



Control Number: 49225



Item Number: 75

Addendum StartPage: 0

SOAH DOCKET NO. 473-20-1554.WS
PUC DOCKET NO. 49225



PETITION BY OUTSIDE CITY
RATEPAYERS APPEALING THE
WATER AND WASTEWATER RATES
ESTABLISHED BY THE CITY OF
CELINA

§
§
§
§
§

PUBLIC UTILITY COMMISSION

OF TEXAS

**PETITIONERS' OBJECTIONS TO AND
MOTION TO STRIKE PORTIONS OF THE
DIRECT TESTIMONY AND ATTACHMENTS OF GEORGIA N. CRUMP**

TO THE HONORABLE JUDGES SIANO AND QUINN:

COME NOW, Petitioners who file their Objections to and Motion to Strike Portions of the Direct Testimony and Attachments of George N. Crump and, in support thereof, respectfully show as follows:

I. INTRODUCTION

The City of Celina ("City") pre-filed the Direct Testimony of Georgia N. Crump on March 17, 2020, pursuant to SOAH Order No. 2.¹ Order No. 2 also provides that objections to the City's Direct Testimony are due March 31, 2020; as such, Petitioners' Objections to and Motion to Strike are timely filed.

II. BASIS FOR OBJECTIONS

Rules 401 and 402 provide the basis for excluding irrelevant testimony. All testimony, including any testimony from an expert, must be relevant; otherwise, the testimony must be excluded. Rule 401 states that relevant evidence "has any tendency to make a fact more or less probable than it would be without the evidence; *and* the fact is of consequence in determining the action."² As stated in Rule 402, "*irrelevant evidence is not admissible.*"³

¹ See SOAH Order No. 2 Memorializing Prehearing Conference; Adopting Procedural Schedule; Notice of Hearing (January 29, 2020); *see also* the Direct Testimony of Georgia N. Crump on Behalf of the City of Celina (March 17, 2020).

² Tex. R. Civ. Evid. 401 (emphasis added).

³ Tex. R. Civ. Evid. 402 (emphasis added).

75

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

III. SPECIFIC OBJECTIONS TO DIRECT TESTIMONY

A. Crump Testimony at page 12 line 10 through page 13 line 22

Q. What is the effect of the second petition on the legal expenses of DTRG?

A. The Rate Appeal petition in Docket No. 49225 was filed by individual ratepayers residing in Collin County Municipal Utility District (MUD) No. 1, on February 14, 2019, appearing initially to be acting pro se. On March 13, 2019, the firm of Gilbert Wilburn, PLLC made an appearance for the ratepayers. On April 15, 2019, Collin County MUD No. 1 filed a separate petition in Docket No. 49448, appealing the same rates that are being appealed in Docket No. 49225. The same firm, Gilbert Wilburn, represents Collin County MUD No. 1 in Docket No. 49448. DTRG represents the City of Celina in both of these dockets. As part of my review to determine the relationship of these two dockets to each other and to determine whether the legal fees could, or should, be separated for each docket, I reviewed Petitioners’ Joint Motions to Consolidate, to Align Parties, and to Designate a Party Representative, filed in both dockets. In that pleading, the Joint Petitioners (ratepayers and Collin County MUD No. 1) requested that the two dockets be consolidated, based upon their statements that: (1) the rate appeals involve common issues of law or fact, involving the same rates and same ratemaking action taken by the City; (2) the ratepayers are all residents of the MUD; (3) the standard of review is the same and both involve the City’s cost of service; (4) consolidation would serve the interest of efficiency and prevent unwarranted expense and delay; (5) the parties and their legal representatives are all the same people; (6) the subject matter is identical; (7) consolidation would reduce rate case expenses for all parties; and (8) consolidation would avoid duplicate hearings.

The City opposed the consolidation, and the petition by the MUD was ultimately dismissed by the Commission on January 28, 2020. Prior to dismissal of the petition in Docket No. 49448, DTRG attorneys litigated that docket in tandem with the Rate Appeal brought by the ratepayers.

