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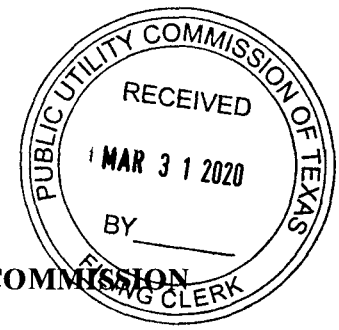

SOAH DOCKET NO. 473-20-1554.WS
PUC DOCKET NO. 49225

PETITION BY OUTSIDE CITY RATEPAYERS APPEALING THE WATER AND WASTEWATER RATES ESTABLISHED BY THE CITY OF CELINA	§ § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

OUTSIDE CITY RATEPAYERS' OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY AND ATTACHMENTS OF DAN V. JACKSON

TO THE HONORABLE JUDGES SIANO AND QUINN:

COME NOW, the Outside City Ratepayers of the City of Celina ("Petitioners") and file this Objections to and Motion to Strike Portions of the Direct Testimony and Attachments of Dan V. Jackson and, in support thereof, respectfully show as follows:

I. INTRODUCTION

The City of Celina ("City") pre-filed the Direct Testimony of Dan V. Jackson 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. PROCEDURAL BASIS

A. Expert Witness Testimony:

Rule 702 states: "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue."[2] The burden is on the proponent of the witness to show that they are

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

[2] Tex R. Civ. Evid. 702.

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an expert in their particular field.[3] A witness may qualify as an expert if they have the sufficient knowledge, skill, experience, training, or education.[4] However, generalized experience in a particular may not qualify the witness as an expert.[5] Occupational status alone generally will not suffice to show that a particular witness is qualified as an expert witness.[6]

In addition, the decisions of the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and the Texas Supreme Court in E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995) set forth the obligations of the courts to serve as gatekeepers with regard to expert testimony. Accordingly, to discharge its duties as the gatekeeper, a court must consider:

1. Helpfulness. The expert's witness' testimony must assist the trier of fact. The witness must have some specialized knowledge to assist the trier of fact in making his determination. If the fact finder is equally competent to determine an issue, the expert opinion will be struck. Honeycutt v. K-Mart, 24 S.W.3d 357 (Tex. 2000).

2. Qualification. The expert must be qualified to render such opinions; Rule 702 allows expert testimony providing the "witness (is) qualified as an expert by knowledge, skill, experience, training or education." The party offering such expert testimony has the burden to prove the expert witness is qualified. United Blood Servs. v. Longoria, 938 S.W.2d 29, 31 (Tex. 1997).

3. Relevance. The expert opinion must be relevant to be admissible. The events must "fit" the issue. The opinion must be "sufficiently tied to the facts of the case that it will aid the [fact-finder] in resolving a factual dispute." *Daubert*, at 591-92.

4. Reliable Technique or Principle. The Court in *Robinson* states that:

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

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

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

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

> In addition to being relevant, the underlying scientific technique or principle must be reliable. Scientific evidence which is not grounded "in the methods and procedures of science" is no more than "subjective belief or unsupported speculation." *Daubert*, 113 S. Ct. at 2795. Unreliable evidence is of no assistance to the trier of fact and is therefore inadmissible under Rule 702. [7]

Robinson adopted the six non-exclusive factors testified to in *Daubert* for determining whether the technique or principle is reliable. *Robinson,* 923 S.W.2d at 557. The analysis focuses solely on the underlying principles and methodology, not on the conclusions they generate. *Id.* at 559.[8]

5. Reliable Connection to Facts and Data. The expert must be able to connect the data and facts that form the foundation of the expert's analysis to the expert's conclusions. When the expert's analysis from facts to conclusions includes an unsupported assertion or assumption and the expert is unable to explain the connection, then the expert's opinion should not be admissible. In Re Paoli RR Yard PCB Litig., 35 F.3d 715, 719 (3rd Cir. 1994); General Motors Electric Co. v. Joiner, 522 U.S. 136 (1997).

6. Reliable Supporting Data and Facts. Expert opinion must be supported by an adequate foundation of relevant facts, data or evidence. Without an adequate foundation, the expert's opinion must be stricken because it is conjecture or speculation. The source of underlying data for an expert's opinion "must themselves be reliable." Workers' Compensation Commission v. Garcia, 862 S.W.2d 61, 105 (Tex. App.—San Antonio 1993) rev'd on other grounds 89 S.W.2d 504 (Tex. 1995). The court must analyze the evidence and data underlying the expert's opinion. "If an expert relies upon an unreliable foundational data any opinion drawn from that data is ...

