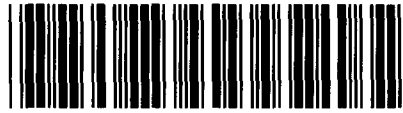


Control Number: 49189



Item Number: 176

Addendum StartPage: 0

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

**APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE  
AUSTIN DBA AUSTIN WATER FOR § OF  
AUTHORITY TO CHANGE WATER §  
AND WASTEWATER RATES § ADMINISTRATIVE HEARINGS**

**CITY OF AUSTIN D/B/A AUSTIN WATER'S  
RESPONSE TO DISTRICTS' OBJECTIONS AND  
MOTIONS TO STRIKE**

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**SOAH DOCKET NO. 473-19-6297.WS  
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<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>AUSTIN DBA AUSTIN WATER FOR</b>	<b>§</b>	<b>OF</b>
<b>AUTHORITY TO CHANGE WATER</b>	<b>§</b>	
<b>AND WASTEWATER RATES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**CITY OF AUSTIN D/B/A AUSTIN WATER'S  
RESPONSE TO DISTRICTS' OBJECTIONS AND MOTIONS TO STRIKE**

COMES NOW, the City of Austin (City) d/b/a Austin Water (AW or Austin Water) and files this Response to 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's (Districts) Objections to and Motions to Strike Testimony and Attachments of David A. Anders,<sup>1</sup> Joseph H. Gonzales,<sup>2</sup> Richard D. Giardina,<sup>3</sup> Dan Wilkerson,<sup>4</sup> Dennis P. Waley,<sup>5</sup> Stephen J. Coonan,<sup>6</sup> and Tab R. Urbantke<sup>7</sup> (collectively,

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<sup>1</sup> 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 David A. Anders (Nov. 1, 2019) (Districts' Objections to and Motion to Strike Testimony of David Anders).

<sup>2</sup> 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 (Nov. 1, 2019) (Districts' Objections to and Motion to Strike Testimony of Joseph Gonzales).

<sup>3</sup> 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 Richard D. Giardina (Nov. 1, 2019) (Districts' Objections to and Motion to Strike Testimony of Richard Giardina).

<sup>4</sup> 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 (Nov. 1, 2019) (Districts' Objections to and Motion to Strike Testimony of Dan Wilkerson).

<sup>5</sup> 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 Dennis P. Waley (Nov. 1, 2019) (Districts' Objections to and Motion to Strike Testimony of Dennis Waley).

<sup>6</sup> 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 Stephen J. Coonan (Nov. 1, 2019) (Districts' Objections to and Motion to Strike Testimony of Stephen Coonan).

Districts' Objections and Motions to Strike). In accordance with State Office of Administrative Hearings (SOAH) Order No. 9, this response is timely filed.

**I. GENERAL RESPONSE TO DISTRICTS' OBJECTIONS  
AND MOTIONS TO STRIKE**

Districts filed generalized, repetitive objections to Austin Water's pre-filed direct testimony in a transparent effort to induce the Administrative Law Judges (ALJs) to produce an inadequate evidentiary record to present to the Public Utility Commission of Texas (Commission) for its ultimate review and determination. Throughout their objections, Districts repeat self-serving and meritless claims that: (1) Austin Water's expert witnesses are not experts on matters to which they testify, and therefore, their opinion testimony is prohibited; (2) portions of AW's testimony constitute hearsay; and (3) portions of AW's testimony are not relevant to this proceeding.

A majority of Districts' objections claim an objection without making any attempt to identify the precise portion of the testimony to which they object and without any attempt to support the objection claimed. Districts assert, for example, an objection, but follow it with a confusing, meaningless, and irrelevant justification. In many instances Districts' objections are so broad and confusing that Austin Water is unsure how to even properly respond, and Austin Water would have to sift through the cited testimony to even identify what is possibly objectionable. Given these failings, Districts' objections simply burden Your Honors and frustrate Austin Water's ability to receive Commission approval of its Application in a timely manner.

**A. Expert Opinion Testimony**

Districts make blanket objections claiming that portions of AW witnesses' testimony consist of improper opinion testimony, claiming that the testimony is outside of the witness'

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<sup>7</sup> 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 (Nov. 1, 2019) (Districts' Objections to and Motion to Strike Testimony of Tab Urbantke).



expertise. Much of the testimony to which Districts object is clearly within the witness' expertise, as explained in each witness' background and credentials within their testimony. In many of Districts' other objections, their claims are misplaced, arguing that a witness must be an expert on every piece of information underlying the facts considered in the experts' testimony. An expert witness does not need to be an expert on how the underlying facts were developed in order to take information before him and reach a logical conclusion. An expert witness is permitted to provide testimony based on sources that would otherwise be considered hearsay. Under the Texas Rules of Evidence (TRE) 703,

[a]n expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.<sup>8</sup>

All of Austin Water's witnesses are testifying as experts. All of their opinions are based off facts and data they have been made aware of, and which experts in their field reasonably rely on to form an opinion on the subject.

In any event, as SOAH Order No. 12 in Docket No. 38339 makes clear, even if a witness is not an expert, the reasonableness of an item for recovery through utility rates is a question that a lay witness may resolve. The ALJs in that docket determined:

[i]f a person testifies as to facts that show the numbers and how they are developed, it requires only common sense to state whether the numbers are reasonable and necessary. This does not mean, however, that the conclusion is necessarily correct. The underlying facts can be tested and protested through cross-examination and competing testimony, and the conclusion drawn can likewise be disputed. That is the nature of a fact based determination.<sup>9</sup>

While the ALJs mentioned that there are many instances where expert testimony is a significant part of a rate case, the ALJs made clear that a witness can reach a conclusion by relying on

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<sup>8</sup> Tex. R. Civ. Evid. 703 (TRE).

<sup>9</sup> *Application of CenterPoint Electric Delivery Company, LLC, for Authority to Change Rates*, Docket No. 38339, SOAH Order No. 12 at 2 (Oct. 1, 2010).

information presented to him, without being an expert on how the underlying information was developed.

Texas courts have also determined that a distinct line cannot be drawn between lay opinion and expert testimony because all perceptions are evaluated based on experiences.<sup>10</sup> Because TRE 701 requires testimony be based on the witness's perception, the witness must personally observe or experience the events about which he or she is testifying.<sup>11</sup> Thus, the witness' testimony can include opinions, beliefs, or inferences as long as they are drawn from his or her own experiences or observations.<sup>12</sup> When Austin Water's witnesses observed information presented to them, they were able to take that information to reach a conclusion, especially concerning the reasonableness of the recovery of a cost through rates. In many instances in Austin Water's testimony, the witness is not testifying to how the underlying information was developed, but instead, how that information was used in the development of Austin Water's Cost of Service (COS). The underlying information and the conclusion can be challenged through cross-examination. The testimony related to Austin Water's policies and practices is appropriate non-expert testimony under TRE 701. To the extent that opinions are expressed, they are designed to help the Commission understand how Austin Water sets wholesale water and wastewater rates.

## **B. Hearsay**

There are two distinct theories regarding the specificity of objections, which the court in *Hernandez v. State*<sup>13</sup> laid out:

“[a]n objection must not only identify what is objected to but must set forth grounds for the objection.” *Evans v. State*, Tex.Cr.App., 480 S.W.2d 387. (Emphasis added.)

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<sup>10</sup> *Rhomer v. State*, 522 S.W.3d 13, 22 (Tex. App.—San Antonio 2017), *aff'd*, 569 S.W.3d 664 (Tex. Crim. App. 2019); *Osbourn v. State*, 92 S.W.3d 531, 537 (Tex. Crim. App. 2002).

<sup>11</sup> *Rhomer*, 522 S.W.3d at 22 (citing *Osbourn v. State*, 92 S.W.3d 531, 535 (Tex. Crim. App. 2002)).

<sup>12</sup> *Rhomer*, 522 S.W.3d at 22-23 (citing *Osbourn v. State*, 92 S.W.3d 531, 535 (Tex. Crim. App. 2002)).

<sup>13</sup> *Hernandez v. State*, 599 S.W.2d 614, 617 (Tex. Crim. App. 1980).

“An objection to admission of evidence must be specific and must state grounds of the objection. (citations.)” *Hinkle v. State*, Tex.Cr.App., 442 S.W.2d 728. (Emphasis added.)

Districts make blanket hearsay objections to several sections of Austin Water’s witnesses’ testimony. However, Districts rarely identify with particularity the portion of Austin Water’s testimony to which they are objecting. They list several lines of testimony, and merely state that “it is prohibited hearsay.” Additionally, in each of Districts’ hearsay objections, Districts confuse the hearsay standard and make no attempt to show the basis for how the testimony constitutes hearsay as it is defined in TRE 801 and 802. For example, Districts present the following objection:

[t]he Districts further object to the referenced testimony, because it is prohibited hearsay under Tex. R. Civ. Evid. 801 and 802. Mr. Anders 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. Anders to provide his opinion regarding wholesale service to MUDs. Mr. Anders is offering his opinion that is not rationally based on his perception because [sic] has no foundation on which to base his opinion.<sup>14</sup>

Even though Districts took the time to lay out TRE 801 and 802 at the beginning of their pleading, Districts make no attempt to apply the standard to their objection. Districts do not make any attempt to show how any part of the referenced testimony constitutes a statement by someone other than the witness, made outside of the current trial or hearing, or how the statement is offered in evidence to prove the matter asserted in the statement. Instead, Districts claim a hearsay objection, then immediately try to justify the hearsay objection with elements more attributable to an objection to a lay witness providing an expert opinion under TRE 701 and 702. There are no elements in TRE 801 and 802 that mention a witness’ opinion, personal knowledge about a matter, a foundation for an opinion, or that an opinion must be based on a witness’ perception. Most of Districts’ hearsay objections follow this exact pattern, with no further attempt to justify a hearsay objection.

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<sup>14</sup> Districts’ Objections to and Motion to Strike Testimony of David Anders at 7.

Districts' objections merely contain the word "hearsay" without any attempt to explain how the testimony in question is, in fact, hearsay. Many of the objections refer to testimony that does not contain anything that could remotely be considered a statement by someone other than the witness or made outside of this proceeding. In almost every one of Districts' objections, they even mention that the portion of the testimony is the witness' opinion in this proceeding. A witness' opinion in his testimony would clearly be a statement in *this* proceeding, and therefore, it would not consist of any statement *outside* of this proceeding, as the hearsay standard requires. Thus, Districts will have the opportunity to challenge the witness' conclusion if they choose to do so. Additionally, as explained above, expert witnesses can rely on hearsay in the formation of their expert opinions when experts in their field would reasonably rely on the facts and data in forming an opinion on the subject. So even if the objected to portion of the witness' testimony did constitute hearsay, the opinion is admissible under TRE 703.

For the foregoing reasons, Austin Water has only responded to Districts' objections that actually identify the testimony to which Districts' object to as hearsay. In instances when Austin Water has not specifically responded, it is because Austin Water does not believe Districts have identified with particularity anything that could be considered hearsay.

### **C. Interpreting Districts' Precise Objections.**

During Austin Water's preparation of this Response, Austin Water noticed that Districts' objections often feature a disconnect between the description of the page and line numbers being objected to and the quoted text in Austin Water's testimony. In some instances Districts cite to line numbers that do not reflect the testimony quoted in their objection.<sup>15</sup> In other instances, Districts have omitted language in their quotation of the testimony that is included in the page

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<sup>15</sup> See, e.g., Districts' Objections to and Motion to Strike Testimony of David Anders at 16 (referring to Item K. Districts object to page 27, line 15 through page 28, line 23 of Mr. Anders' Testimony. Page 28, line 23 does not exist. Districts' quoted testimony to which it objects only extends through page 28, line 1.).

range cited.<sup>16</sup> Lastly, in some instances Districts have misrepresented the question to which the objected-to testimony responds.<sup>17</sup> Because Austin Water is not in a position to interpret Districts' intentions, Austin Water simply acknowledges this disconnect in their objections, and requests the ALJs take this into account in their rulings.

## **II. RESPONSE TO DISTRICTS' OBJECTIONS TO AND MOTION TO STRIKE DIRECT TESTIMONY AND ATTACHMENTS OF DAVID A. ANDERS**

Districts have made several objections regarding whether Mr. Anders' expertise covers opinions on various topics discussed in his testimony. In his testimony, Mr. Anders provided a description of his extensive background, qualifications, and work experience, spanning over 30 years.<sup>18</sup> He specifically described how he graduated with a Bachelor of Business Administration degree with coursework in finance and management from the University of Texas; how he has co-authored publications regarding utility financing, and cost of service development; how he is involved in managing and overseeing all divisions within the Financial Services program; how he is Austin Water's Chief Financial Officer (a role which requires him to provide financial guidance to AW's Executive Team and the various program areas of the utility); and how he is involved with the managerial oversight of AW's COS studies for water and wastewater.<sup>19</sup> He described how this includes the development of revenue requirements for those services, as well as cost allocation and rate design.<sup>20</sup> Mr. Anders also described the various positions that he has held at Austin Water, which include his role as a Financial Analyst, Rates and Charges Manager,

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<sup>16</sup> See, e.g., Districts' Objections to and Motion to Strike Testimony of Dennis Waley at 9 (referring to Item F. Districts object to Mr. Waley's testimony at "page 8, line 19 through page 9, line 6," although the quoted testimony omits a portion of Mr. Waley's testimony from page 8, line 20 through page 9, line 3. This makes it unclear whether Districts are objecting to the entire page range, or only the quoted portions.).

