, line 9.**

***Q. WHAT STANDARDS ARE USED TO DETERMINE THE REASONABLENESS OF RATE CASE EXPENSES INCURRED BY THE CITY??***

*Well-established case law, however, does discuss the types of factors that the Commission can consider when determining the reasonableness of rate case costs and expenses. The seminal case in this area is City of El Paso v. Public Utility Commission of Texas.' In City of El Paso, the Third Court of Appeals held that a utility's requested rate case expenses are reimbursable if the Commission finds the expenses reasonable.' The Court discussed the types of factors the Commission can consider when determining the reasonableness of rate case costs and expenses.' Those factors, which are similar to the factors that may be considered in determining the reasonableness of legal fees under the Texas Disciplinary Rules of Professional Conduct (TDRPC),<sup>8</sup> include but are not limited to:*

- 1. the time and labor required;*

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<sup>8</sup> *Id.*

- 2. the nature and complexities of the case;*
- 3. the amount of money or value of property or interest at stake;*
- 4. the extent of responsibilities the attorney assumes;*
- 5. the fee customarily charged in the locality for similar legal services;*
- 6. whether the attorney loses other employment because of the undertaking; and*
- 7. the benefits to the client from the services.*

*More recently, in 2014, the Commission adopted 16 TAC § 25.245 that establishes (i) the specific requirements imposed on an electric utility claiming recovery of rate case expenses, and (ii) the criteria the Commission must apply to determine the reasonableness of such expenses. While not directly applicable here, this rule provides helpful guidance on the specific requirements that the Commission has looked to for the recoverability of rate case expenses. Thus, I have used 16 TAC § 25.245 to guide my evaluation of the City's requested rate case expenses in this case.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>9</sup> By testifying as he did above, Mr. Urbantke is offering his opinion regarding an electric utility case and the Commission's rules applicable to electric utilities, not a case involving the City's request for authorization to increase its rates under TWC § 13.044. As the ALJs know, 16 TAC § 25.245 does not apply to a water and wastewater rate case filed under TWC § 13.044. Mr. Urbantke's testimony regarding inapplicable statutes is irrelevant to the matter. Mr. Urbantke's exploration of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

**E. Urbantke Testimony at page 12, line 10 through page 13, line 9.**

***Q. PLEASE DESCRIBE THE REQUIREMENTS IMPOSED ON AN ELECTRIC UTILITY CLAIMING RECOVERY OF RATE CASE EXPENSES UNDER 16 TAC § 25.245.***

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<sup>9</sup> *Id.*



*An electric utility requesting recovery of rate case expenses must prove the reasonableness of its expenses by a preponderance of the evidence. Specifically, the utility must provide evidence showing:*

- 1. the nature, extent, and difficulty of the work done by the attorney or other professional;*
- 2. the time and labor required and expended by the attorney or other professional;*
- 3. the fees or other consideration paid to the attorney or other professional for the services rendered;*
- 4. the expenses incurred for lodging, meals and beverages, transportation, or other services or materials;*
- 5. the nature and scope of the rate case, including:*
  - a. the size of the utility and number and type of customers served;*
  - b. the amount of money or value of property or interest at stake;*
  - c. the novelty or complexity of the issues addressed;*
  - d. the amount and complexity of discovery;*
  - e. the occurrence and length of a hearing; and*
- 6. the specific issues in the rate case and the amount of rate case expenses reasonably associated with each issue.*

*These factors, though not dispositive in this case, provide relevant guidance as to what evidence the City functioning as a municipal water utility may provide in order to establish its rate case expenses are just and reasonable.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>10</sup> By testifying as he did above, Mr. Urbantke is offering his opinion regarding a Commission rule applicable to electric utilities, not a case involving the City's request for authorization to increase its rates under TWC § 13.044. As the ALJs know, 16 TAC § 25.245 does not apply to a water and wastewater rate case filed under TWC § 13.044. Mr. Urbantke's testimony regarding inapplicable statutes is irrelevant to the matter. Mr. Urbantke's exploration

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<sup>10</sup> *Id.*

of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

**F. Urbantke Testimony at page 13, line 10 through page 14, line 6.**

***Q. ON WHAT BASIS MAY THE COMMISSION EXCLUDE RATE CASE EXPENSES FROM RECOVERY?***

*Again, though not dispositive here, 16 TAC § 25.245 is helpful. Under section 13 25.245 and after considering the City of El Paso factors, the Commission may exclude rate case expenses to the extent it finds:*