In my opinion, the facts that the same City action was the subject of both dockets, the petitioners in both dockets had the same legal counsel, and both dockets were proceeding simultaneously, argue for the City's recovery here of its rate case expenses attributable to its defense of Docket No. 49448, to the extent the expenses can even be separately identified. I have attempted to do that in consultation with DTRG personnel. It is my recommendation that all of the DTRG expenses be approved for recovery. To the extent the Commission disagrees, I have identified the amount of \$25,595 in legal fees that appear to be connected to filings and work performed for the defense of Docket No. 48448 only.

Petitioners object to the referenced testimony, because it is irrelevant under Rules 401 and 402. While Ms. Crump is correct that Docket No. 49225 and Docket No. 49448 share common characteristics – same City rates action and same legal counsel – and both cases preceded until Docket No. 49448 was dismissed, the similarities stop for purposes of rate case expenses.⁴

After Collin County Municipal Utility District No. 1 (the “District”) filed its petition appealing the City’s water and wastewater rates, the City responded with a Motion to Dismiss.⁵ The City’s Motion to Dismiss focused entirely on the statutory construction of Texas Water Code § 13.044(a) and its corresponding Title 16 of the Tex. Admin. Code (“TAC”) § 24.45. The City argued that the District lacked standing to appeal the City’s rates, since the consent agreement between the District and City prohibits the District from providing utility services to its residents.

Clearly, the Petitioners in this docket have appealed under TWC § 13.043(a) – a completely different statute. The discrete jurisdictional issues relating to the construction of TWC § 13.044(a) and standing have nothing to do with this docket.⁶ Therefore, neither the testimony about Docket No. 49448 legal fees nor the fees themselves are relevant to Petitioners’ appeal under TWC § 13.043(a), and the ALJs should strike the testimony and associated exhibits.

⁴ In order to “determine whether legal fees could, or should, be separated for each docket,” Ms. Crump notes that she reviewed only the Petitioners’ Joint Motions to Consolidate but references no other pleading like the substantive briefing on standing in Docket No. 49448.

⁵ See *Petition of Collin County Municipal Utility District No. 1 Appealing Water and Wastewater Rates of the City of Celina and Request for Interim Rates*, Docket No. 49448, Original Petition (Apr. 15, 2019); See *Petition of Collin County Municipal Utility District No. 1 Appealing Water and Wastewater Rates of the City of Celina and Request for Interim Rates*, Docket No. 49448, City of Celina’s Response to Petition of Collin County Municipal Utility District No. 1 and Motion to Dismiss (May 6, 2019).

⁶ In fact, the standing process under TWC § 13.043(c) whereby a petition must be signed by 10 % of ratepayers to perfect an appeal is completely different than the TWC § 13.044 inquiry.

Ultimately, it is not reasonable to include expenses, and pass those costs on to out-of-city ratepayers that relate solely with the District's issue related to the statutory construction of TWC § 13.044(a). The District's standing to appeal under TWC § 13.044(a) has nothing to do with the substantive rate issues at issue in this docket. Under Tex. R. Civ. Evid. 402, the ALJs should strike the aforementioned referenced portion of Ms. Crump's testimony due to its lack of relevancy to whether the City's rates are just, reasonable, and based upon the actual cost of service.

IV. OBJECTIONS TO ATTACHMENT B EXCERPTS TO CRUMP TESTIMONY

For the same reasons stated above, that Ms. Crump's testimony about legal fees incurred by the City to keep the District from appealing rates under an entirely different statutory scheme is irrelevant to this docket, the legal fees themselves are likewise irrelevant. Most Davidson Troilo Ream & Garza, P.C. ("DTRG") bills attached to Ms. Crump's Direct Testimony as Attachment B relating to Docket No. 49448, which the District filed on April 15, 2019, are listed as separate, easily identifiable entries.⁷ The ALJs should strike these bills as irrelevant to the issues germane to this docket as the bills represent time charged to Docket No. 49448 and not this matter.