<sup>17</sup> See, e.g., Districts' Objections to and Motion to Strike Testimony of Joseph Gonzales at 8 (referring to Item B. Districts object to page 29, lines 18 through 21 of Mr. Gonzales' Testimony. Districts list the question to which Mr. Gonzales responds as "[p]lease describe AW's O&M expenses," when the question is actually "[p]lease provide a listing of AW transfers.").

<sup>18</sup> Direct Testimony of David A. Anders at 4-7 (Anders Testimony).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 6.

Acting Manager of Utilities Finance, and Manager of Utilities Finance, which have given him a variety of expertise in Austin Water's business functions.<sup>21</sup>

Mr. Anders' expertise covers the use of information to develop and support Austin Water's COS models and revenue requirements for classes of customers. While he may not be a certified expert in every single area of the information used to develop Austin Water's COS and rates, he is an expert on assessing the benefits of different costs for the purpose of correctly allocating costs to customer classes.

While Mr. Anders took the time to describe his extensive background in finance and ratemaking, he did not describe every fractional detail of what his experience covers. His testimony stems from his expert experience, and Districts' objections concerning his expert opinion should be overruled.

Subject to the "General Response to Districts' Objections" section, above, Austin Water provides the following responses to Districts' specific objections.

**A. Anders Testimony at Page 9, Lines 22 through 23.**

*Q. WHAT FACILITIES DOES AW OWN AND OPERATE?*

*The Reclaimed Water System is a critical component in AW's Water Forward integrated water supply plan.*

Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. Districts' objection is without merit, and should be overruled. While Districts claim that Mr. Anders is not an expert in all of the details of reclaimed water, Mr. Anders is not testifying to matters that require expertise in reclaimed water. Mr. Anders is testifying that Austin Water's Reclaimed Water System is a *critical component* in AW's Water Forward integrated water supply plan. Mr. Anders expertise in his current role as Austin Water's Chief Financial Officer covers familiarity with AW's Water Forward integrated water supply plan, and the elements that make up that plan.

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<sup>21</sup> *Id.* at 6-7.

Additionally, Mr. Anders references the testimony of AW experts, Steve Coonan and Richard Giardina, for further detail on the reclaimed water system, which he reviewed in the development of his testimony.<sup>22</sup> As detailed in the “General Response to Districts’ Objections” section, above, SOAH has acknowledged a witness can testify to the importance of information, without being an expert on how the underlying information was developed.

Districts also object to this portion of Mr. Anders’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. In short, Mr. Anders’ own statement clearly is not hearsay. The Districts’ objection on this point should be overruled.

**B. Anders Testimony at Page 13, Lines 17 through 18.**

*Q. IF THIS BROADER CONTEXT IS GONE, HOW SHOULD WHOLESALE SERVICE TO THE MUDS BE VIEWED?*

*Wholesale service to the MUDs should be viewed as a regular commercial transaction by a municipally-owned water utility.*

Districts object to this portion of Mr. Anders’ testimony on the basis that it is prohibited opinion testimony. As previously mentioned, Mr. Anders’ testimony establishes his expertise in financial services, COS development, development of revenue requirements for water and wastewater, as well as cost allocation and rate design. Additionally, Mr. Anders has worked closely for the past six years on wholesale rate issues including serving as the lead witness in Docket No. 42857, a proceeding devoted to wholesale service to districts.<sup>23</sup> Mr. Anders’ expertise clearly encompasses wholesale service to Municipal Utility Districts (MUDs). The Districts’ objection on this point should be overruled.

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<sup>22</sup> *Id.* at 28, lines 7-19.

<sup>23</sup> *Petition of 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 from the Ratemaking Actions of the City of Austin and Request for Interim Rates in Williamson and Travis Counties*, Docket No. 42857 (Jan. 14, 2016).

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**C. Anders Testimony at Page 22, Lines 14 through 16, and Lines 19 through 21.**

*Q. IF THIS BROADER CONTEXT IS GONE, HOW SHOULD WHOLESALE SERVICE TO THE MUDS BE VIEWED?*

*Wholesale service to the MUDs should be viewed as a regular commercial transaction by a municipally-owned water utility.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. Mr. Anders admits that he has never managed an investor-owned utility rate change process in the portion of his testimony cited by Districts, however, his expertise in MOU ratemaking generally qualifies his ability to compare MOU ratemakings to other forms of ratemaking. Even if Mr. Anders is not considered an expert on ratemaking to qualify his opinion as an expert opinion, his opinion is (a) rationally based on his perception, and (b) helpful to a clear understand of his testimony and determining a fact in issue.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**D. Anders Testimony at Page 23, Lines 6 through 11.**

*Q. WHAT METHOD DOES AW PROPOSE TO USE TO ESTABLISH WHOLESALE WATER AND WASTEWATER RATES IN THIS CASE?*

*In addition to this methodology, AW has utilized a DSC methodology to determine and ensure all customer classes provide sufficient revenue to achieve AW's targeted coverage levels. While the revenue requirements were calculated using*



*the Cash Needs Method, the DSC methodology provides an additional check on the appropriateness of the rates to be set in this case.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled. The testimony referenced in Districts' objections is clearly within Mr. Anders' expertise. As mentioned above, and in Mr. Anders' testimony, he has served as Austin Water's Chief Financial Officer and has specialized expertise in ratemaking and the establishment of a revenue requirement for all AW customer classes. He even expressly mentions in his testimony that AW utilizes a debt service coverage (DSC) methodology in the development of its revenue requirements. DSC methodologies fall squarely within Mr. Anders' expertise, and he is permitted to give his opinion in his testimony regarding Austin Water's use of DSC methodologies in the development of its rates.

Additionally, even if the ALJs determine that Mr. Anders is not an expert in DSC methodologies, Mr. Anders is solely testifying to the use of DSC methodologies in the development of Austin Water's rates. As mentioned in the "General Response to Districts' Objections" section, above, a witness does not need to be an expert on all of the information underlying their testimony. Mr. Anders is allowed to reach a conclusion on how he perceives Austin Water has used DSC methodologies in the development of its rates, without being an expert on DSC methodologies.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**E. Anders Testimony at Page 23, Lines 18 through 19.**

*Q. ARE BOTH THE CASH NEEDS METHOD AND DSC METHOD PERMISSIBLE MEANS OF ESTABLISHING A REVENUE REQUIREMENT AT THE COMMISSION?*

*Although I am not an attorney, my understanding is that both methods are an acceptable means of substantiating a municipally-owned utility's (MOU) revenue requirement.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-D, above.

As an expert in MOU ratemaking, Mr. Anders has a specialized understanding of Commission requirements and standards. In his expertise in MOU ratemaking, he is subject to and familiar with the Commission's requirements and permissible means of establishing revenue requirements. The Districts' objection on this point should be overruled.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**F. Anders Testimony at Page 24, Lines 2 through 5, Lines 7 through 8, and Lines 15 through 19.**

*Q. WHAT IS THE RELATIONSHIP BETWEEN THE GFT ISSUE LITIGATED IN DOCKET NO. 42857 AND THE DSC ANALYSIS PRESENTED IN THIS CASE?*

*Among other reasons, a GFT is the equivalent of a return, and as such is comparable, in principle, to amounts collected by an investor-owned utility in both water and electric rates approved by the Commission.*

*Moreover, the decision is at odds with state law and extensive Commission precedent authorizing the collection of a GFT.*

*As Mr. Wilkerson and Mr. Gonzales both testify in this case, under the rates set by the Commission in Docket No. 42857, the Petitioners provided a DSC ratio ranging from 0.74x to 0.84x for water service, and from 1.36x to 1.42x for wastewater service. In contrast, AW's overall DSC ratio for water during the test year was 1.58x for retail water and 1.80x for retail wastewater.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-D, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Additionally, Mr. Anders' references to Mr. Wilkerson and Mr. Gonzales' testimony do not constitute hearsay, as both of these witnesses' testimony are within this proceeding. The Districts' objection on this point should be overruled.

**G. Anders Testimony at Page 24, Lines 23 through 24.**

*Q. WHAT IS THE SIGNIFICANCE OF THESE RATIOS?*

*the Petitioners are the beneficiary of a subsidy provided by the rest of AW's retail and wholesale customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-D, above.

Mr. Anders is an expert on the use of DSC methodologies in the development of Austin Water's rates and may give his expert opinion regarding how rates are developed, including how some customer classes subsidize others. Mr. Anders' opinion was also rationally based on his perception of Mr. Wilkerson and Mr. Gonzales' testimony, and this opinion is helpful in understanding Mr. Anders' testimony and the determination of facts in issue. The Districts' objection on this point should be overruled.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**H. Anders Testimony at Page 25, Lines 2 through 4.**

*Q. IS A DSC REQUIREMENT OF 1.85x APPROPRIATE?*

*Yes. As discussed by AW expert Dennis Waley, a DSC target of 1.85x is modest compared to comparable utilities, and a failure to meet that target is of concern to the credit rating agencies.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-D, above.

Mr. Anders expertise covers the use of DSC methodologies and the use of credit ratings in the development of Austin Water's rates. Additionally, Mr. Anders' conclusion in his testimony is also based off of his perception of AW expert Dennis Waley's testimony. Mr. Anders is not making an expert opinion based on a matter outside of his expertise, but simply drawing a logical conclusion based on his perception of Mr. Waley's testimony.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Additionally, Mr. Anders' testimony does not constitute hearsay by merely referencing Mr. Waley's testimony, as Mr. Waley's testimony is found in this proceeding. Mr. Waley's testimony, as well as Mr. Anders' conclusions based off of Mr. Waley's testimony, can be challenged by Districts through their testimony or cross-examination of Mr. Anders in this proceeding. The Districts' objection on this point should be overruled.

**I. Anders Testimony at Page 25, Lines 7 through 8.**

*Q. DO THE RATES PROPOSED BY AW IN THIS CASE BRING AW TO A DSC RATIO OF 1.85X?*

*Yes. The rates proposed in this case for each of the wholesale customers ensure a 1.85x debt service coverage for water and wastewater service.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-D, above.

Mr. Anders' testimony is within his expertise of the interaction between DSC methodologies and the development of Austin Water's rates.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**J. Anders Testimony at Page 27, Lines 7 through 12.**

*Q. NOTWITHSTANDING THE COMMISSION'S DECISION IN DOCKET NO. 42857, ARE THE RECLAIMED WATER SYSTEM'S CAPITAL COSTS AND EXPENSES COSTS ASSOCIATED WITH THE PROVISION OF WATER SERVICE TO AW'S CUSTOMERS?*

*The reclaimed water system is a cost-effective water source which extends AW's current water supply portfolio. The reclaimed water system enhances the total amount of water available to all customers, both retail and wholesale. The reclaimed water system is a key component of AW's recently completed Water Forward 100-year integrated water supply plan. The reclaimed water system will be a critical component for providing and meeting future water supply needs.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-A, above.

It is clear from Mr. Anders' testimony that he is not testifying as an expert regarding the details of a reclaimed water system, but, instead, how the reclaimed water system is a key component to AW's Water Forward plan. Mr. Anders' expertise covers Austin Water's Water Forward plan, which he has been involved with in the performance of his duties in his role at Austin Water. Therefore, his expert opinion on the matter is permissible.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection

of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**K. Anders Testimony at Page 27, Line 15 through Page 28, Line 23.<sup>24</sup>**

*Q. DO THE RECLAIMED WATER SYSTEM CAPITAL COSTS AND EXPENSES BENEFIT AW’S WHOLESALE CUSTOMERS?*

*The reclaimed water system provides significant benefits to all customer classes of the water system including wholesale customers. These benefits include the extension of AW’s water supply, saving potable drinking water supplies, deferring the need for additional water supplies, deferring the need for the expansion of treatment and distribution facilities, and providing for drought resistant water supplies.*

*The reclaimed water system is also a required component of the State mandated water supply planning process, particularly the Region K Plan that covers Austin.*

The Districts object to Mr. Anders’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Section II-A, above.

Mr. Anders does not need to be an expert on all of the details of reclaimed water systems to understand the benefits which the reclaimed water system provides AW, and testify to such. His expertise in ratemaking involves understanding the benefits of the reclaimed water system. Even as a lay witness, he is giving his opinion which is rationally based on his perception, and it is helpful to clearly understand his testimony regarding the determination of Austin Water’s rates and the allocation of costs to different customer classes. The Districts’ objection on this point should be overruled.