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[7] E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 557 (Tex. 1995), citing Kelly v. State, 792 S.W.2d 579 (Tex. App.--Fort Worth 1990), *aff'd*, 824 S.W.2d 568, 572 (Tex. Crim. App. 1992).

[8] In Robinson, the Court concluded that, while there are many factors that a court may consider in making the threshold determination of admissibility under Rule 702, the factors must at least include:

1. The extent to which the theory has been or can be tested;

2. The extent to which the technique relies upon the subjective interpretation of the expert;

3. Whether the theory has been subjected to peer review and/or publication;

4. The technique's potential rate of error;

5. Whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and

6. The non-judicial uses which have been made of the theory or technique.

Robinson, 923 S.W.2d at 557.

inadmissible." Helena Chem. Co. v. Wilkins, 47 S.W.3d 486, 489 (Tex. 2001). The Texas Supreme Court has determined that an opinion is not admissible if there is no adequate foundation and the underlying facts are unreliable. The opinion must not be contrary to any disputed facts and the opinion must not be conclusionary. Instead, the expert must disclose the factual basis of the opinion when the opinion is challenged. Brown v. Eight Gates, 36 Hous. L. Rev. at 823-26.

7. Limited Reliance on Inadmissible Evidence. Rule 703 of the Texas Rules of Civil Procedure allows an expert to base an opinion upon facts and documentation not admissible into evidence if such facts and documentation are the type relied upon by other experts in the expert witness' field. The trial judge must determine (1) whether other experts in the field rely upon the facts or data and (2) whether such reliance is reasonable. Nevertheless, the trial court is not bound to accept expert testimony based on questionable data simply because other experts use such data in the field and the underlying data should be independently evaluated. Merrell Dow Pharmaceuticals v. Havner, 953 S.W.2d 706, 713 (Tex. 1997).

Furthermore, the party designating the expert as its witness has the responsibility to submit competent evidence that the expert should be allowed to express the opinion to the fact finder. United Blood Servs. v. Longoria, 938 S.W.2d 29, 31 (Tex. 1997).

B. Lay witness testimony:

In the absence of an individual qualifying as an expert in a particular subject area, Rule 701 governs the role of opinion testimony by lay witnesses and specifies that "if the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue."[9] The lay witness must have personal knowledge of the matter and may not rely on what another has said about an experience.[10] Rule 701 further bars speculative lay opinion testimony because the witness has no specialized knowledge or personal experience.[11]

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[9] Tex. R. Civ. Evid. 701.

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

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

C. Hearsay Inadmissible:

Irrespective of an individual's qualification as an expert (perhaps even relying on hearsay) or testimony as a lay witness, hearsay is generally inadmissible to prove the truth of the matter asserted. Rules 801 and 802 lay out the definition of hearsay and prohibit hearsay from admission as evidence. Rule 801 states:

> **"(a) Statement.** "Statement" means a person's oral or written verbal expression, or nonverbal conduct that a person intended as a substitute for verbal expression.
>
> **(b) Declarant.** "Declarant" means the person who made the statement.
>
> **(c) Matter Asserted.** "Matter asserted" means:
>
> > **(1)** any matter a declarant explicitly asserts; and
> >
> > **(2)** any matter implied by a statement, if the probative value of the statement as offered flows from the declarant's belief about the matter.
>
> **(d) Hearsay.** "Hearsay" means a statement that:
>
> > **(1)** the declarant does not make while testifying at the current trial or hearing; and
> >
> > **(2)** a party offers in evidence to prove the truth of the matter asserted in the statement.
>
> **(e) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:
>
> > **(1)** ***A Declarant-Witness's Prior Statement.*** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
> >
> > > **(A)** is inconsistent with the declarant's testimony and:
> > >
> > > > **(i)** when offered in a civil case, was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; or
> > > >
> > > > **(ii)** when offered in a criminal case, was given under penalty of perjury at a trial, hearing, or other proceeding—except a grand jury proceeding—or in a deposition;
> > >
> > > **(B)** is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
> > >
> > > **(C)** identifies a person as someone the declarant perceived earlier.
> >
> > **(2)** ***An Opposing Party's Statement.*** The statement is offered against an opposing party and:

> **(A)** was made by the party in an individual or representative capacity;
>
> **(B)** is one the party manifested that it adopted or believed to be true;
>
> **(C)** was made by a person whom the party authorized to make a statement on the subject;
>
> **(D)** was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
>
> **(E)** was made by the party's coconspirator during and in furtherance of the conspiracy."[12]

Rule 802, meanwhile, states: "Hearsay is not admissible unless any of the following provides otherwise: (a) a statute; (b) these rules; or (c) other rules prescribed under statutory authority. Inadmissible hearsay admitted without objection may not be denied probative value merely because it is hearsay."[13] Consequently, Petitioners must object to all hearsay statements.