- 1. the fees paid to, tasks performed by, or time spent on a task by an attorney or other professional were extreme or excessive;*
- 2. the expenses incurred for lodging, meals and beverages, transportation, or other services or materials were extreme or excessive;*
- 3. there was duplication of services or testimony;*
- 4. the utility's or municipality's proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of Commission precedent;*
- 5. rate case expenses, as a whole, were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of § 25.245; or*
- 6. the utility or municipality failed to comply with the requirements for 2 providing sufficient information pursuant to subsection (b) of § 24.245.*

*Otherwise, the Commission is required to allow recovery of rate case expenses equal to the amount shown in the evidentiary record to be actually and reasonably incurred by the utility.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>11</sup> By testifying as he did above, Mr. Urbantke is offering his opinion regarding an electric utility case and the Commission's rules applicable to electric utilities, not a case involving the City's request for authorization to increase its rates under TWC § 13.044. As

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<sup>11</sup> Direct Testimony of Tab R. Urbantke at 5.

the ALJs know, 16 TAC § 25.245 does not apply to a water and wastewater rate case filed under TWC § 13.044. Mr. Urbantke's testimony regarding inapplicable statutes is irrelevant to the matter. Mr. Urbantke's exploration of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

**G. Urbantke Testimony at page 24, lines 6 through 7.**

***Q. DO THE CITY'S RATE CASE EXPENSES MEET THE STANDARDS FOR REASONABLENESS UNDER THE CITY OF EL PASO CASE AND 16 TAC § 25.245 APPLICABLE TO ELECTRIC UTILITIES?***

*Yes. The City's rate case expenses are reasonable in light of the City of El Paso standards and the factors used in electric utility rate cases.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>12</sup> By testifying as he did above, Mr. Urbantke is offering his opinion based upon regarding an electric utility case and the Commission's rules applicable to electric utilities, not a case involving the City's request for authorization to increase its rates under TWC § 13.044. As the ALJs know, 16 TAC § 25.245 does not apply to a water and wastewater rate case filed under TWC § 13.044. Mr. Urbantke's testimony regarding inapplicable statutes is irrelevant to the matter. Mr. Urbantke's exploration of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

**H. Urbantke Testimony at page 24, line 10 through page 26, line 9.**

***Q. PLEASE SUMMARIZE YOUR OPINIONS CONCERNING THE FACTORS DISCUSSED IN THE CITY OF EL PASO CASE.***

*Time and Labor Required/Nature and Complexities of the Case. The fees, expenses, and hourly rates I reviewed are consistent with the time and labor required, novelty and difficulty of the issues, and the skill necessary to properly perform the legal services in this case. Historically, the City has conducted its own ratemaking process. There is no template for this case, and many of the issues faced by the City and the legal team must be freshly*

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<sup>12</sup> *Id.*

*considered. For example, it is my understanding that the Commission has no RFP tailored to this particular type of case, so the City prepared its case at Commission Staff's recommendation utilizing the RFP applicable to Class A investor-owned water utilities. Rate cases in general require a lot of expertise and time, and the unique procedural posture of this case, in addition to the substantial lack of precedent, creates complex challenges for the City and its rate case team.*

*The Fee Customarily Charged in Locality for Similar Legal Services. The hourly rates I reviewed in this case are customary in the locality for similar legal services. It is reasonable and customary to charge hourly rates for legal services rendered on behalf of utilities in cases before the Commission. Based upon my experience in other rate cases, the hourly rates charged by the lawyers and support personnel on behalf of the City in this case are more than reasonable and generally lower than the rates charged by other lawyers and supporting resources representing utilities in rate proceedings before the Commission. This is largely due to the size of the City and the fact that the rates charged to municipalities, generally, tend to be on the lower end of the market, due to cities' needs to keep costs down.*

*Amount of Money or Value of Property or Interest at Stake. The City's interest in this proceeding is significant. The City rarely litigates rate cases before the Commission, and was unable to recover rate case expenses incurred in Docket No. 42857. A utility must be allowed to recover its reasonable and necessary rate case expenses in order to recover its full reasonable cost of doing business. Therefore, the City has a large interest in the outcome of this proceeding.*