Districts also object to this portion of Mr. Anders’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

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<sup>24</sup> Districts object through the end of page 28, although the portion they included in their objection only goes to page 28, line 2.

**L. Anders Testimony at Page 28, Lines 15 through 19.**

*Q. WHAT DO YOU CONCLUDE REGARDING THE RECLAIMED WATER SYSTEM COSTS?*

*Based on my testimony and the more detailed reasons stated in Mr. Coonan's and Mr. Giardina's testimony, the reclaimed water system benefits all customer classes, including wholesale customers. The water supply benefits of the reclaimed water system provide benefits to all customers, regardless of whether a customer is directly connected to the reclaimed system.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Sections II-A and II-K, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**M. Anders Testimony at Page 31, Lines 21 through 24.**

*Q. HOW DID AW PRESENT THE DRAINAGE FEES CHARGED TO AW BY THE CITY'S DRAINAGE UTILITY?*

*These costs are appropriately allocated to all AW customer classes, including wholesale customers. Mr. Giardina also offers testimony in support of these costs as inclusions in the revenue requirements for all customers: retail and wholesale alike.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled. As previously mentioned, Mr. Anders has established his expertise in financial services, COS development, development of revenue requirements for water and wastewater, as well as cost allocation and rate design. His expertise clearly encompasses familiarity with different fees, the utility and benefit of such fees, and the allocation of such fees to the different customer classes in order to develop rates. This portion of Mr. Anders' testimony applies his expertise regarding the allocation of costs for the purpose of

ratemaking. His expertise clearly encompasses the allocation of drainage fees to the different customer classes for the purpose of his testimony.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**N. Anders Testimony at Page 32, Lines 11 through 16.**

*Q. NOTWITHSTANDING THE COMMISSION'S DECISION IN DOCKET NO. 42857, ARE THE DRAINAGE FEES AN APPROPRIATE COST ASSOCIATED WITH THE PROVISION OF WATER SERVICE TO AW'S CUSTOMERS?*

*The drainage fees are an assessed fee for all property owners in the City limits. The facilities and buildings owned by AW are critical to providing water service to our customers. The drainage fees collected by the City's Watershed Protection Department protects lives, property and the environment by reducing the impact of flood, erosion, and water pollution. These services, especially flood protection, provide service to AW and its customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-M, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**O. Anders Testimony at Page 32, Lines 18 through 19.**

*Q. DOES THE DRAINAGE FEES BENEFIT AW'S WHOLESALE CUSTOMERS?*

*Yes. The drainage fees and the associated protections of AW's facilities and buildings benefit all customers, including AW's wholesale customers.*



The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-M, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**P. Anders Testimony at Page 33, Lines 2 through 6.**

*Q. WHAT DO YOU CONCLUDE REGARDING THE DRAINAGE FEES?*

*The drainage fees are costs of doing business within the City of Austin. All businesses, utilities and residents pay drainage fees based on their property, impervious cover, and the rate. AW is required to pay these fees based on our property characteristics, and therefore there are costs associated with providing water service to our customers, including wholesale customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-M, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**Q. Anders Testimony at Page 34, Lines 2 through 6.**

*Q. NOTWITHSTANDING THE COMMISSION'S DECISION IN DOCKET NO. 42857, IS THE REVENUE STABILITY RESERVE FUND A COST ASSOCIATED WITH THE PROVISION OF WATER SERVICE TO AW'S CUSTOMERS?*

*Yes. For this reason, AW has allocated the Revenue Stability Reserve Fund surcharge to all customer classes including wholesale customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously mentioned, Mr. Anders has established his expertise in financial services, COS development, development of revenue requirements for water and wastewater, as well as cost allocation and rate design. His expertise clearly encompasses ratemaking and the allocation of costs to different customer classes.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**R. Anders Testimony at Page 34, Lines 10 through 11.**

*Q. DOES THE REVENUE STABILITY RESERVE FUND BENEFIT AW'S WHOLESALE CUSTOMERS?*

*Appropriate levels of reserves are important to AW maintaining its current AA bond ratings.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously mentioned, Mr. Anders has established his expertise in financial services, COS development, development of revenue requirements for water and wastewater, as well as cost allocation and rate design. This expertise involves his expertise in interpreting and interaction between the Revenue Stability Reserve Fund, AW's cash reserves, and AW's bond ratings. His expertise also clearly involves the allocation of the costs of the Revenue Stability Reserve Fund to AW's customer classes. Therefore, Mr. Anders' expert opinion testimony is permissible, and Districts' objection should be overruled.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**S. Anders Testimony at Page 35, Lines 3 through 5.**

*Q. WHAT DO YOU CONCLUDE REGARDING THE REVENUE STABILITY RESERVE FUND?*

*The Revenue Stability Reserve Fund presents benefits to all of AW's customers, including its wholesale customers. A portion of these costs are reasonably and appropriately allocated to wholesale customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-R, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**T. Anders Testimony at Page 36, Lines 16 through 19.**

*Q. DOES THE RECLAIMED WATER SYSTEM BENEFIT AW'S WHOLESALE CUSTOMERS?*

*Yes. As described in the testimony above regarding the reclaimed water system capital and O&M expenses and in testimony of Steve Coonan, these costs go towards activities that benefit AW's wholesale customers. These additional administrative O&M costs similarly benefitted wholesale customers during the test year.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Sections II-A and II-K, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Additionally, Mr. Anders' references to Mr. Coonan's testimony does not render Mr. Anders' testimony as hearsay. Mr. Coonan's testimony is a statement made within this proceeding and his testimony is subject to Districts' challenges in their testimony and cross-examination. The Districts' objection on this point should be overruled.

**U. Anders Testimony at Page 37, Lines 3 through 5.**

*Q. WHAT DO YOU CONCLUDE REGARDING THE ALLOCATION OF O&M EXPENSES OF THE RECLAIMED WATER SYSTEM?*

*The reclaimed water system presents benefits to all of AW's customers, including its wholesale customers. A portion of these costs are reasonably and appropriately allocated to wholesale customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Sections II-A and II-K, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**V. Anders Testimony at Page 37, Line 21 through Page 38, Line 6.**

*Q. NOTWITHSTANDING THE COMMISSION'S DECISION IN DOCKET NO. 42857, IS THE GOVALLE PLANT STILL USED IN THE PROVISION OF WATER AND WASTEWATER SERVICE TO AW'S CUSTOMERS?*

*Since the decommissioning of the Govalle Plant, buildings located at the site are used by AW for various treatment support functions, emergency wastewater flow diversion, and for storage of treatment plant and infrastructure assets. The administrative and other buildings on the Govalle property are also used to provide training to AW's pipeline and treatment staff. This training includes classroom instruction, confined space training, respiratory training, and other*

*training needs. The clarification basins on the site provide emergency storage for wastewater influent headed toward the South Austin Regional Wastewater Treatment Plant. Govalle was used in these capacities during the test year presented in this case, and through the current time.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously mentioned, Mr. Anders has established his expertise in financial services, COS development, development of revenue requirements for water and wastewater, as well as cost allocation and rate design. This expertise involves assessing the usefulness and benefits of AW's water supply systems, as well as the allocation of costs to AW's customer classes. His testimony consists of permissible expert opinions regarding AW's water supply systems.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**W. Anders Testimony at Page 38, Lines 12 through 16.**

*Q. DOES THE UTILIZATION OF THE GOVALLE SITE BENEFIT AW'S WHOLESALE CUSTOMERS?*

*All customers benefit from the activities conducted at Govalle. The facilities' use as a training and backup effluent storage site provides benefits to the AW system as a whole. While it no longer treats wastewater, the site is not idle, and remains in use to provide service to AW's customers—a different use than before it was decommissioned, but an important use nonetheless.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-V, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely

on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**X. Anders Testimony at Page 38, Lines 18 through 19.**

*Q. WHAT DO YOU CONCLUDE REGARDING THE GOVALLE SITE?*

*As a facility that assists in AW’s provision of service to the Petitioners, its costs should be allocated to customers and recovered through rates as proposed in AW’s COS Study.*

The Districts object to Mr. Anders’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Section II-V, above.

Districts also object to this portion of Mr. Anders’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**Y. Anders Testimony at Page 39, Lines 7 through 9.**

*Q. HOW DOES AW PRESENT COSTS ASSOCIATED WITH THE BERL L. ILANDCOX, SR. WATER PLANT (FORMERLY WTP4)?*

*AW operates its water treatment and distribution system as an integrated system. The Handcox WTP provides reliable water service to our existing and future water customers, including our wholesale customers.*

The Districts object to Mr. Anders’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Section II-V, above.

Districts also object to this portion of Mr. Anders’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection

of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**Z. Anders Testimony at Page 39, Lines 16 through 19.**

*Q. NOTWITHSTANDING THE COMMISSION'S DECISION IN DOCKET NO. 42857, IS THE HANDCOX WTP USED IN THE PROVISION OF WATER SERVICE TO AW'S CUSTOMERS?*

*The Handcox WTP is a critical component of providing water service to all of AW's customers.... Since November 2014, the Handcox plant has continuously been used and useful to AW's water system.*

The Districts object to Mr. Anders’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Section II-V, above.

Districts also object to this portion of Mr. Anders’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**AA. Anders Testimony at Page 39, Lines 22 through 23.**

*Q. DOES THE UTILIZATION OF THE HANDCOX WTP BENEFIT AW'S WHOLESALE CUSTOMERS?*

*Yes, it does. The Handcox WTP benefits all AW water customers, including AW's wholesale customers.*

The Districts object to Mr. Anders’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Section II-V, above.

Districts also object to this portion of Mr. Anders’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**BB. Anders Testimony at Page 40, Lines 14 through 16.**

*Q. WHAT DO YOU CONCLUDE REGARDING THE COSTS FOR THE HANDCOX WTP?*

*The Handcox WTP costs benefit all customer classes including wholesale customers, and therefore a portion of the O&M and capital costs associated with the plant have been properly allocated to wholesale customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-V, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**CC. Anders Testimony at Page 41, Lines 1 through 3.**

*Q. PLEASE EXPLAIN AW'S USE OF GREEN CHOICE ELECTRICITY FROM AUSTIN ENERGY.*

*The City's decision for AW to purchase 100% renewable energy as part of the Climate Action Plan is a valid operating cost for AW. These efforts towards climate protection benefit all customer classes.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously mentioned, Mr. Anders has established his expertise in financial services, COS development, development of revenue requirements for water and wastewater, as well as cost allocation and rate design. This expertise involves knowledge of the City's Climate Action Plan, assessing the usefulness and benefits of Austin Water's various costs, and the allocation of costs to AW's customer classes. Mr. Anders is not making an expert opinion that requires expertise in environmental science. His opinion is based in his expertise of assessing the usefulness and benefits of one of Austin Water's many costs. He is merely giving his expert



opinion regarding ratemaking and cost allocation that this cost is one that applies generally to all of Austin Water's customer classes. Districts can challenge this conclusion through its testimony and through cross-examination.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**DD. Anders Testimony at Page 41, Lines 14 through 17.**

*Q. NOTWITHSTANDING THE COMMISSION'S DECISION IN DOCKET NO. 42857, ARE THE GREEN CHOICE ENERGY COSTS USED IN THE PROVISION OF WATER SERVICE TO AW'S CUSTOMERS?*

*Yes. Energy costs are a critical component of any water system operation. The use of 100% renewable energy is an important part of the City's Climate Action Plan. The efforts towards climate protection benefit all customer classes including wholesale customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-CC, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**EE. Anders Testimony at Page 42, Lines 3 through 6.**

*Q. WHAT DO YOU CONCLUDE REGARDING THE GREEN CHOICE ENERGY COSTS?*

*The cost of 100% renewable energy for AW operations benefits all customer classes and is a component of the City's Climate Action Plan. The reduced greenhouse gas emissions from using 100% renewable energy provides long-term benefits to AW's customers.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-CC, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**FF. Anders Testimony at Page 43, Lines 12 through 16.**

*Q. WHAT DO YOU CONCLUDE REGARDING THE GFT?*

*AW has decided to not include a GFT in its revenue requirement. AW does include a debt service coverage amount to ensure that all customer classes contribute sufficient revenue to achieve the appropriate DSC target. If AW's proposed revenue requirement is approved, the wholesale customers would not be responsible for a specific GFT amount, but only the amount sufficient to produce the appropriate level of DSC.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-D, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**GG. Anders Testimony at Page 43, Lines 21 through 23.**

*Q. DID AW INCLUDE ANY COSTS ASSOCIATED WITH DEPRECIATION WITHIN ITS WHOLESALE REVENUE REQUIREMENT PRESENTED IN THIS CASE?*

*Because AW is a municipal utility that uses the cash flow method and DSC method to quantify its revenue requirement, depreciation expense is not included in AW's rates.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section II-D, above.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**HH. Anders Testimony at Page 46, Lines 8 through 9.**

*Q. DID AW ENCOUNTER ANY DIFFICULTY IN USING THE COMMISSION'S RFP?*

*AW is a MOU that calculated its revenue requirement using methods that are permissible for MOUs.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously mentioned, Mr. Anders has established his expertise in financial services, COS development, development of revenue requirements for water and wastewater, as well as cost allocation and rate design. He has demonstrated that he is an expert in MOU ratemaking, and as such, Mr. Anders has a specialized understanding of Commission requirements and standards. In his expertise in MOU ratemaking, he is subject to and familiar with the permissible means for an MOU to establish revenue requirements.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**II. Anders Testimony at Page 47, Lines 13 through 14.**

*Q. DID AW ENCOUNTER ANY OTHER ISSUES IN USING THE IOU RFP FOR THIS CASE?*

*AW's chart of accounts provides a level of detail which is consistent with the NARUC system.*

The Districts object to Mr. Anders' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously mentioned, Mr. Anders has established his expertise in financial services, COS development, development of revenue requirements for water and wastewater, as well as cost allocation and rate design. His experience clearly encompasses a specialized understanding of Austin Water's chart of accounts for its accounting. His expertise in Austin Water's chart of accounts provides him with the expert ability to compare Austin Water's chart of accounts to other charts of accounts, such as the National Association of Regulatory Utility Commissioners (NARUC) chart of accounts. In this sense, Mr. Anders' testimony is permissible expert opinion testimony.