D. Relevance:

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."[14] As stated in Rule 402, "***irrelevant evidence is not admissible.***"[15]

Additionally Rule 403 provides the basis for excluding otherwise relevant testimony, including expert opinion 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

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[12] Tex. R. Civ. Evid. 801.

[13] Tex. R. Civ. Evid. 802.

[14] Tex. R. Civ. Evid. 401 (emphasis added).

[15] Tex. R. Civ. Evid. 402 (emphasis added).

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. Jackson Testimony, Tables and Charts DVJ-ES1, DVJ-ES2, DVJ-ES3, DVJ-ES4, DVJ-ES5, DVJ-1 through DVJ-46 and Appendices B, I and K.

Petitioners object to the admission of all Tables and Charts referenced and the models attached as appendices in Mr. Jackson's testimony. Commission Procedural Rule 22.72(i) states:

> File format standards.
>
> (1) Electronic filings shall be made in accordance with the current list of preferred file formats available in Central Records and on the commission's World Wide Web site.
>
> (2) Electronic filings shall be made ***using the native file format*** used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the commission referenced in paragraph (1) of this subsection. ***Microsoft Excel spreadsheets shall have active links and formulas*** that were used to create and manipulate the data in the spreadsheet. An application that fails to include the native file filings is materially deficient.
>
> (3) Electronic filings that are submitted in a format other than that required by paragraph (1) of this subsection will not be accepted until after successful conversion of the file to a commission standard.

The tables and charts and appendices in Mr. Jackson's testimony do not comply with the Commission's rules for filing testimony because they do not include "native file formats used to create and edit the file" nor do they include "active links and formulas that were used to create and manipulate the data in the spreadsheet" as required for Microsoft Excel spreadsheets. The filings were simply PDF versions of those native files, which Petitioners are unable to evaluate for purposes of compiling specific objections related to the underlying linked files and formulae. Petitioners advised counsel for the City of this deficiency under the rules by email on March 20, 2020, 11 days ago. Counsel for the City responded on March 23, stating:

> With the size of the filing, and the Central Records office being overwhelmed, we have been having trouble getting things filed. Fortunately the Commission's Order

in Docket No. 50664 has suspended Chapter 22 to the extent it requires that filings be made in a certain amount of time (see attached).

We will continue to work on resolving these minor issues and will update you as we are able. **(See email chain attached as Exhibit A)**

To date, no compliant filing has been made by the City. Petitioners object to the admission of all Tables and Charts in Mr. Jackson's testimony for failure to comply with the Commission's rules.

B. Jackson Testimony at page 7, lines 5 asserting that his "testimony is largely based on the internationally-recognized rate model I adopted..." (*underlining added for emphasis*)

Petitioners object to the referenced testimony, because it is unreliable and unsubstantiated testimony that is inadmissible under Rule702. Mr. Jackson simply asserts that his own model is "internationally recognized," citing no concurring expert opinions and providing no evidence or facts to support his assertion. His statement is simply a bold and unqualified attempt to bolster his own opinions by asserting his model has been "internationally recognized." However, he provides no evidence to support his assertion. Mr. Jackson's model is exactly that, a simple Excel model. His Excel file has not been peer reviewed, and it has not been "internationally recognized" in any way. In fact, Mr. Jackson works very diligently to prevent any peer review of his Excel workbook, claiming that the development of his Excel file is somehow proprietary and a trade secret and alleging that reviewing consultants might somehow "steal" his secret calculations and work product.

C. Jackson Testimony at page 13, line 2 through page 15, line 5, Tables DVJ-ES3, DVJ-ES4 and DVJ-ES5, Column "Prior 2018"

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's total cost of service, revenues, and customer counts in 2018. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these costs, revenues and customer accounts. His testimony simply asserts these facts to be true without providing any underlying data to support the claim. In fact, Mr. Jackson's testimony is filled with these assertions of facts without any supporting evidence to show the reliability of the data or the connectivity of the data to Mr. Jackson's opinion testimony.

In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson.

The ALJ should strike Mr. Jackson's testimony asserting the costs, revenues, and customer accounts for 2018 as hearsay and unreliable. The testimony is also inadmissible as expert opinion testimony under Rule 702, because Mr. Jackson offers no evidence to support his assertion of these facts and data or show how the facts and data are reliable.