*Extent of Responsibilities and Potential Loss of Other Employment. Lloyd Gosselink's engagement to represent the City in this rate case is likely to preclude other employment for the firm and its lawyers. Cost of service rate cases require an enormous time commitment that may require the lawyers working on the matter to devote their time exclusively, or almost exclusively, to the utility client for a considerable period of time. Furthermore, because the City is a municipal utility, the process of moving through a rate case is more cumbersome than for an investor-owned utility. Lloyd Gosselink must work closely with city management, utility management, and the Austin City Council. The number of people that must be included in the process requires the legal team to devote substantial time and resources to case management and oversight. This time commitment may make it extremely difficult or impossible for individual attorneys to accept new clients for any kind of material commitment or work on other matters.*

*Benefits to Client. The City derives a large benefit from having this team handle the rate case. I do not believe that the City could successfully and timely prepare and prosecute this rate case without substantial additional resources and expertise. These cases do not occur frequently, so it makes more sense to use external resources for this type of project. In my experience, most utilities, whether they are municipal or investor-owned, require*

*substantial external resources when prosecuting a rate case such as this one, and it is the common practice in Texas.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>13</sup> By testifying as he did above, Mr. Urbantke is offering his opinion based upon regarding an electric utility case and the Commission's rules applicable to electric utilities, not a case involving the City's request for authorization to increase its rates under TWC § 13.044. As the ALJs know, 16 TAC § 25.245 does not apply to a water and wastewater rate case filed under TWC § 13.044. Mr. Urbantke's testimony regarding inapplicable statutes is irrelevant to the matter. Mr. Urbantke's exploration of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

**I. Urbantke Testimony at page 26, line 10 through page 27, line 5.**

***Q. PLEASE SUMMARIZE YOUR OPINIONS CONCERNING HOW THE CITY'S RATE CASE EXPENSES SATISFY STANDARDS FOR REASONABLENESS UNDER 16 TAC § 25.245(B) APPLICABLE TO ELECTRIC UTILITIES.***

*Based on those factors that can be addressed at this point in the proceeding, the City's rate case expenses are reasonable under 16 TAC § 25.245(b). As noted above, this case is unusual and will require a substantial amount of time and effort on the part of the attorneys involved. The rates charged for each of the attorneys working on the case are reasonable given the time commitment and experience level of each of the attorneys. While it is not possible this early in the proceeding to fully evaluate the factors regarding expenses incurred for travel, the nature and scope of the rate case, and the specific issues in the rate case, I believe the City and Lloyd Gosselink have put measures in place to make sure that the rate case expenses incurred throughout this rate proceeding remain reasonable in light of the unique issues presented in this case. For example, establishment of the 13 billing categories directly corresponds to the requirement of 16 TAC § 25.245(b)(6). Also, as discussed above, the City employees and outside consultants are encouraged to avoid luxury or unnecessary travel expenses throughout the rate case proceeding, which helps to manage costs of travel. All of these factors weigh in favor of finding that the City's rate case expenses are reasonable.*

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<sup>13</sup> *Id.*

The Districts object to the referenced testimony, because Tex. R. Civ. Evid. 402 prohibits the introduction of irrelevant evidence. Mr. Urbantke is an attorney who admittedly is unfamiliar with water utility rate cases.<sup>14</sup> By testifying as he did above, Mr. Urbantke is offering his opinion based upon regarding the Commission's rules applicable to electric utilities, not a case involving the City's request for authorization to increase its rates under TWC § 13.044. As the ALJs know, 16 TAC § 25.245(b) does not apply to a water and wastewater rate case filed under TWC § 13.044. Mr. Urbantke's testimony regarding an inapplicable Commission rule is irrelevant to the matter. Mr. Urbantke's exploration of theoretical rules inapplicable to AW and this rate case is clearly confusing the issues and irrelevant to this proceeding. Mr. Urbantke's statement regarding application of inapplicable rules and statutes should be stricken from the record.

#### IV. 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 of David A. Urbantke as requested above and grant such other relief to which Districts may be entitled.

Respectfully submitted,



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John J. Carlton

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<sup>14</sup> *Id.*

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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 1<sup>st</sup> day of November, 2019.



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John J. Carlton