Alternatively, if Mr. Anders is not considered an expert on the NARUC system, his opinion is still permissible as lay witness testimony. His opinion is rationally based on his perception of the NARUC chart of accounts, compared to his expert understanding of Austin Water's chart of accounts. His opinion, based on his expertise on Austin Water's chart of accounts is helpful to a clear understanding of his testimony and to the determination of a fact in issue.

Districts also object to this portion of Mr. Anders' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**JJ. Attachment DAA-2 to Anders Testimony.**

Districts object to Attachment DAA-2 to Mr. Anders' testimony on the basis that Austin Water has failed to authenticate the exhibit as a public record. During the preparation of Austin Water's response to this objection, Austin Water discovered that the reference in Mr. Anders' testimony to Attachment DAA-2 incorrectly cited the resolution number. The testimony incorrectly cites to Resolution No. 291192170939 and mentions that the resolution is provided as Attachment DAA-2.<sup>25</sup> However, Austin Water mistakenly typed a "9" in instances where it should have typed a "0"; mistakenly typed "0" in instances where it should have typed "-", presumably because of the proximity of these keys to each other on a keyboard. The correct cite should be to Resolution No. 20110217-030. Especially due to the resolution numbering policy reflecting the year, month, and date, it is clear that the resolution was not passed in the year 2911.

Austin Water will amend this reference in Mr. Anders' testimony to reflect the correct resolution number in Attachment DAA-2 at the time Mr. Anders' testimony is offered into evidence. With this correction, Austin Water will have properly authenticated Attachment DAA-2 as an exhibit of which Mr. Anders has personal knowledge.

**III. RESPONSE TO DISTRICTS' OBJECTIONS TO AND  
MOTION TO STRIKE DIRECT TESTIMONY  
AND ATTACHMENTS OF JOSEPH H. GONZALES**

As Mr. Gonzales provided in his testimony in this proceeding, he has extensive expertise in various aspects of accounting and ratemaking.<sup>26</sup> He has over 20 years of finance and accounting experience, including 17 years of experience preparing and overseeing the preparation of various cost allocation plans, including water and wastewater cost of service allocation plans, support services cost allocation plans, and Office of Management Budget (OMB) A87 indirect cost allocation plans.<sup>27</sup> He explained his role at Austin Water as a Division

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<sup>25</sup> Anders Testimony at 12, lines 5-6.

<sup>26</sup> Direct Testimony of Joseph H. Gonzales at 4-6 (Gonzales Testimony).

<sup>27</sup> *Id.* at 4-5.

Manager over the Financial Management Division, including management oversight of financial planning, cost allocation, and rate setting processes for AW.<sup>28</sup> He also described his experience with the City of Cedar Park as the Assistant Director of Finance, which involved the management of Cedar Park's annual budget and financial reporting processes for all of Cedar Park's departments, including water, wastewater and solid waste utilities, as well as responsibility for all treasury activities.<sup>29</sup> He also served on the operating committee that manages Brushy Creek Regional Utility Authority water treatment plant.<sup>30</sup> Lastly, he described his experience and roles with the City of Austin Controller's Office.<sup>31</sup>

Mr. Gonzales also described his role at Austin Water as Financial Manager III, in which he manages the Rates and Charges group and the Financial Planning group within the Financial Management Division of AW.<sup>32</sup> In this role, he provides management oversight of financial planning, cost allocation, and rate setting processes for AW; he provides project management duties related to AW's COS update process; and he oversees the capital budgeting, debt management and long-term financial planning functions for AW. His expertise in everything related to AW's COS and AW's financing is easily shown from his extensive background and experience.

While Mr. Gonzales took the time to describe his extensive background in finance and ratemaking, he did not describe every fractional detail of what his experience covers. His testimony stems from his expert experience, and Districts' objections concerning his expert opinion should be overruled.

Subject to the "General Response to Districts' Objections" section, identified above, Austin Water provides the following response to Districts' specific objections.

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<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 5-6.

<sup>32</sup> *Id.* at 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 14.**

*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 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, lines 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 Mr. Gonzales' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled. Districts present a long list of objections to portions of Mr. Gonzales' testimony in an attempt to discredit his expertise and strike valuable



information from Austin Water's case to change its rates. However, Mr. Gonzales' expert testimony is centered on his expertise in the development of AW's COS, rates, cost allocation, and the revenue requirements of different rate classes. He is not providing an expert opinion regarding the development of underlying information, such that would require the expertise as an attorney, engineer, reclaimed water expert, or environmental scientist. In each of the portions of testimony to which Districts object, Mr. Gonzales has given his expert opinion on how a cost benefits a customer class and how the cost should be allocated based on who receives benefits. He is undoubtedly an expert regarding development of rates and cost allocation, as exemplified in his lengthy credentials. Therefore, his expert opinion testimony is permissible.

Additionally, Mr. Gonzales often references the testimony of AW experts David Anders, Steve Coonan, and Richard Giardina, which he reviewed and perceived in the development of his testimony.<sup>33</sup> As detailed in the "General Response to Districts' Objections" section, above, SOAH has acknowledged how a witness can testify to the importance of information, without being an expert on how the underlying information was developed. Even if Mr. Gonzales is not considered to be an expert on these subjects in order to give expert opinion testimony, his opinion is rationally based on his perception of AW's expert witness testimony, and it is helpful to clearly understand Mr. Gonzales' testimony and the determination of a fact in issue.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**B. Gonzales Testimony at Page 29, Lines 18 through 21.**

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

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<sup>33</sup> Anders Testimony at 28, lines 7-19.

*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.*

Districts object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. As previously mentioned, Mr. Gonzales has a broad range of experience and responsibilities in his role as Financial Manager III at Austin Water. In this role, Mr. Gonzales works closely with Austin Water's executive team. He described in his resume, how he provides financial advice to the utility's executive team.<sup>34</sup> He has first-hand knowledge of the executive team's recommendations and the basis for their recommendations, especially recommendations regarding financial matters. Mr. Gonzales' experience in working with Austin Water's executive team, their approval of cash financing targets, and the basis of this approval is all within Mr. Gonzales' expertise as Financial Manager III. His testimony does not consist of a statement made by the executive team, but an expert opinion, based on his expertise. Therefore, this portion of his testimony is not hearsay, and even if it were to be considered hearsay, it is permissible as an expert opinion.

The Districts' objection on this point should be overruled.

**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.*

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<sup>34</sup> Application of the City of Austin d/b/a Austin Water for Authority to Change Water and Wastewater Rates (Attachment JHG-1) at 126 (Apr. 15, 2019) (Application).

Districts object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Here, Districts claim that Mr. Gonzales cannot provide his testimony because he is not a member of the Executive Team, however, this has nothing to do with this portion of Mr. Gonzales' testimony. Mr. Gonzales makes no references to any statements made by the Executive Team that are outside of this proceeding in order to prove a valid hearsay objection. The Districts' objection on this point should be overruled.

**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 Mr. Gonzales' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously mentioned, Mr. Gonzales has established his expertise in financial services, COS development, development of revenue requirements for water and wastewater, cost allocation, and rate design. Mr. Gonzales' expertise necessitates familiarity with a variety of aspects of Austin Water's functions and departments. Mr. Gonzales's role with Austin Water encompasses knowledge of the Economic Development Department (EDD), and how costs associated with the EDD benefit different customer classes.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**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 Mr. Gonzales' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously discussed, Mr. Gonzales has a wide range of expertise covering financial services, COS development, development of revenue requirements for water and wastewater, cost allocation, and rate design. His expertise requires him to know the benefits of different costs in order to properly allocate those costs to different customer classes. While not specifically mentioned in Mr. Gonzales' testimony, he is an expert on communication and radio systems to the extent that he is familiar with the benefits they provide to customer classes.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely

on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above.

**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 Mr. Gonzales’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Section III-A, above.

Districts also object to this portion of Mr. Gonzales’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**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 MI 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 Mr. Gonzales’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Section III-A, above.

Districts also object to this portion of Mr. Gonzales’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. While Mr. Gonzales cites to

the “AWWA M1 Manual” in his testimony, the AWWA M1 Manual is a Learned Treatise, which is an exception to hearsay under TRE 803(18). Under TRE 803, statements from a Learned Treatise may be admitted when (1) it is relied upon by the expert on direct examination, and (2) the publication is established as a reliable authority by the expert’s admission or testimony, by another expert’s testimony, or by judicial notice.<sup>35</sup> The AWWA M1 Manual clearly fits the description of a Learned Treatise. There is nothing else that could be considered hearsay in the portion of Mr. Gonzales’ testimony objected to by Districts.

**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 Mr. Gonzales’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Section III-A, above.

Districts’ objection to this portion of Mr. Gonzales’ testimony is remarkably meritless. As previously discussed, Mr. Gonzales’ expertise in ratemaking has been exemplified in his description of his extensive background and experience in water and wastewater ratemaking and financing. This expertise clearly encompasses the information contained in this portion of his testimony.

Districts also object to this portion of Mr. Gonzales’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely

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<sup>35</sup> TRE 803(18).

on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**I. Gonzales Testimony at 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 Mr. Gonzales’ testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water’s response in Sections III-A, above.

While Mr. Gonzales cites to the Water Environment Federation (WEF) Financing and Charges for Wastewater Systems Manual in his testimony, this manual is a Learned Treatise, which is an exception to hearsay under TRE 803(18). Under TRE 803, statements from a Learned Treatise may be admitted when (1) it is relied upon by the expert on direct examination, and (2) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.<sup>36</sup> The WEF Financing Charges for Wastewater Systems Manual clearly fits the description of a Learned Treatise. There is nothing else that could be considered hearsay in the portion of Mr. Gonzales’ testimony objected to by Districts.

Districts also object to this portion of Mr. Gonzales’ testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

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<sup>36</sup> TRE 803(18).

**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 Mr. Gonzales' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Sections III-A, above.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. In addition, Mr. Gonzales is familiar with the models and was involved in the process to create them.

**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 Mr. Gonzales' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Sections III-A, above.



Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**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 Mr. Gonzales' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section III-A, above.

As previously discussed, Mr. Gonzales has a wide range of expertise in water and wastewater financial reporting including roles as Finance Director in Cedar Park, and Finance Manager III with Austin Water. By describing these roles in his testimony, Mr. Gonzales has demonstrated his expertise in municipal financing inside and outside of Austin. Districts' objection is baseless and should be overruled.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**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 Mr. Gonzales' testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously discussed, Mr. Gonzales has a wide range of expertise covering financial services, COS development, development of revenue requirements for water and wastewater, cost allocation, and rate design. While not specifically mentioned in his testimony, Mr. Gonzales' expertise has involved the interpretation of credit ratings. Therefore, his opinion is permissible expert testimony.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above.

**N. 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)

The Districts object to Mr. Gonzales' schedule as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously discussed, Mr. Gonzales has a wide range of expertise covering financial services, COS development, development of revenue requirements for water and wastewater,

cost allocation, and rate design. While not specifically mentioned in his testimony, Mr. Gonzales' expertise has involved interpreting rating agencies' determinations. He does not need to have worked for a rating agency to understand the factors which rating agencies take into consideration. His experience has qualified him to make the expert opinion expressed in his testimony. Therefore, Districts' objection should be overruled.