D. Jackson Testimony at page 16, line 11 through line 15

> ***Q. Please describe the City?***
>
> *A. ... As shown in its 2013 Comprehensive Plan, the City is forecast to grow in population by an annual rate of 27.5% between 2017 and 2020, and is expected to reach a total of approximately 48,000 by 2030. Celina maintains a well-deserved reputation as one of the fastest growing cities in Texas and the USA.*

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted. The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and demonstrate the data is reliable.

Petitioners also object to the testimony as not relevant under Rule 403. The City's projected growth is irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking may be a prospective activity, the proposed rates must be based on actual data adjusted for known and measurable changes. The City's projected growth is neither actual nor known and measurable. The ALJ should strike the testimony as irrelevant.

E. Jackson Testimony at page 17, line 2 through line 3, Table DVJ-1 (Historical and Forecast Population)

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted related to the City's population and its projected growth.

Petitioners also object to the testimony as not relevant under Rule 403. The City's projected growth is irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking may be a prospective activity, the proposed rates must be based on actual data adjusted for known and measurable changes. The City's projected growth is neither actual nor known and measurable. The ALJ should strike the testimony as irrelevant.

F. Jackson Testimony at page 18, line 1 through line 16

> ***Q. Can you describe the City's basic water and wastewater system characteristics?***
>
> *A. Mr. Jason Gray, former City Manager of Celina, provides a comprehensive description of the City's water and wastewater system in his testimony. His principal observations are:*
>
> *1) The City's outside customers include more than just the residents of Light Farms. While there are only a handful of such customers now, there are expected to be thousands more in the coming years as the City continues its remarkable growth.*
>
> *2) These customers are expected to be located in areas throughout the City's 31.9 mile ETJ, which rings the City of Celina.*
>
> *3) The City's entire water and wastewater systems are used and useful to providing service to Light Farms and the City's other current and forecast outside city customers.*
>
> *4) The City has assumed significant operational and financial risk designing the system as it currently exists for Light Farms and its other current and forecast new outside city customers.*

Petitioners object to the referenced testimony, because it is irrelevant to the amount of money that the City spent during the test year to provide service to Petitioners, the change in those expenditures for any known or measurable changes, or the metrics used to calculate Petitioners'

rates. The testimony is irrelevant to whether the City's rates are just, reasonable, and based on the cost of service. The question asked and the answer given about the areas that are likely to be developed outside of the City have absolutely nothing to do with the City's costs incurred during the test year used to develop the rates at issue or whether the rates to Petitioners were based on the actual cost of providing service to Petitioners. The problem with the testimony does not simply go to the weight that the ALJs may assign to the testimony. Tex. R. Civ. Evid. 402 requires the ALJs to strike this referenced portion of the testimony due to its lack of relevancy to whether the City's rates at the time the City Council adopted the rates are just, reasonable, and based upon the actual cost of service. Petitioners also object to the testimony as prohibited under Rule 403 as cumulative.

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted related to the City's population and its projected growth.

G. Jackson Testimony at page 18, line 33 through line 34

> ***Q. Please describe the City's utility system customer classes?***
>
> *A. ... The table shows that as of 2018, the City had 5,090 water accounts and 4,356 wastewater accounts.*

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted. The testimony is also inadmissible as expert opinion testimony under Rule 702, because Mr. Jackson offers no evidence to support his assertion of these facts and data and demonstrate the data is reliable.

H. Jackson Testimony at page 19, line 16 through line 17, Table DVJ-2 (Existing Customer Classses)

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted related to the City's customer classes and accounts. The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and to demonstrate the data is reliable.

I. Jackson Testimony at page 19, line 23 through page 20, line 1

Q. How many new water accounts does the City expect to acquire in the next decade?

A. ... The table reveals that the City is expected to have as many as 12,795 water accounts by FY 2027. That represents an increase of 151% over 2018 1 levels. Wastewater customers are expected to experience similar levels of growth. Once again the primary source for this forecast was the City's 2013 comprehensive plan.

Petitioners object to the referenced testimony, because it is irrelevant to the amount of money that the City spent during the test year to provide service to Petitioners, the change in those expenditures for any known or measurable changes, or the metrics used to calculate Petitioners' rates. The testimony is irrelevant to whether the City's rates are just, reasonable, and based on the cost of service. The question asked and the answer given about the how many new accounts will be acquired over the next decade have nothing to do with the City's costs incurred during the test year used to develop the rates at issue or whether the rates to Petitioners were based on the actual cost of providing service to Petitioners. The problem with the testimony does not simply go to the weight that the ALJs may assign to the testimony. Tex. R. Civ. Evid. 402 requires the ALJs to strike this referenced portion of the testimony due to its lack of relevancy to whether the City's rates are just, reasonable, and based upon the actual cost of service.