In some but few instances, billing entries are general and do not indicate whether work performed was attributable to the District's or Petitioners' appeals. Conversely, the billing entry may indicate work for both dockets but does not include a specific breakdown of time attributed to each docket. In other cases, billing for photocopying, conference calls and computerized legal research does not indicate for which docket the work was performed. None of these vague areas are included in the attached Exhibit A, table of fees to be excluded, at this time.⁸ On the other hand, where courier charges could be linked to specific days where the City made a Commission filing in Docket No. 49448, those entries are included in Exhibit A.

Finally, although Docket No. 49448 involved mostly legal briefing, it is possible Willdan consultants assisted in these efforts. However, since all Willdan invoices included in Attachment

⁷ See Exhibit A, Inadmissible Rate Case Expenses Listed in Attachment B to the Direct Testimony of Georgia N. Crump, attached and incorporated herein.

⁸ Since the burden of proof is on the City to establish the reasonableness of rate case expenses, the City should be required to supplement and/or clarify its bills where vague and specify how much time is attributable to each docket. In the absence of this clarification, each vague entry should be excluded.

C to Ms. Crump’s testimony are non-specific, stating only billings for “research,” “support,” or “professional services,” these are not included in the attached Exhibit A. Like its other non-specific legal bills, the City should be required to detail specific work performed by Willdan. Without this level of detail, the City cannot meet its burden under 16 TAC § 24.44(b)(6) to provide evidence of “the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associate *with each issue*.”⁹

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Outside City Ratepayers of the City of Celina respectfully request that the Administrative Law Judges sustain Petitioners’ objections, enter an order excluding and striking the Direct Testimony and Attachments of Georgia N. Crump as requested above and grant such other relief to which Petitioners may be entitled.

⁹ 16 TAC § 24.44(b)(6) (emphasis added).

Respectfully submitted,



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

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

**ATTORNEYS FOR PETITIONERS, OUTSIDE
CITY RATEPAYERS OF CITY OF CELINA**

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via electronic mail to all parties on this the 31st day of March 2020.



John J. Carlton

EXHIBIT A

INADMISSIBLE RATE CASE EXPENSES LISTED IN ATTACHMENT B TO THE DIRECT TESTIMONY OF GEORGIA N. CRUMP

Date	Entry	T.K.	Hours	Amount
04/15/19	REVIEW AND REVISE RESPONSE TO PETITION.	PWL	1.00	\$350.00
04/17/19	REVIEW MUD PETITION GATHER AND REVIEW DOCUMENTS FROM 2004 REGARDING MUD SETTLEMENT. DRAFT AND SEND EMAIL TO S. SMYTH REGARDING SAME.	PWL	2.00	\$700.00
04/17/19	REVIEW NEW PETITION BY MUD #1 TO APPEAL WATER AND SEWER RATES. TELEPHONE CALL WITH P. LINDNER REGARDING LITIGATION STRATEGY. EMAIL TO CLIENT ON SAME (DOCKET #49448).	SJS	3.50	\$1,190.00
04/17/19	REVIEW PUCT ORDER NO. 1 IN MUD #1 PETITION MATTER (DOCKET #49448).	SJS	0.50	\$170.00
04/18/19	EXCHANGE EMAILS WITH S. SMYTH REGARDING PLEA TO JURISDICTION. PHONE CALLS REGARDING SAME.	PWL	1.00	\$350.00
04/19/19	PROVIDE ADDITIONAL INFORMATION AND SUGGESTIONS TO S. SMYTH REGARDING PLEA TO THE JURISDICTION ON MUD'S APPEAL.	PWL	1.00	\$350.00
04/19/19	RESEARCH STANDING OF MUNICIPAL UTILITY DISTRICT TO APPEAL WATER RATES, JURISDICTION OF PUCT (DOCKET #49448).	SJS	2.00	\$680.00
04/22/19	REVIEW EMAIL FROM S. SMYTH REGARDING MOTION TO DISMISS. DRAFT EMAIL IN RESPONSE TO SAME.	PWL	1.00	\$350.00
04/23/19	CONSULTATION WITH S. SMYTH REGARDING MOTION TO DISMISS.	PWL	0.50	\$175.00