Even if Mr. Gonzales opinion is not considered expert testimony, his opinion could also be considered permissible lay witness testimony. Mr. Gonzales' opinion is rationally based on his perception of rating agencies' determinations, and his opinion is helpful to clearly understand his testimony and assist in determining a fact in issue.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Nothing in Mr. Gonzales' testimony can be considered a statement by a declarant outside of this proceeding.

**O. 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 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.

The Districts object to Mr. Gonzales' schedule as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Section III-A, above.

As previously discussed, Mr. Gonzales has a wide range of expertise covering financial services, COS development, development of revenue requirements for water and wastewater, cost allocation, and rate design. While not specifically mentioned in his testimony, Mr. Gonzales' expertise has involved expertise in understanding the benefits of various Austin Water programs, policies, and costs. He has clearly demonstrated his expertise in cost allocation and ratemaking. Schedule V-4(1), regarding unaccounted for water, is within his expertise. Therefore, this schedule is permissible expert testimony.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**P. 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 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.*

The Districts object to Mr. Gonzales' schedule as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. See Austin Water's response in Sections III-A and III-O, above.

While Schedule V-4 indicates that the Project Manager II is primarily responsible for collecting data for the audit, Mr. Gonzales's expertise and experience involved overseeing such information. His testimony described how he manages and oversees financial planning, cost allocation, and rate setting processes for AW.<sup>37</sup> He also explains how he is responsible for project management duties related to AW's COS update process and oversees capital budgeting, debt management and long-term financial planning functions for AW.<sup>38</sup> His expertise involves Austin Water's programs, including the information which Districts objected to in Schedule V-4.

Districts also object to this portion of Mr. Gonzales' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

#### **IV. RESPONSE TO DISTRICTS' OBJECTIONS TO AND MOTION TO STRIKE DIRECT TESTIMONY OF RICHARD D. GIARDINA**

In Mr. Giardina's Direct Testimony, he provided a description of his education and extensive background in finance and accounting. He received his Bachelor of Arts from Western State College with a major in Business Administration and minors in Accounting and Sociology.<sup>39</sup> He also described his position as a financial analyst with the State of Colorado Public Utilities Commission (CPUC).<sup>40</sup> Mr. Giardina even explained that his opinions are based on his experience in the completion of COS studies and analysis for water and wastewater utilities from across the United States, Canada, and Puerto Rico, including having served as the Project Director on AW's detailed 2008 and 2017 COS studies. He described his 40 years of experience of utility finance and rate design for local government and privately-owned water,

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<sup>37</sup> Gonzales Testimony at 6.

<sup>38</sup> *Id.*

<sup>39</sup> Direct Testimony of Richard D. Giardina at 4 (Giardina Testimony).

<sup>40</sup> *Id.*

wastewater, stormwater, solid waste, electric, natural gas, and telecommunications utility operations.<sup>41</sup> He is a Certified Public Accountant licensed and registered in Colorado and has worked for Raftelis since 2013. Mr. Giardina continues to explain his extensive credentials, experience, and membership in professional organizations that span several pages of his testimony.<sup>42</sup>

Austin Water intends to present Mr. Giardina's testimony as expert testimony in this proceeding. As such, he is able to rely on information that is otherwise inadmissible in the formation of his expert opinions when experts in his field would reasonably rely on the facts and data in forming an opinion on the subject.

**A. Giardina Testimony at Page 10, Lines 4 through 5.**

*Q. PLEASE DESCRIBE THE COS STUDY AND THE SERVICES PROVIDED BY RAFTELIS.*

*AW leadership discussed each of the issues internally and made the final decisions.*

Districts object to this portion of Mr. Giardina' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**B. Giardina Testimony at Page 17, Lines 9 through 12.**

*Q. CAN YOU DESCRIBE THE DIFFERENCE BETWEEN THE CASH VERSUS UTILITY APPROACH TO DETERMINING REVENUE REQUIREMENTS?*

*The AW Executive Team recommended the determination of revenue requirements based on the cash basis methodology for both inside city and outside city retail customers, as well as wholesale customers.*

Districts object to this portion of Mr. Giardina' testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 4-6.

on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**V. RESPONSE TO DISTRICTS’ OBJECTIONS TO AND  
MOTION TO STRIKE DIRECT TESTIMONY  
AND ATTACHMENTS OF DAN WILKERSON**

Mr. Wilkerson is qualified to present expert testimony on this matter; he has a long professional history of in the field of municipal utility operations and rate setting. As his testimony makes clear, Mr. Wilkerson worked for the City of Bryan, Texas since 1978 in various capacities, including as Director of Electric Utilities and General Manager, with authority over the generation, transmission and distribution, billings, and wholesale sales of electricity.<sup>43</sup> This responsibility also included rate design for the utility, and gauging the sufficiency of Bryan’s rates against bond covenants requirements for debt service coverage and the adequacy of Bryan’s revenues.<sup>44</sup> Mr. Wilkerson completed a cost of service study for Bryan’s electric, water, and wastewater services, implemented a new rate structure in accordance with that study and with Bryan City Council’s approval, and continued updating those rates until the 1990s when Bryan’s water and wastewater rates were placed under the Public Works Director.<sup>45</sup> Mr. Wilkerson has provided testimony and expert analysis in a variety of utility matters, including before the Commission, the Texas Commission on Environmental Quality, and state District Court.<sup>46</sup>

Subject to the “General Response to Districts’ Objections” section, above, Austin Water provides the following responses to Districts’ specific objections.

**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.*

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<sup>43</sup> Direct Testimony of Dan Wilkerson at 4 (Wilkerson Testimony).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*



The Districts object to this portion of Mr. Wilkerson's testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As explained above, Mr. Wilkerson will be offered as an expert on the matters to which he testifies. The Districts' objection does not contend with any of this background. In their brief justification for their objection, Districts offer no detail regarding what expertise they believe that Mr. Wilkerson would need to provide the testimony quoted above, or why his professional background and experience are insufficient. The only claim is that Mr. Wilkerson's testimony is beyond his personal knowledge, which is an unusual claim in the Commission context, as is much of Districts' motion. What does it mean for an individual, expert or not, to have "personal knowledge" of a utility's finances and DSC? The facts surrounding these issues are known by Mr. Wilkerson in the same manner as they would be known by the Districts' or Staff's witnesses, should Districts or Commission Staff elect to present testimony in this case. As an expert, Mr. Wilkerson is permitted to provide testimony based on sources that would otherwise be considered hearsay. And, in any event, as SOAH Order No. 12 in Docket No. 38339 makes clear, even if Mr. Wilkerson is not an expert, the reasonableness of an item for recovery through utility rates is a question that a lay witness may resolve.<sup>47</sup> Perhaps Districts disagree with Mr. Wilkerson's testimony that the rates imposed in Docket No. 42857 were insufficient to recover AW's costs, including a reasonable debt service coverage level. If so, their recourse is to present competent and compelling testimony to the contrary, not to exclude qualified testimony from the record. The Districts' objection on this point should be overruled.

Districts also object to this portion of Mr. Wilkerson's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection

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<sup>47</sup> Docket No. 38339, SOAH Order No. 12.

of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**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.*

Districts again object on the grounds that these statements by Mr. Wilkerson are prohibited hearsay and not based on his personal knowledge of the matter. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above.

As detailed above, as an expert, Mr. Wilkerson is capable of drawing the conclusion that the Districts have not been contributing an appropriate DSC ratio through their wholesale rates, and that they have enjoyed a subsidy at the expense of other ratepayers on the AW system. Furthermore, the truth of this can be found through the simple mathematical calculation contained in Mr. Wilkerson’s Attachment DW-3, which demonstrates that each of the Districts pay less than a DSC ratio of 1.0 for water service, and less than AW’s target for wastewater service. Notably, the Districts make no objection to Mr. Wilkerson’s Attachment DW-3, or the analysis contained within it. Such an analysis is within his expertise gained through decades of management of Bryan’s utility system, including, for many years, its water utility. The testimony that the Districts now object to simply describes, in narrative form, the stark under-recovery that Attachment DW-3 demonstrates. The first two objected-to sentences are simply a narrative description of what Attachment DW-3 calculates. It is also not clear why the Districts object to Mr. Wilkerson’s statement about the Commission’s intent in setting rates at this level—it is a reasonable inference that the Commission did not intend to establish such a subsidy. If it is Districts view that this result was intended by the Commission in Docket No. 42857, they may test Mr. Wilkerson’s testimony through cross examination, or through

testimony of their own. Districts' objection to this portion of Mr. Wilkerson's testimony should be overruled.

**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.*

Districts also object to this portion of Mr. Wilkerson's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above.

Additionally, see response to Section V-B, above.

**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.*

Districts claim this statement is prohibited hearsay, and that Mr. Wilkerson provides no evidence of his personal knowledge of this matter. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above.

As previously noted, Mr. Wilkerson will be offered as an expert witness in this proceeding, and as such, he is permitted to testify regarding his opinion on the organization and operation of AW within the larger City of Austin organization. Mr. Wilkerson himself has managed the operations of a utility system, and therefore, has many years of direct experience in managing utility operations. This is his basis for concluding that shared support services contribute to economies of scale for AW. If Districts disagree with Mr. Wilkerson on this

point—if, for example, they believe that AW would be better served by not utilizing the support services of the City of Austin, and instead bearing the cost of individual functions specific to AW—they may explore that proposition at hearing, in their own testimony, or via briefing. But this is no grounds for striking Mr. Wilkerson’s testimony, and Districts’ objection should be overruled.

**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.*

In their objections to the above-quoted portions of Mr. Wilkerson’s testimony, Districts claim that Mr. Wilkerson is not an expert on DSC or utility rate design, and this opinion testimony is not based on his knowledge, skill, experience, training or education that would qualify him as an expert. They claim that, as such, this testimony is beyond Mr. Wilkerson’s personal perception, that it is impermissible on that ground, and that it is hearsay. Yet, while Districts’ objections speak of supposedly objectionable testimony regarding DSC, the quoted language is about the difficulty of operating a water utility. DSC is not mentioned in the objected-to language. Mr. Wilkerson instead speaks of providing utility service generally, a topic upon which he is well-qualified to provide expert testimony, as he worked in, and lead, utility operations in the City of Bryan for more than 30 years. His experience includes work within water, wastewater, and electric utilities, and he is a qualified expert in the matters addressed by this portion of his testimony. Districts’ objection is off-target, without merit, and should be overruled.

Districts also object to this portion of Mr. Wilkerson’s testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely

on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**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.*

See Austin Water’s response in Section V-E, above.

Districts also object to this portion of Mr. Wilkerson’s testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**G. Wilkerson Testimony at Page 10, Lines 15 through 16.**

*Q. HAS 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 these portions of Mr. Wilkerson’s testimony on the basis of relevance, and claim that they do not address a material fact in this matter—“namely water and wastewater.” The Districts’ objections appear to be boilerplate that do not contend with the specifics of Mr. Wilkerson’s testimony. One of the reasons that Mr. Wilkerson’s testimony looks to the Commission’s experience in setting wholesale electric transmission rates is that there is no precedent that parties can look to for this, AW’s follow-up wholesale rate review filed

pursuant to Texas Water Code (TWC) § 13.044(b). Notably, the Districts' objection does not describe what body of precedent that Mr. Wilkerson should have looked to, if not wholesale electric transmission rate setting. The Districts do not cite to any such prior precedent, either in their objection or in any other pleading in this case to date. As AW has noted before, "this is the first instance where a utility has filed for approval of rates following the filing of a challenge to its rates;"<sup>48</sup> therefore, no direct precedent exists. In contrast, the Commission has a full line of precedent addressing electric transmission rate setting for municipal utilities, and the establishment of regulated rates that are, in their fundamental principles, no different than regulated rates for water or wastewater services. In any event, the Districts' objections do not explain how or why ratemaking concepts in the electric industry are different from those in the water and wastewater arenas, and do not explain why Mr. Wilkerson's testimony is purportedly irrelevant, other than the superficial fact that Mr. Wilkerson points to the Commission's practices in setting transmission rates in this portion of his testimony. In its objection to Item "K," the Districts even go so far as to object to a portion of Mr. Wilkerson's testimony in which he explains the relevance of electric utility rate setting. Clearly, Districts disagree with Mr. Wilkerson, but that is not permissible grounds for striking these portions of his testimony. For these reasons, Districts' objections to the quoted portions of Mr. Wilkerson's testimony should be denied.

**H. Wilkerson Testimony at Page 10, Lines 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.*

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<sup>48</sup> Application at 2.

See Austin Water's response in Section V-E, above.

**I. Wilkerson Testimony at Page 11, Lines 5 through 9.**

*Q. IS 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.*

See Austin Water's response in Section V-E, above.

**J. Wilkerson Testimony at Page 11, Lines 11 through 15.**

*Q. IS 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.*

See Austin Water's response in Section V-E, above.

**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.*

See Austin Water's response in Section V-E, above.