Petitioners also object to the testimony as not relevant under Rule 403. The City's projected growth is irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking may be a prospective activity, the proposed rates must be based on actual data adjusted for known and measurable changes. The City's projected growth is neither actual nor known and measurable. The ALJ should strike the testimony as irrelevant.

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted.

J. Jackson Testimony at page 21, line 2 through page 22, line 1, Table DVJ-3 (Forecast Total Customers)

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted related to the City's population, customer totals and its projected growth.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and to demonstrate the data is reliable.

Petitioners also object to the testimony as not relevant under Rule 403 to the extent it projects future population and customer totals. The City's projected customer growth is irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking may be a prospective activity, the proposed rates must be based on actual data adjusted for known and measurable changes. The City's projected customer growth is neither actual nor known and measurable. The ALJ should strike the testimony as irrelevant.

K. Jackson Testimony at page 24, line 6 through page 25, line 4, Table DVJ-5 (Forecast Billed Consumption) and Chart DVJ-6 (Historical and Forecast Water Consumption)

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted related to the City's historical volume for water customer classes.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and to demonstrate the data is reliable.

Petitioners also object to the testimony as not relevant under Rule 403 to the extent it projects future water customer class volumes. The City's projected growth is irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected growth in water volumes is neither actual nor known and measurable. The testimony should be stricken as irrelevant.

L. Jackson Testimony at page 32, line 17 through page 34, line 1, including Table DVJ-8 (Dallas-Fort Worth Outside City Rate Premiums)

> ***Q. Is the charging of higher rates for outside retail customers based on general multipliers common in the Collin-Denton County corridor of North Texas?***
>
> *A. Yes. My staff and I researched over fifty cities in the Dallas-Fort Worth area with regards to the rates charged for outside city service. The results of our analysis are presented in Table DVJ-8. Those cities that have significant numbers of outside customers all charge (with one exception) an outside city multiplier that ranges from 1.10 to as high as 2.56. Note that these multipliers are overwhelmingly general or rounded – the most common are 1.15, 1.25, 1.50 and 2.0.*
>
> *The City of Celina's 1.50 multiplier is approximately in the middle of the sample. Further, the 1.50 figure is used by many of Celina's immediate neighbors, including Frisco, Gunter, Princeton, The Colony and Van Alstyne. This illustrates that it is not only a common practice to use a 1.50 multiplier, but that it is commonly available knowledge to ratepayers in the Collin-Denton County corridor who plan to live outside a city limits that they will expect to pay higher water and wastewater rates at some general, rounded multiplier.*
>
> *The table also shows that many cities either do not have outside customers or have an extremely limited number. Either these cities do not bother with setting an outside city rate, or the number of customers will remain too small to create a separate rate class. One cannot conclude that these cities consider a multiplier to be inappropriate; just that there are either no outside customers or so few that in all likelihood they do not take the time to set a separate rate.*

Petitioners object to the referenced testimony, because it is irrelevant to the amount of money that the City spent during the test year to provide service to Petitioners, the change in those expenditures for any known or measurable changes, or the metrics used to calculate Petitioners' rates. The testimony is irrelevant to whether the City's rates are just, reasonable, and based on the cost of service. The question asked and the answer given about Dallas-Fort Worth area premiums have nothing to do with the City's costs incurred during the test year used to develop the rates at issue or whether the rates to Petitioners were based on the actual cost of providing service to Petitioners. The problem with the testimony does not simply go to the weight that the ALJs may assign to the testimony. Tex. R. Civ. Evid. 402 requires the ALJs to strike this referenced portion of the testimony due to its lack of relevancy to whether the City's rates are just, reasonable, and based upon the actual cost of service. Petitioners also object to the testimony as not relevant under Rule 403 because it attempts to justify the City's rates based upon a comparison to the utility rates of surrounding cities. As the ALJ knows, the rates charged by other cities are irrelevant to the *de novo* calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners required under Texas Water Code §13.043(b) and §13.043(e). The ALJ should strike the testimony as irrelevant.

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted related to the utility rates of other cities.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and to demonstrate the data is reliable.

M. Jackson Testimony at page 38 lines 6 through 7.

> ***Q. Does the rate plan encourage conservation and the responsible use of water by the citizens of Celina?***
>
> *A. The City Council, who are representatives of the community, consider the plan to be fair, just and reasonable, and chose not to alter the basic rate structure.*

Petitioners object to the referenced testimony as speculative and impermissible expert testimony under Rule 702. Since Mr. Jackson is not a member of the Celina City Council, he

cannot know what it considered to be fair, just, and reasonable. Mr. Jackson cannot speak for the City Council.