EXHIBIT A

04/23/19	DRAFT MOTION TO DISMISS MUD PETITION FOR WANT OF JURISDICTION.	SJS	2.00	\$680.00
04/26/19	DRAFT MOTION TO DISMISS PORTION OF CITY'S REPOSE TO PETITION OF MUD.	SJS	0.50	\$170.00
04/29/19	REVIEW DRAFT MOTION TO DISMISS. COMMUNICATE WITH S. SMYTH REGARDING MOTION TO DISMISS AND TIMING TO FILE SAME. ¹⁰	PWL	2.00	\$700.00
04/29/19	REVIEW AND EDIT MOTION TO DISMISS.	BJJ	0.50	\$95.00
05/02/19	RESEARCH/DRAFT RESPONSE TO PETITION OF COLLIN COUNTY MUD #1 AND MOTION TO DISMISS (DOCKET #49448).	SJS	2.00	\$680.00
05/03/19	REVIEW DRAFT MOTION TO DISMISS. CONSULT WITH S. SMYTH REGARDING SAME.	PWL	1.00	\$350.00
05/03/19	RESEARCH/DRAFT RESPONSE TO PETITION OF COLLIN COUNTY MUD #1 AND MOTION TO DISMISS (DOCKET #49448).	SJS	2.00	\$680.00
05/06/19	REVIEW MOTION TO DISMISS FILED WITH PUCT.	PWL	0.50	\$175.00
05/06/19	DRAFT AND FILE RESPONSE TO PETITION OF COLLIN COUNTY MUD #1 AND MOTION TO DISMISS.	SJS	3.00	\$1,020.00
05/14/19	REVIEW PUCT STAFF MOTION FOR EXTENSION OF TIME. RESEARCH OPTIONS FOR RESPONSE (DOCKET NO. 49448).	SJS	0.50	\$170.00
05/15/19	REVIEW PLEADINGS REGARDING PUCT STAFF REQUEST FOR EXENTION OF TIME AND ORDER GRANTING MOTION IN DOCKET # 49448.	SJS	0.50	\$170.00

¹⁰ This entry includes time billed for both Docket Nos. 49225 and 49448 with no indication of how much time is specifically attributable to which docket.

EXHIBIT A

05/27/19	EMAIL WITH CLIENT. RESEARCH PUCT STAFF MOTION FOR EXTENSION OF TIME TO RESPOND TO CITY'S MOTION TO DISMISS (DOCKET # 49448).	SJS	0.50	\$170.00
05/28/19	REVIEW MUD RESPONSE TO MOTION TO DISMISS. EMAIL TO CLIENT (DOCKET # 49448).	SJS	1.50	\$510.00
05/22/19	MAGIC COURIERS, INC. SPECIAL MAIL/DELIVERY FEES 5/6/19.			\$25.00
06/18/19	REVIEW PUCT ORDER NO. 3. EMAIL TO CLIENT ON SAME (DOCKET #49448).	SJS	0.50	\$170.00
06/27/19	PHONE CALL AND EMAIL FROM SAWS' ATTORNEY REGARDING PRECEDENT BY MUD'S RATE CASE. RESEARCH AND FOLLOW-UP ON SAME.	PWL	1.00	\$350.00
07/03/19	PHONE CALL FROM J. FRIEDLAND REGARDING IMPACT OF CELINA APPEAL. COMMUNICATE WITH S. ROBINSON AND S. SMYTH REGARDING SAME.	PWL	1.00	\$350.00
09/27/19	REVIEW AND RESPOND TO EMAIL REGARDING DISMISSAL.	PWL	0.50	\$175.00
09/30/19	PHONE CALL FROM S. SMYTH. EMAIL AMICAE. GATHER DOCUMENTS REGARDING APPEAL OF DENIAL OF MOTION TO DISMISS.	PWL	2.00	\$700.00
09/30/19	REVIEW PUCT ORDER DENYING CITY'S MOTION TO DISMISS. RESEARCH APPEAL OPTIONS. CONFER WITH P. LINDNER ON SAME (DOCKET #49448).	SJS	4.50	\$1,530.00