**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.*

In attacking this testimony, Districts state that it is impermissible opinion testimony and that Mr. Wilkerson is not an expert in DSC or rate design, and that it is prohibited hearsay. At the outset, as is the case with the Districts' other objections to Mr. Wilkerson's testimony on DSC issues, it is not clear why the Districts would permit Mr. Wilkerson to present his

Attachment DW-3—which calculates that the Districts did not provide an equitable portion of DSC for water or wastewater service—but not allow him to restate the Attachment’s conclusion in narrative form, as he has done here. Their position on this issue is inconsistent and illogical, and should be rejected on that basis alone. Even so, as detailed previously in this Response, Mr. Wilkerson will be presented as an expert qualified to make these statements, based on this decades of experience managing a municipal utility and overseeing rate setting for that utility.

Districts also object to this portion of Mr. Wilkerson’s testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. The Districts’ objection on this point should be overruled.

**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.*

In another poorly framed and misdirected objection, the Districts complain that Mr. Wilkerson’s testimony assumes facts not in evidence, is irrelevant, and is more prejudicial than probative. AW notes that the Districts’ objection seeks to strike a portion of Mr. Wilkerson’s testimony that is not actually an entire sentence; the full sentence begins with “[s]ince the Order on Rehearing in Docket No. 42857 was put into effect.” and then proceeds with “the wholesale water and wastewater....” The omitted material at the outset of that sentence demonstrates how meritless this objection is. It is undisputed, and a matter of public record, that in Docket No. 42857 the Commission denied AW’s proposal to recover a general fund transfer as a component of its rates charges to the wholesale customers who are now at



issue in this case.<sup>49</sup> This sentence simply recites that fact. Accordingly, Districts' objection on this point should be overruled.

**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.*

Districts object that this testimony assumes facts not in evidence, and therefore, presents an irrelevant opinion; the Districts also characterize this testimony as “what might have happened,” and is more prejudicial than probative. They tar Mr. Wilkerson’s discussion as relating to “theoretical changes to the debt service coverage” given certain circumstances. The Districts are wrong on this point. First, there is no “evidence,” in the sense of an evidentiary record, at this point in the proceeding. The record will not be complete and closed until the conclusion of the hearing. Furthermore, Mr. Wilkerson’s testimony lays the foundation for the objected-to language in the prior question-and-answer, in which he points to his Attachment DW-3 (which Districts do not object to) as the basis for testimony that the wholesale customers at issue in this case did not contribute even a 1.0 debt service coverage for water service, and less than AW’s targeted ratio for wastewater service. The language that Districts now object to simply discusses the meaning of that conclusion. It is not hypothetical, nor is it theoretical—that conclusion is based on actual data for the adjusted 2018 test year, as his testimony makes clear on page 13, lines 3-12. Mr. Wilkerson’s testimony states only that a DSC ratio for the wholesale customers at issue in this case that is so much lower than the system average means that those wholesale customers are enjoying a subsidy. Districts are free to challenge that conclusion on the merits—though it is difficult to see how, since it is simply a mathematical outcome of Attachment DW-3—but striking Mr. Wilkerson’s testimony as they now request is inappropriate.

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<sup>49</sup> Docket No. 42857, Finding of Fact No. 52 (Jan. 14, 2016).

**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.*

The Districts claim that the testimony assumes facts not in evidence and that his opinion is irrelevant, and should be excluded as an “exploration of theoretical changes” to AW’s DSC levels. This is factually wrong. Mr. Wilkerson’s testimony in the objected-to language is not theoretical; it explores the implications of a computation contained in Attachment DW-3, to which the Districts did not object. That analysis is based on an adjusted 2018 test year. It is based on actual, historical data—it is not a theoretical or hypothetical exercise. As in previous objections, to claim that the testimony “assumes facts not in evidence” at this point in the proceeding sheds no light—since there is not an evidentiary record at this time, all testimony (including Districts’ own) contains facts that are not yet in the evidentiary record. As is the case for their other objections, Districts’ objections to this portion of Mr. Wilkerson’s testimony should be denied.

**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.*

See Austin Water’s response in Section V-O, above.

**Q. Wilkerson Testimony at Page 17, Lines 1 through 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.*

Districts argue that because AW does not seek approval of a General Fund Transfer (GFT) in this proceeding, this portion of Mr. Wilkerson's testimony is irrelevant and should be stricken. The relevant language is a discussion of the Texas Water Commission's treatment of GFTs in previous rulings. The objected-to discussion follows two previous pages of discussion of policy and precedent on utility transfers—includes GFTs—that the Districts did not object to. Given the prominence of the GFT issue in the last proceeding, and the fact that this case is a follow-up to that proceeding, the discussion is appropriate and helpful to the Commission's consideration of the large context of AW's water and wastewater rates. For these reasons, the Districts' objection on this point should be overruled.

**R. Wilkerson Testimony at Page 18, Lines 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.*

Districts object to this portion of Mr. Wilkerson's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Also regarding Districts' hearsay objection, see Austin Water's response in Sections V-A and V-B, above.

The Districts claim that this portion of Mr. Wilkerson's testimony is irrelevant, and does not relate to a material fact in this matter, namely the DSC targets in Bryan. The Districts are wrong. Mr. Wilkerson is relying on his expertise to compare Austin Water's DSC ratio to other cities' DSC ratios to show the reasonableness of Austin Water's target DSC ratio of 1.85. The relevance of this comparison is obvious from the wording of Mr. Wilkerson's testimony. Therefore, Districts' objection on this point should be overruled.

**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.*

Districts object to this portion of Mr. Wilkerson's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Also regarding Districts' hearsay objection, see Austin Water's response in Sections V-A and V-B, above.

**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.*

Districts object to this portion of Mr. Wilkerson's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Also regarding Districts' hearsay objection, see Austin Water's response in Sections V-A and V-B, above.

**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.*

Districts object to this portion of Mr. Wilkerson's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Also regarding Districts' hearsay objection, see Austin Water's response in Sections V-A and V-B, above.

The Districts claim that the testimony assumes facts not in evidence and that his opinion is irrelevant, and should be excluded as an "exploration of theoretical changes" to AW's DSC levels. See Austin Water's response in Section V-O, above.

**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 insure 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.*

Districts object to this portion of Mr. Wilkerson's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Also regarding Districts' hearsay objection, see Austin Water's response in Sections V-A and V-B, above.

The Districts also object to Mr. Wilkerson's testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

Regarding Districts' objections that Mr. Wilkerson's testimony is prohibited opinion testimony, see Austin Water's response in Section V-A, above.

## **VI. RESPONSE TO DISTRICTS' OBJECTIONS TO AND MOTION TO STRIKE DIRECT TESTIMONY AND ATTACHMENTS OF DENNIS P. WALEY**

Many of Districts' objections to Mr. Waley's testimony claim that he is not an expert on the subject which he testifies. Mr. Waley described his educational background and professional experience at the onset of his testimony. He described how he currently serves as Managing Director of PFM Financial Advisors, LLC (PFM), earned his Bachelor of Business Administration in finance from the University of Texas at Austin, and he is a certified Public Accountant and a registered Municipal Advisor Representative (Series 50 licensed).<sup>50</sup> He described how prior to joining PFM, he worked for the City for over twenty years and served as City Treasurer for the last eight years of his tenure.<sup>51</sup> Finally, he described how he has over

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<sup>50</sup> Direct Testimony of Dennis P. Waley at 3 (Waley Testimony).

<sup>51</sup> *Id.*

30 years' experience in public finance and has worked as financial advisor on the issuance of over \$20 billion in debt obligations.<sup>52</sup> While Mr. Waley took the time to describe his extensive background in public finance, he did not describe every minute detail of what his experience covers. His testimony stems from his expert experience, and Districts' objections concerning his expert opinion should be overruled.

Subject to the "General Response to Districts' Objections" section, above, Austin Water provides the following responses to Districts' specific objections.

**A. Waley Testimony at Page 5, Lines 15 through 19.**

*Q. HOW CAN FISCAL HEALTH BE MEASURED?*

*Financially strong utilities are more likely to increase rates incrementally as necessary over time, whereas weak utilities may resist raising rates until very large increases are needed to maintain solvency. AW has, over the past few years, undertaken the prudent approach of setting financial targets and incrementally increasing rates to achieve strong financial metrics.*

The Districts object to Mr. Waley's testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. The Districts' objection is without merit, and should be overruled.

As previously discussed, Mr. Waley has a wide range of expertise covering public finance. His testimony regarding Austin Water's financial metrics is well within his expertise. Therefore, this portion of his testimony is permissible expert opinion.

Districts also object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**B. Waley Testimony at Page 6, Line 18 and Lines 23 through 24.**

*Q. WHAT WOULD THE CONSEQUENCES BE TO AW OF A CREDIT DOWNGRADE?*

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<sup>52</sup> *Id.* at 3-4.

*The consequences would be harmful to AW and its customers... For these reasons, AW has established financial metrics at certain targeted levels to support its credit ratings.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Additionally, Mr. Waley's extensive expertise in public finance has provided him with an expert understanding of the consequences of a city's financial actions.

**C. Waley Testimony at Page 7, Lines 3 through 9.**

*Q. WHY DID AW ADOPT POLICIES AND TARGETS TO SUPPORT ITS CREDIT RATING?*

*AW's policies to maintain financial metrics at certain target levels were first implemented during a period of relative financial distress. In 2012, AW was facing decreased revenues due to a severe drought. Over this period, revenues decreased enough that AW's financial metrics were not in line with its highly rated peers. This set of factors put AW's creditworthiness at risk. Management worked to create a set of rate increases that, over time, restored financial health to the utility. Maintaining this financial health over time is the best way to keep capital costs low.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Additionally, Districts' objection has not been narrowly tailored to the single sentence in this portion of his testimony to which they claim a hearsay objection.

**D. Waley Testimony at Page 7, Lines 13 through 15.**

*Q. WHAT ARE THE BENEFITS OF AW MANAGEMENT'S APPROACH SINCE THAT TIME?*

*The use of incremental rate adjustments supported by COS analyses indicating a need for those adjustments is a prudent course, and avoids ratepayer shock due to large rate adjustments.*



Districts also object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**E. Waley Testimony at Page 8, Lines 12 through 16.**

*Q. HOW DO THE RATING AGENCIES VIEW DEBT SERVICE COVERAGE?*

*Two metrics targeted in AW's financial policies are based on factors that are important to credit rating agencies. Although many factors contribute to the final credit rating, the rating agencies place emphasis on the debt service coverage ratio, as well as the level of reserves (commonly measured as days-cash-on-hand) when evaluating the financial strength of a utility.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. As previously discussed, Mr. Waley has a wide range of expertise covering public finance. His testimony regarding how rating agencies view DSC is well within his expertise. He does not have to experience what rating agencies' actually discuss or think, in order to apply his expertise and analyze rating agencies actions. Over the course of his career, he has had to interpret credit ratings, and which factors affect those credit ratings. Therefore, this portion of his testimony is permissible expert opinion.

There are no out of court statements included in this portion of Mr. Waley's testimony. This portion of Mr. Waley's testimony consists only of his statements in this proceeding, which constitute his expert opinion.

**F. Waley Testimony at Page 8, Line 19 through Page 9, Line 6.**

*Q. IS DEBT SERVICE COVERAGE A KEY METRIC USED BY THE RATINGS AGENCIES?*

*It is an important data point that each ratings agency considers in arriving at a credit rating... The debt service coverage metric provides an indication of a utility's ability to pay its obligations as well as overall financial flexibility. Additionally, investors and rating agencies evaluate the trend of this ratio over time to determine changes in the financial health of a utility system.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Additionally, see response to Section VI-E, above.

**G. Waley Testimony at Page 10, Lines 7 through 9, and Line 15.**

*Q. HOW HAS AW'S CREDIT RATINGS CHANGED IN RECENT YEARS?*

*As shown above, in 2014–2015 AW's ratings from Fitch and Moody's were under pressure due to weak financial metrics caused by decreased revenues, which led to lower debt service coverage and reserve levels... As Days Cash on Hand and coverage increased, rating outlooks stabilized.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Additionally, see response to Section VI-E, above.

Similar to how Mr. Waley's extensive expertise in public finance allows him to interpret the actions by a rating agency, Mr. Waley has the expertise to interpret Austin Water's actions in order to give his expert opinion as to why Austin Water's rating changed. Therefore, this portion of his testimony is permissible expert opinion.

There are no out of court statements included in this portion of Mr. Waley's testimony. This portion of Mr. Waley's testimony consists only of his statements in this proceeding, which constitute his expert opinion.

**H. Waley Testimony at Page 11, Lines 3 through 8 and Line 12.**

*Q. HOW DID THE RATINGS AGENCIES VIEW THE DEBT SERVICE COVERAGE DECLINE OF 2014?*

*Unfavorably; as I describe above. This caused Moody's and Fitch to place AW's credit ratings on negative outlook... "The revision on Outlook to Negative from Stable on the water and wastewater bonds reflects the diminishing prospect of any material improvement in AWU's financial profile over the near term, due in part to ongoing drought conditions." ... AW's DSC improved from 2015 through 2017.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. Additionally, see response to Section VI-E, above, regarding hearsay.