N. Jackson Testimony at page 38 lines 14 through 15.

> ***Q. Does the rate plan encourage conservation and the responsible use of water by the citizens of Celina?***
>
> *A. In summary, the City is comfortable with the existing water rate structure and saw no need to "fix" something that was not broken.*

Petitioners object to the referenced testimony under Rule 702, because Mr. Jackson provides speculative and impermissible expert testimony about the City Council's degree of comfort with the existing water rate structure. Mr. Jackson has demonstrated no specialized knowledge that would allow him to speak to the City Council's comfort level or desire to refrain from fixing a perceived problem.

O. Jackson Testimony at page 38, lines 19 through 21.

> ***Q. Does the rate plan encourage conservation and the responsible use of water by the citizens of Celina?***
>
> *A. After all, it is never easy to increase rates, and Council member were aware that the decision they made to adopt the proposed rate plan, though necessary, would be unpopular.*

Petitioners object to the referenced opinion testimony, because Mr. Jackson is speculating about the City Council's perception of the popularity of a rate increase. Rule 702 bars this kind of speculative opinion testimony where the witness has no specialized knowledge or personal experience about whether City Councilmen perceived the rate increase to be popular or not.

P. Jackson Testimony at page 40, lines 22 through lines 24.

> ***Q. How does the adopted rate plan address the City's outside customers?***
>
> *A. It has been accepted by the City's outside City ratepayers for the past two decades, and to my knowledge no one has appealed the practice prior to the commencement of these proceedings.*

Petitioners object to the referenced testimony, because it is irrelevant to the amount of money that the City spent during the test year to provide service to Petitioners, the change in those

expenditures for any known or measurable changes, or the metrics used to calculate Petitioners' rates. The testimony is irrelevant to whether the City's rates are just, reasonable, and based on the cost of service. The question asked and the answer given about whether the City's outside customers accepted the rates has absolutely ***nothing*** to do with the City's costs incurred during the test year used to develop the rates at issue or whether the rates to Petitioners were based on the actual cost of providing service to Petitioners. The problem with the testimony does not simply go to the weight that the ALJs may assign to the testimony. Tex. R. Civ. Evid. 402 requires the ALJs to strike this referenced portion of the testimony due to its lack of relevancy to whether the City's rates are just, reasonable, and based upon the actual cost of service.

Petitioners object to the referenced testimony, because Mr. Jackson is speculating about whether the outside City ratepayers "accepted" the 1.5 multiplier and assumes facts not in evidence about their thought process regarding same. Rule 702 bars this kind of speculative opinion testimony where the witness has no specialized knowledge or personal experience about what was in the minds of previous outside City ratepayers, whether they acquiesced or vehemently opposed past rate hikes or what motivated the timing and purpose of the present appeal. Rule 401 also deems irrelevant testimony that assumes facts not in evidence, like the mindset of outside City ratepayers for which Mr. Jackson cannot possibly know.

Q. Jackson Testimony at page 40, line 26 through page 44, line 20, including Appendix H (Amended and Restated Development Agreement) [16]

> ***Q. What evidence can you present to verify that Celina's use of a 1.5 multiplier has been accepted by outside ratepayers?***
>
> *A. In 2007 the City entered into a comprehensive development agreement with Forestar/RPG Land Company LLC, the developer of the Light Farms subdivision and the successor to the originator of Collin County Municipal Utility District No. 1. The agreement was executed before development of Light Farms began, and covered numerous aspects of the relationship between the developer and the City. The executed 2007 agreement is contained as Appendix H to this testimony.*

[16] At pages 40 (line 26) through page 44, Mr. Jackson embarks on a long-winded answer about the acceptability of the 1.5 multiplier. All this testimony relates to the 2007 development agreement that is not relevant to the subject matter in this docket, the cost of providing water and sewer service to outside City ratepayers. Throughout this section, Mr. Jackson's testimony is also speculative, it assumes facts not in evidence, relies on hearsay and includes legal conclusions he is not competent to make.