EXHIBIT A

10/03/19	CONFER WITH COUNSEL FOR CITY OF SAN ANTONIO REGARDING POSSIBLE AMICUS BRIEF IN CELINA'S APPEAL OF MOTION TO DISMISS MUD'S PETITION.	SJS	0.50	\$170.00
10/06/19	REVIEW DRAFT APPEAL AND COMMUNICATE WITH S. SMYTH REGARDING SAME.	PWL	1.00	\$350.00
10/07/19	REVIEW AND RESPOND TO EMAILS REGARDING APPEAL OF DECISION.	PWL	1.00	\$350.00
10/07/19	RESEARCH. DRAFT APPEAL OF ORDER NO. 4 DENYING CITY'S MOTION TO DISMISS MUD PETITION (DOCKET #49448).	SJS	3.50	\$1,190.00
10/07/19	CONFER WITH COUNSEL FOR CITY OF SAN ANTONIO. REVIEW AMICUS BRIEF.	SJS	1.50	\$510.00
10/14/19	REVIEW PUCT ORDER NO. 5 REGARDING RESPONSES TO CITY'S APPEAL OF MUD PETITION (DOCKET #49448).	SJS	0.50	\$170.00
10/15/19	REVIEW ORDER. CONFERENCE WITH S. SMYTH REGARDING RESPONSE.	PWL	1.00	\$350.00
10/16/19	REVIEW RESPONSES OF MUD, PUCT STAFF AND CITY OF SAN ANTONIO (AMICUS) TO CITY'S APPEAL OF MUD PETITION. RESEARCH CITED LAW (DOCKET #49448).	SJS	3.50	\$1,190.00
10/24/19	RESEARCH LAW ON STANDING FOR DISTRICTS TO APPEAL CITY'S RATES UNDER TEXAS WATER CODE. CONFER WITH CO-COUNSEL ON SAME.	SJS	1.50	\$510.00
10/24/19	CONFER WITH COUNSEL FOR SAN ANTONIO REGARDING AMICUS BRIEF AND PUCT AGREEING TO HEAR CITY'S APPEAL OF ORDER DENYING MOTION TO DISMISS.	SJS	0.50	\$170.00

EXHIBIT A

10/25/19	CONFER WITH CLIENT, J. LAUMER REGARDING STATUS OF CASE, UPCOMING PUCT HEARING ON APPEAL.	SJS	0.50	\$170.00
10/29/19	RESEARCH LAW ON MUD STANDING, PUCT CASES REGARDING GRANTING MOTIONS TO DISMISS. PREPARE FOR PUCT OPEN MEETING ON APPEAL.	SJS	2.00	\$680.00
10/30/19	RESEARCH LAW ON MUD STANDING, PUCT CASES REGARDING GRANTING MOTIONS TO DISMISS. PREPARE FOR PUCT OPEN MEETING ON APPEAL.	SJS	2.00	\$680.00
10/31/19	RESEARCH LAW ON MUD STANDING, PUCT CASES REGARDING GRANTING MOTIONS TO DISMISS. PREPARE FOR PUCT OPEN MEETING ON APPEAL.	SJS	2.00	\$680.00
10/23/19	MAGIC COURIERS, INC. SPECIAL MAIL/DELIVERY FEES 10/11/19.			\$40.00
10/23/19	MAGIC COURIERS, INC. SPECIAL MAIL/DELIVERY FEES 10/7/19.			\$19.00
11/06/19	DRAFT REQUEST FOR ORAL ARGUMENT. CONFER WITH COUNSEL FOR AMICUS BRIEF AUTHOR.	SJS	0.50	\$170.00
11/07/19	PREPARE AND FILE CITY'S REQUEST FOR ORAL ARGUMENT IN ITS APPEAL OF ORDER NO. 4.	SJS	0.50	\$170.00
11/08/19	REVIEW EMAIL WITH ATTACHMENTS FROM S. SMYTH REGARDING ORAL ARGUMENT. RESEARCH REGARDING AUSTIN RATE CASE. SEND EMAIL TO S. SMYTH WITH ATTACHMENTS REGARDING DIFFERENCES BETWEEN AUSTIN AND CELINA SITUATION.	PWL	2.50	\$875.00