Districts also make a convoluted objection to this portion of Mr. Waley's objection on the basis of relevance, claiming that the wording of the Fitch Ratings brings in irrelevant evidence, and further, that "[t]he testimony and exhibit offered do not relate to a material fact related to the question asked of Mr. Waley...."<sup>53</sup> Districts' objection is meritless and confusing. The question asked of Mr. Waley is "[h]ow did the rating agencies view the debt service coverage decline of 2014?"—to which he responded with a statement from Fitch Ratings regarding how they viewed the DSC decline of 2014. His answer is directly responsive to the question. Districts' objection is meritless, and should be overruled.

**I. Waley Testimony at Page 12, Lines 10 through 12.**

*Q. HAVE THE RATING AGENCIES PUBLISHED GUIDANCE ON DSC TRENDS FOR COMPARABLY-RATED ENTITIES AS AW?*

*None of these customers provide a level of debt service coverage meeting the rating agency targets. None of these customers provide even 1.0 DSC for water service.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above.

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<sup>53</sup> Districts' Objections to and Motion to Strike Testimony of Dennis Waley at 10.

The Districts also object to Mr. Waley's testimony as impermissible opinion testimony, given by someone not an expert, and not based on his personal knowledge. Please see Austin Water's response in Section VI-E, above. The Districts' objection is without merit, and should be overruled.

**J. Waley Testimony at Page 13, Lines 6 through 9.**

*Q. IF AW HAD ITS CREDIT RATINGS DOWNGRADED IN THE 2014–2015 TIMEFRAME, WHAT WOULD HAVE BEEN THE IMPACT ON AW AND ITS CUSTOMERS?*

*Had AW been downgraded by Fitch in 2015, it would have been the only major Texas city—among the top five most populous—with a utility system with a rating in the A category. Ratings in this lower category generally translate into higher interest rates and higher debt service costs that must be passed on to the ratepayers.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above.

Districts' hearsay objection is meritless. There are no out of court statements included in this portion of Mr. Waley's testimony. This portion of Mr. Waley's testimony consists only of his statements in this proceeding, which constitute his expert opinion.

Additionally, Districts object that this portion of Mr. Waley's testimony is irrelevant because it assumes facts not in evidence and confuses the issues. As previously explained, Mr. Waley has a wide range of expertise covering public finance. His testimony regarding how rating agencies view DSC is well within his expertise. He does not have to experience what rating agencies actually discuss or think, in order to apply his expertise and analyze rating agencies' actions. Over the course of his career, he has had to interpret credit ratings, and which factors affect those credit ratings. In this portion of his testimony, he has applied his expertise to explain the effects of lower ratings. This is not a theoretical change; he is merely applying his expertise on cause and effect. He is not confusing the issues, but is actually helping to explain

his argument of the significance of a downgrade in credit rating and the appropriateness of Austin Water's target DSC.<sup>54</sup>

**K. Waley Testimony at Page 13, Line 12 through Page 14, Line 1.**

*Q. IS THE POTENTIAL EFFECT OF A DOWNGRADE FROM "AA" TO "A" ON THE ABILITY OF AW TO OBTAIN DEBT FINANCING SIGNIFICANT?*

*Yes. Over the past five years, credit spreads for a twenty year bond between an "AA" rated and an "A" rated credit averaged 35 basis points. An additional 35 basis points in the interest rate would add \$7 million in interest costs to a \$100 million bond over twenty years... however, as interest rates increase, credit spreads tend to widen, and the cost of a credit rating downgrade could become more expensive.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. There are no statements outside of this proceeding that could be considered hearsay in this portion of Mr. Waley's testimony.

Additionally, Districts object that Mr. Waley is irrelevant because it assumes facts not in evidence and confuses the issues. Please see Austin Water's response in Section VI-J, above.

**L. Waley Testimony at Page 7, Lines 13 through 15.**

*Q. WHAT DOES THIS LEAD YOU TO CONCLUDE REGARDING AW'S DEBT SERVICE COVERAGE PRESENTED IN THIS CASE?*

*As I have discussed, debt service coverage is a critical factor upon which the agencies base their ratings.*

Districts object to this portion of Mr. Waley's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above.

Additionally, see Austin Water's response in Section VI-E, above.

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<sup>54</sup> Waley Testimony at 13-14.

Districts have misidentified the portion of Mr. Waley's testimony to which they object. This portion of Mr. Waley's testimony is from page 14, lines 14-15.

**VII. RESPONSE TO DISTRICTS' OBJECTIONS TO AND  
MOTION TO STRIKE DIRECT TESTIMONY  
AND ATTACHMENTS OF STEPHEN J. COONAN**

In his testimony, Mr. Coonan described his educational background, receiving a B.S. in Civil Engineering from the University of Missouri–Rolla.<sup>55</sup> He also described his expertise as an engineer, specializing in water resource planning and design and his role as a Principal with Alan Plummer Associates, Inc. (APAI).<sup>56</sup> He described his work history with Dannenbaum Engineering Corporation for seven years, and the Missouri Highway Department for two years.<sup>57</sup> Additionally, Mr. Coonan described how his work in water resources has been recognized in the industry: he was selected to serve on the Stakeholder Committee that helped write the original rules governing the use of reclaimed water in the State of Texas; he has been elected to numerous leadership roles in the Capital Area Chapter of the Water Environment Association of Texas (WEAT), culminating in his election as President in 2005; his leadership roles for WEAT at the State level, culminating in his election as President in 20015; and his current role as Senior Delegate for the State of Texas to the Water Environment Federation.<sup>58</sup> Accordingly, Austin Water intends to present Mr. Coonan's testimony as expert testimony in this proceeding.

While Districts have styled their objections to Mr. Coonan's testimony as including objections to his attachments, no such objections to attachments were included in this pleading.

Subject to the "General Response to Districts' Objections" section, above, Austin Water provides the following response to Districts' specific objections.

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<sup>55</sup> Direct Testimony of Stephen J. Coonan at 4 (Coonan Testimony).

<sup>56</sup> *Id.* at 3.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 4.

**A. Coonan Testimony at Page 9, Lines 11 through 15.**

*Q. IF THE CITY HAS A FIRM SUPPLY OF 325,000 ACRE-FEET PER YEAR AND ONLY DIVERTED 151,028 ACRE-FEET DURING FY 2018. WHY DOES AW CONTINUE TO PLAN FOR AND DEVELOP NEW WATER SUPPLIES?*

*The reductions were to be based off the consumption rates for the prior year, as opposed to contracted rates. The fact that the City had paid in advance for a firm supply of water did not protect it from the possibility of running low on water during the severe drought, thus emphasizing the value of developing its own, drought resistant supplies, such as reclaimed water.*

Districts object to this portion of Mr. Coonan's Testimony on the basis of relevance, claiming that his "exploration of theoretical droughts is clearly confusing the issues and is irrelevant in this proceeding."<sup>59</sup> This objection is meritless. Contained in the portion of Mr. Coonan's testimony to which Districts object, Mr. Coonan explains the relevance the City's preparation for unknown future weather: "[t]he fact that the City had paid in advance for a firm supply of water did not protect it from the possibility of running low on water during the severe drought, thus emphasizing the value of developing its own, drought resistant supplies, such as reclaimed water."<sup>60</sup> This is not a "theoretical drought," but an expert opinion, directly in response to the question "...why does AW continue to plan for and develop new water supplies?" Therefore, Districts' objection should be overruled.

**B. Coonan Testimony at Page 9, Lines 18 through 19.**

*Q. WOULD THE WHOLESALE CUSTOMERS HAVE BEEN AFFECTED BY THE PRO-RATA CURTAILMENT?*

*Yes, the wholesale customers would have been required to reduce their consumption by the same percentage as the City was required to reduce.*

Districts object that this testimony assumes facts not in evidence, and therefore, presents an irrelevant opinion; the Districts also characterize this testimony as "what might have happened," and is more prejudicial than probative. Districts claim that Mr. Coonan's "exploration of theoretical reductions in consumption is clearly confusing the issues and is

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<sup>59</sup> Districts' Objections to and Motion to Strike Testimony of Stephen Coonan at 6.

<sup>60</sup> Coonan Testimony at 9.

irrelevant in this proceeding.” This objection is meritless. Mr. Coonan’s testimony is clearly intended to describe why AW continues to plan for and develop new water supplies.

**C. Coonan Testimony at Page 9, Line 22 through Page 10 Line 7.**

*Q. HOW WAS AW GOING TO ACHIEVE THE REDUCTION IN WATER DEMANDS TO MATCH THE PROPOSED CURTAILMENT?*

*Fortunately, AW had proactively begun several programs to reduce water demands even before the drought began. AW intensified these efforts as the drought deepened. LCRA recognized that some of their firm customers, like AW, had already done a lot to conserve water, and that it was inappropriate for LCRA to require an equal reduction from those customers that had already invested in on-going water conservation or reuse while other customers might have done very little in these categories. As a result, the City was able to demonstrate that they had already reduced their demands during the referenced baseline year through conservation and reuse by 26,266 acre-feet per year. Based on this demonstration, Austin’s prorate curtailment was set at 6 percent by LCRA.*

Districts object to this portion of Mr. Coonan’s testimony on the basis of hearsay. Regarding the insufficiency of Districts’ hearsay objections and an expert witness’ ability to rely on information that would otherwise be considered hearsay, please see the “Hearsay” subsection of the “General Response to Districts’ Objections” section, above. As explained above, Austin Water intends to present Mr. Coonan as an expert in this proceeding. As such, he is able to rely on hearsay in the formation of his expert opinions when experts in his field would reasonably rely on the facts and data in forming an opinion on the subject. There are no out of court statements included in this portion of Mr. Coonan’s testimony. This portion of Mr. Coonan’s testimony consists only of his statements in this proceeding, which constitute his expert opinion.

**D. Coonan Testimony at Page 10, Lines 11 through 13.**

*Q. WOULD THE WHOLESALE CUSTOMERS HAVE BENEFITED FROM AUSTIN’S PROACTIVE DECISIONS TO REDUCE WATER CONSUMPTION?*

*Yes, the wholesale customers would have had to reduce their consumption by 6 percent as opposed to 20 percent because Austin had been proactive in their efforts to reduce water consumption through conservation and reuse.*

Districts object that this testimony assumes facts not in evidence, and therefore, presents an irrelevant opinion; the Districts also characterize this testimony as “what might have happened,” and is more prejudicial than probative. This portion of Mr. Coonan’s testimony is



simply describing how customers benefitted from AW's proactive decisions to reduce water consumption.

Districts also object to this portion of Mr. Coonan's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**E. Coonan Testimony at Page 10, Lines 16 through 18.**

*Q. IS THE WATER REUSE PROGRAM ONE OF THE WAYS AUSTIN REDUCED CONSUMPTION?*

*Yes. LCRA specifically identified reuse as one of the activities that could be credited, and the benefit of this activity was available to the wholesale customers even though they did not have direct access to the reuse water.*

Districts object that this testimony assumes facts not in evidence, and therefore, presents an irrelevant opinion; the Districts also characterize this testimony as "what might have happened," and is more prejudicial than probative. The Districts make no attempt to describe how this confuses the issues or is irrelevant to the proceeding. This testimony is important for the point of proving that the water reuse program can be partially credited for Austin Water's reduced consumption, and therefore, wholesale customers benefitted. This is relevant for the purpose of allocating costs to customer classes, and therefore, Districts' objection should be overruled.

Districts also object to this portion of Mr. Coonan's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**F. Coonan Testimony at Page 12, Lines 10 through 11.**

*Q. ARE THESE WATER SUPPLY PLANS REQUIRED TO INCLUDE WATER REUSE AS A COMPONENT?*

*In fact, the Regional Water Plans indicate that approximately 14 percent of the water needs in the State of Texas will be met by water reuse.*

Districts object to this portion of Mr. Coonan's testimony on the basis of relevance. Their explanation—that "[t]he fact that those plans contemplate consumption in 2070 or 50 years in the future is irrelevant to the matter at hand..."—fails to recognize other surrounding portions of Mr. Coonan's testimony, which lays the foundation. Mr. Coonan has explained that the 75<sup>th</sup> Legislature required that each regional water planning group consider reuse as an alternative water supply, and that while they are not required to adopt water reuse as a part of their regional water plan, each of the 16 Regional Water Planning Groups have done so.<sup>61</sup> All of this testimony, including the portion objected to by Districts helps prove that Austin Water's decision to develop its water reuse system is reasonable and necessary, which makes the objected-to portion of Mr. Coonans' testimony relevant. Therefore, Districts' objection should be overruled.