Mr. Jason Gray points out in his testimony that several aspects of this development agreement were highly beneficial to Light Farms' developers, and ultimately to the homeowners themselves in terms of significantly lower lot and home costs. These benefits, as described in detail by Mr. Gray, include:

a) The City dropping its prior opposition to the creation of the MUD, a key factor in getting TCEQ approval for the MUD;

b) The development of an interconnected and interdependent whole water system, thus leading to significant fire safety, water quality and operational efficiencies;

c) The setting of specific and unchanging standards for lot sizes and residential densities, thus providing certainty to the development and removing the risk of the City arbitrarily changing the standards at a future date;

d) Setting specific and unchanging impact fees that are approximately 50% lower than the fees Celina charges to its other developments;

e) Cost savings in the form of the allowance of temporary manufactured housing on the premises;

f) The right to sell MUD bonds, thus providing millions of dollars of risk and interest rate advantages to the developers, which could be passed along to the homeowners through lower lot and home prices;

g) The obligation and definitive commitment for the City to provide water and wastewater capacity.

As Mr. Gray states, the development agreement was contemplated, negotiated and has functioned as a wholly considered agreement. Agreements such as these can be highly beneficial to developments in terms of cost savings that can be passed through to the homeowners in the form of lower lot and home prices. But these agreements can only work if all components are enforced and respected.

One critical component of this agreement is on page 24, where the agreement states:

"The retail water rates charged to customers located within the RPG property shall not exceed 150% of those rates duly adopted and uniformly charged by the City for "in-city service". The retail wastewater rates charged to customers located within the RPG property shall be the same as those duly adopted and uniformly charged by the City for "in-city" service. Each end-buyer (as defined in Section 12.14(a) below) takes title to its portion of the property, subject to these rates, and acknowledges that these rates are reasonable." (emphasis added)

To add perspective to this statement, it must be noted that the City's policy of implementing a 1.5 multiplier on outside water rates was in place long before Light Farms came into existence. It was commonly available knowledge, accepted

practice, and well understood that any and all outside customers of the City of Celina would be assessed a water rate that included a 1.5 multiplier.

In summary, it was well understood when the development came into existence that its residents would be specifically charged a 1.5 multiplier on inside rates. And the agreement was executed specifically stating that the developer and the Light Farms homeowners considered the City's policy, and the 1.5 multiplier, to be reasonable.

As if further evidence is needed, page 11 to the Development Agreement states as follows:

2.10 Waiver. RPG, the East Commercial Property Owner and the West Commercial Property Owner (a) waive any and all claims against the City regarding validity or enforceability of the Development Fees and easement and site donations described in this Agreement, and (b) release any claims that RPG, the East Commercial Property Owner and the West Commercial Property Owner may have against the City regarding such fees and donations (whether such claim exists on the Effective Date or arises in the future). In addition, ***RPG, the East Commercial Property Owner and the West Commercial Property Owner on behalf of themselves and their respective assigns and successors in interest, including subsequent owners of the Property (a) waive any and all claims against the City regarding validity or enforceability of the Park Fee, Water Impact Fee, and Sewer Impact Fee, and water rates described in this Agreement, and (b) release any claims that RPG, the East Commercial Property Owner and the West Commercial Property Owner, and their respective assigns and successors in interest may have against the City regarding the collection of such fees*** *and the payment of all or part of such fees to RPG. (emphasis added)* [emphasis and underline in testimony]

So in a second section of the development agreement, RPG, 1 on behalf of the property owners, reaffirmed the validity of the 1.5 multiplier and waived all claims against the City regarding the validity or enforceability of the Water Rates. Why would they sign such an agreement if they did not accept that the water rate 1.5 multiplier was reasonable?

Quite simply, ***the signatories to this agreement, and the Light Farms homeowners themselves, have in two separate sections explicitly accepted the reasonableness of a 1.5 multiplier for their water rates.*** [emphasis in testimony]

As conclusive as the evidence is that the Light Farms developers and residents considered any rate up to 1.5 times the inside city rate to be reasonable, further evidence is provided by what is not in the agreement. There is no provision that states that the City must prove that a 1.5 multiplier is reasonable, or if a cost of service study establishes that the cost differential is less than 1.5 then the City must adjust its rate accordingly. Had there been any concern about the reasonableness of the 1.5 multiplier, the developers and residents could easily have placed this provision in the development agreement. They did not do so.

Further, there were nine separate amendments to this development agreement in the ensuing years since the original agreement was signed. None of them addressed the 1.5 multiplier or the signatories' waiving of any claims against the City over its utility rates.

Additionally, Mr. Gray states in his testimony that as City Manager he met many times with the developers of Light Farms and the 1.5 multiplier was never brought up as an issue or concern. If this was an issue to the developer or the homeowners, why was it never brought up? Why was there never any attempt to amend or "fix" this provision?