EXHIBIT A

11/10/19	RESEARCH LAW ON JURISDICTION OF MUDS UNDER PUCT LAWS. PREPARE FOR ORAL ARGUMENT ON APPEAL OF ORDER NO. 4.	SJS	2.00	\$680.00
11/12/19	PHONE CALL FROM S. SMYTH REGARDING PUC MEETING. ¹¹	PWL	0.50	\$175.00
11/13/19	PREPARE FOR ORAL ARGUMENT BEFORE PUCT COMMISSIONERS IN CITY'S APPEAL OF ORDER NO. 4 DENYING CITY'S MOTION TO DISMISS MUD'S PETITION AGAINST CITY'S WATER RATES.	SJS	3.00	\$1,020.00
11/14/19	RESPOND TO SUCCESSFUL DECISION BY PUCT.	PWL	1.00	\$350.00
11/14/19	PREPARE FOR, PRESENT ORAL ARGUMENT AND CONFER WITH CLIENT REGARDING CITY'S APPEAL OF PUCT ORDER NO. 4.	SJS	4.00	\$1,360.00
11/21/19	MAGIC COURIERS, INC. SPECIAL MAIL/DELIVERY FEES 11/7/19.			\$25.00
12/03/19	REVIEW PUCT ORDER OF DISMISSAL OF MUD CASE, RESEARCH NECESSITY OF FILING EXCEPTIONS TO ORDER.	SJS	1.00	\$340.00
12/06/19	DRAFT MOTION FOR REHEARING OF PUCT ORDER DISMISSING MUD PETITION.	SJS	1.00	\$340.00
01/07/20	REVIEW PUCT STAFF REPLY TO CITY'S MOTION FOR REHEARING (DOCKET #49448).	SJS	1.00	\$340.00
01/07/20	REVIEW COLLIN COUNTY MUD REPLY TO MOTION FOR REHEARING FILED BY CITY (DOCKET #49448).	SJS	0.50	\$170.00
01/09/20	COMMUNICATE WITH S. SMYTH REGARDING PUCT'S RECONSIDERATION OF PRIOR DECISION.	PWL	0.50	\$175.00

¹¹ Entry appears to be combined with discovery work performed in Docket No. 49225.

EXHIBIT A

01/09/20	REVIEW PUCT NOTICE TO HEAR CELINA'S MOTION FOR REHEARING. RESEARCH ERROR IN ORDER DISMISSING MUD'S PETITION (DOCKET #49448).	SJS	0.50	\$170.00
01/15/20	REVIEW PUCT CHAIRMAN MEMORANDUM AGREEING WITH CELINA'S MOTION FOR REHEARING (DOCKET #49448).	SJS	0.50	\$170.00
01/16/20	ATTEND PUCT OPEN MEETING ON MOTION FOR REHEARING ON DISMISSAL OF MUD PETITION (DOCKET #49448).	SJS	2.00	\$680.00
01/21/20	PHONE CALL FROM S. SMYTH REGARDING HEARING RESULTS.	PWL	0.50	\$175.00
02/07/20	PARKING EXPENSE TO ATTEND PUC OPEN MEETING DOCKET #49448.			\$10.00