**G. Coonan Testimony at Page 13, Lines 4 through 5.**

*Q. HOW MUCH WATER IS AUSTIN CURRENTLY REUSING AND HOW MUCH DO THEY PLAN ON REUSING IN THE FUTURE?*

*The City intends to expand the use of reuse to as much as 54,600 acre-feet per year as detailed in AW's Water Forward Plan.*

Districts object to this portion of Mr. Coonan's testimony on the basis of relevance. Again, their explanation—that "[t]he fact that those plans contemplate consumption in 2115 or about 100 years in the future is irrelevant to the matter at hand..."—fails to recognize other surrounding portions of his testimony, which lays the foundation. Mr. Coonan has described how there is a benefit to Austin to develop its reuse system now as opposed to waiting until its demand is closer to the 325,000 acre-feet identified in the contract with Lower Colorado River Authority (LCRA).<sup>62</sup> All of this testimony, including the portion objected to by the Districts helps prove that Austin Water's decision to develop its water reuse system is reasonable and

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<sup>61</sup> *Id.* at 12.

<sup>62</sup> *Id.* at 13.

necessary, which makes the objected-to portion of Mr. Coonan’s testimony relevant. Therefore, Districts’ objection should be overruled.

**H. Coonan Testimony at Page 14, Lines 6 through 17.**

*Q. HOW DOES THE VOLUME OF WATER REUSE IN AUSTIN COMPARE TO THE USE OF WATER BY WHOLESALE WATER CUSTOMERS AND THE PETITIONERS IN THIS CASE?*

*Austin delivered approximately 2.5 billion gallons or 7,547 acre-feet of water to its wholesale customers during the 2018 test year. The following is a list of the four petitioners involved in this case along with their water use in the 2018 test year.*

- 1. North Austin MUD – 326.5 million gallons or 1,002 acre-feet*
- 2. Northtown MUD – 291.8 million gallons or 895 acre-feet*
- 3. WCID #10 827.4 million gallons or 2,539 acre-feet*
- 4. Wells Branch MUD – 481.3 million gallons or 1,477 acre-feet*

*The total water supplied to the four petitioners in this case was 5,913 acre-feet in the 2018 test year.*

*The 4,465 acre-feet of water supply conserved by AW through reuse represents 75 percent of the water used by the petitioners in this case and 59.2 percent of the total wholesale water demand of 7,547 acre-feet.*

Districts object to this portion of Mr. Coonan’s testimony on the basis of relevance, without providing any argument or basis for how this portion of the testimony is irrelevant. This portion of the testimony is relevant to this proceeding—as Mr. Coonan has explained in his testimony—because Austin Water has developed its reuse system for the benefit of all customers. By comparing the volume of reuse water in Austin, to the volume of water used by the Districts, Mr. Coonan explains on page 15 of his testimony that the wholesale customers receive a benefit from the reuse system: “[t]he City has chosen to incorporate reuse as a part of their overall water supply portfolio and the wholesale customers indirectly benefit from the reuse system as a result.”<sup>63</sup>

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<sup>63</sup> *Id.* at 15.

**I. Coonan Testimony at Page 14, Line 20.**

*Q. DO OTHER UTILITIES TRANSFER COSTS FROM THEIR REUSE SYSTEMS TO THEIR WATER FUND?*

*Yes, it is relatively common for this to happen.*

Districts also object to this portion of Mr. Coonan's testimony on the basis of hearsay. Regarding the insufficiency of Districts' hearsay objections and an expert witness' ability to rely on information that would otherwise be considered hearsay, please see the "Hearsay" subsection of the "General Response to Districts' Objections" section, above. The Districts' objection on this point should be overruled.

**VIII. RESPONSE TO DISTRICTS' OBJECTIONS TO AND  
MOTION TO STRIKE DIRECT TESTIMONY  
OF TAB R. URBANTKE**

In his testimony, Mr. Urbantke described his educational background and professional experience giving rise to his expertise in rate case expense recovery. He received his Bachelor of Arts degree in political science from Baylor University in 1998, and later received a Master of Public Policy and Administration and his Juris Doctor degrees from Baylor University and Baylor Law School in 2002.<sup>64</sup> He was admitted to the State Bar of Texas in 2002, and since then has been continuously licensed to practice law in Texas.<sup>65</sup> In his professional experience, he has practiced public utility and energy regulatory law, almost exclusively, for 17 years for three different law firms.<sup>66</sup> He has represented utilities in numerous proceedings before the Commission, municipal regulatory authorities, the Railroad Commission of Texas, and the Federal Energy Regulatory Commission.<sup>67</sup> He also described his experience handling rate case expense issues on behalf of utilities and many other major issues involved in a typical rate case.<sup>68</sup> Finally, he described his experience with in-house counsel and regulatory personnel to

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<sup>64</sup> Direct Testimony of Tab R. Urbantke at 4-5 (Urbantke Testimony).

<sup>65</sup> *Id.* at 5.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

coordinate efforts of outside counsel and in-house resources for rate and other regulatory matters.<sup>69</sup> Accordingly, Austin Water intends to introduce Mr. Urbantke's testimony as an expert in this proceeding.

Subject to the "General Response to Districts' Objections" section, above, Austin Water provides the following responses to Districts' specific objections.

**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 recover 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.*

Districts object that this testimony is irrelevant; the Districts claim that Mr. Urbantke is unfamiliar with water utility rate cases, that his testimony regarding inapplicable statutes is irrelevant, and that his "exploration of theoretical rules inapplicable to AW and this rate case" confuse the issues in this proceeding. This objection is meritless. TRE 401 provides that evidence is relevant if "(a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."<sup>70</sup> Mr. Urbantke's testimony has the tendency to make more probable the fact that Austin Water's rate case expenses are recoverable because they are reasonable and necessary, due to the absence of Commission guidance on the rate case expenses in this proceeding. This fact is of consequence in determining whether Austin Water's rate case expenses are recoverable and why.

Mr. Urbantke has to draw on other sections of Texas statutes and rules, because, as he testified, the "Commission substantive rules and Texas statutes do not currently speak to the specific factors that the City must address to recover its rate case expenses as a municipality

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<sup>69</sup> *Id.*

<sup>70</sup> TRE 401.

operating a municipal water utility.”<sup>71</sup> In the lines of his expert testimony immediately preceding the objected to portion, Mr. Urbantke explains how the City is entitled to reimbursement of rate case expenses incurred in connection with this rate case:

[t]he City filed this rate case under Texas Water Code (TWC) § 13.044 and under the Commission’s Order on Rehearing in the City’s last rate case in Docket No. 42857.<sup>72</sup> In the Order on Rehearing, the Commission recognized that it is a fundamental principle of ratemaking that regulated public utilities are entitled to rates that will allow them to collect total revenues equal to their cost of service.<sup>73</sup> The City, functioning as Austin Water, operates as a municipal water and sewer utility. Rate case expenses are part of a utility’s operating expenses and, therefore, the inclusion and recovery of reasonable rate case expenses as a part of the City’s operating expense is appropriate here. A utility must be allowed to recover its reasonable and necessary rate case expenses in order to recover its full and reasonable cost of doing business. This is true for investor-owned utilities and for municipal utilities like Austin Water.<sup>74</sup>

Mr. Urbantke later describes how this principle, along with several other provisions in the TWC, the Public Utility Regulatory Act (PURA), and related Commission rules—including the sections of the Commission rules and TWC which Districts cited in their objection—“support the general proposition that utilities and municipalities should be allowed to recover reasonable rate case expenses.”<sup>75</sup> These are not “theoretical rules” as Districts claim, they are relevant, real rules, which Mr. Urbantke is using to support his expert opinion that Austin Water should be allowed to recover reasonable rate case expenses.

All of this testimony tends to make the fact more probable that Austin Water’s recovery of rate case expenses in this proceeding are reasonable and necessary, and therefore, it is relevant.

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<sup>71</sup> Urbantke Testimony at 10-11.

<sup>72</sup> Docket No. 42857, Order on Rehearing (Jan. 14, 2016).

<sup>73</sup> *Id.* at 28 (citing *Suburban Util. Corp. v. Pub. Util. Comm’n.*, 652 S.W.2d 358, 362 (Tex. 1983); Tex. Water Code Ann. § 13.044 (providing in an appeal of its rates, a municipality must show its rates are reasonable and the Commission may set its rates in a reasonable manner)).

<sup>74</sup> Urbantke Testimony at 7-8.

<sup>75</sup> *Id.* at 9.

Finally, Austin Water intends to present Mr. Urbantke's testimony as expert testimony in this proceeding. As previously mentioned, under TRE 703 experts may base their opinion on evidence that is otherwise inadmissible. Districts' argument that Mr. Urbantke's testimony is irrelevant only goes toward the weight of Mr. Urbantke's opinion, and not towards its admissibility.

Therefore, this portion of Mr. Urbantke's testimony is relevant, and Districts' objections should be overruled.

**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.*

See Austin Water's response in VIII-A, above.

As explained in Section VIII-A, Mr. Urbantke's reference in his testimony to TWC § 13.084 is relevant to support the proposition that Austin Water should be allowed to recover reasonable rate case expenses. This testimony tends to make the fact more probable that Austin Water's recovery of rate case expenses in this proceeding are reasonable and necessary, and therefore, it is relevant. The portion of Mr. Urbantke's expert testimony to which Districts' object even spells out how this is relevant:

[t]he 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, and other reasonable costs. And, the utility must be allowed to recover these costs through rates.<sup>76</sup>

Mr. Urbantke continues to explain that this provision supports “the general proposition that utilities and municipalities should be allowed to recover reasonable rate case expenses.”<sup>77</sup>

Finally, Austin Water intends to present Mr. Urbantke’s testimony as expert testimony in this proceeding. As previously mentioned, under TRE 703 experts may base their opinion on evidence that is otherwise inadmissible. Districts’ argument that Mr. Urbantke’s testimony is irrelevant only goes toward the weight of Mr. Urbantke’s opinion, and not towards its admissibility.

Therefore, this portion of Mr. Urbantke’s testimony is relevant, and Districts’ objections should be overruled.

**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.*

See Austin Water’s response in Section VIII-A, above.

As explained in Section VIII-A, Mr. Urbantke’s reference in his testimony to PURA is relevant to support the proposition that Austin Water should be allowed to recover reasonable rate case expenses.

Finally, Austin Water intends to present Mr. Urbantke’s testimony as expert testimony in this proceeding. As previously mentioned, under TRE 703 experts may base their opinion on evidence that is otherwise inadmissible. Districts’ argument that Mr. Urbantke’s testimony is

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*



irrelevant only goes toward the weight of Mr. Urbantke's opinion, and not towards its admissibility.

Therefore, this portion of Mr. Urbantke's testimony is relevant, and Districts' objections should be overruled.

**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), include but are not limited to:*

- 1. the time and labor required;*
- 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.*

See Austin Water's response in Section VIII-A, above.

As explained in Section VIII-A, Mr. Urbantke's references in his testimony to the City of El Paso's electric rate case and the Commission's electric rules are relevant to support the proposition that Austin Water should be allowed to recover reasonable rate case expenses.

Finally, Austin Water intends to present Mr. Urbantke's testimony as expert testimony in this proceeding. As previously mentioned, under TRE 703 experts may base their opinion on evidence that is otherwise inadmissible. Districts' argument that Mr. Urbantke's testimony is irrelevant only goes toward the weight of Mr. Urbantke's opinion, and not towards its admissibility.

Therefore, this portion of Mr. Urbantke's testimony is relevant, and Districts' objections should be overruled.

**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.*

*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.*

See Austin Water's response in Sections VIII-A and VIII-D, above.

**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 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 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.*

See Austin Water's response in Sections VIII-A and VIII-D, above.

**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.*

See Austin Water's response in Sections VIII-A and VIII-D, above.

**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 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.*

See Austin Water's response in Sections VIII-A and VIII-D, above.

**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.

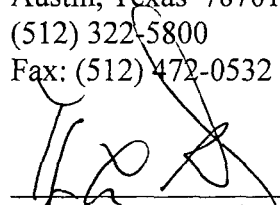
*Based on those factors that can be addressed at this point in the proceeding, the City's rate case expenses are reasonable under 16 TAC § 25.245(b). As noted above, this case is unusual and will require a substantial amount of time and effort on the part of the attorneys involved. The rates charged 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.*

See Austin Water's response in Sections VIII-A and VIII-D, above.

For the foregoing reasons, Austin Water respectfully requests that Districts' Objections and Motions to Strike be overruled, that Austin Water's testimony be admitted in its entirety, and that it be granted any other relief to which it may be entitled.

Respectfully submitted,

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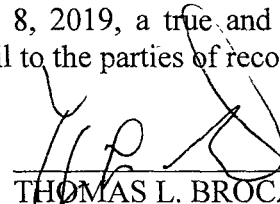
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ATTORNEYS FOR AUSTIN WATER

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2019, a true and correct copy of the foregoing document was transmitted by electronic mail to the parties of record.



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THOMAS L. BROCATO