So to summarize, the City signed a developers agreement bestowing significant financial benefits on the developers and ultimately on the Light Farms homeowners, in exchange for accepting the reasonableness of a 1.5 multiplier on its water rates only and waiving future claims against the City. As I will show in the next section, the 1.5 water multiplier does not even allow the City to recover its full cost of service from 1 outside customers. But the City was able through this provision to offset at least some portion of its additional cost of service.

Now, 13 years later, despite the City having kept its end of the bargain in all aspects of this agreement, the Light Farms residents now wish to no longer be held to the very agreement that their development entered into, long after they received the benefits from the agreement.

The City prefers that the agreed-to arrangement stay in place, and that the residents of Light Farms continue to honor the 2007 development agreement. The City is willing to continue to cap its outside city water rate multiplier at 1.5, and to not charge a multiplier for outside city wastewater rates, even though it means that inside customers will effectively continue to subsidize outside city customers.

However, if the Light Farms residents no longer wish to honor the 2007 development agreement, then I will show in the next section that not only will the City's actual cost of service result in a greater multiplier for water than 50%, it also will result in a higher rate for outside city wastewater service as well. Simple fairness dictates that the complainants should not be allowed to adhere to the portions of the agreement they like (the numerous financial benefits and the equal wastewater rate) and ignore the portions of the agreement they do not like (the 1.5 water rate multiplier).

Q. Do these agreements bind the Commission in setting rates for outside City customers?

24 A. That would be for a court to decide. I bring this to the Commission's attention as a point of fundamental fairness.

The City entered into a hard-fought agreement with the developer to strike a balance between competing costs and how to recover those costs. Now, years after that agreement was reached, the successors in interest to the developers, are now

seeking to overturn the very agreement they reached, long after they received many of the financial benefits (i.e. lower interest rates and lower impact fees). The City has made many trade-offs in setting its water and wastewater rates, and it understandably thought I it could rely on the contract it entered into with the predecessor in interest to the Petitioners. I would hope that in the interest of simple fairness, both parties should adhere to the agreement they signed and relied upon, and that this guiding principal be taken into consideration in evaluating the City's 1.5 multiplier.

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted related to the utility rates of other cities.

Any testimony about the 2007 development agreement is also irrelevant under Rules 401 and 402 because it has nothing to do with whether the City's rates are just, reasonable, and based on the cost of service. Additionally, the rates charged by other cities are irrelevant to the *de novo* calculation of cost of service based rates at the time the City set the rates appealed by Petitioners required under Texas Water Code §13.043(b) and §13.043(e). The testimony should be stricken as irrelevant.

Mr. Jackson also offers inadmissible expert opinion testimony under Rule 702 because he offers no evidence based on specialized knowledge to support his assertion of these facts and data to demonstrate reliability. Mr. Jackson is not an attorney but speculates and renders legal conclusions about what was in the minds of previous outside City ratepayers or others, what degree of knowledge they possessed about the 2007 development agreement and the 1.5 multiplier, and what was "beneficial," "commonly available" and "well understood." He impermissibly gives opinions about the development agreement on legal subjects like: waiver, what was explicitly accepted, reasons for omissions of provisions ("the benefit of the bargain"), offsets, the City's adherence to provisions and the outside City ratepayers alleged failure to "honor" (i.e., breach) same. Yet Mr. Jackson has no legal knowledge, skill, experience or training that would qualify him as an expert to render these opinions and assist the trier of fact. On top of which, his opinion that the agreement specifically states the 1.5 multiplier is reasonable is flat wrong.

R. Jackson Testimony at page 50, line 1 through page 53, line 3, including Chart DVJ-12 and Table DVJ-13

Q. What is the percentage of household income that inside 1 and outside city ratepayers devote to paying for water and wastewater service?

A. Like many cities in Texas, Celina's cost of providing water and wastewater service has increased in recent years. However, as will be demonstrated below, Celina's rates remain well within reasonable standards of affordability.

Both the City of Celina and the Light Farms development have benefited from the spectacular growth in the Collin-Denton County corridor in recent years. As a near-lifelong resident of Collin and Denton Counties, I can attest to the incredible economic development, particularly in the last ten years.

***Chart DVJ-12** compares the most recent median household income totals for the City and Light Farms, the predominant, but not exclusive, location for outside city customers at present. The data was derived from the US Census Bureau for Celina, and the point2homes demographic website for Light Farms. As the chart reveals, both the City and Light Farms have achieved the distinction of becoming a middle to upper middle-class community.*

However, Light Farms currently has a median household income of $136,642 or 42% greater than the City of Celina as a whole.

Further, according to the point2homes web site, the median 2 home value in Light Farms is $415,800. I obtained a listing of homes recently for sale in Light Farms and the vast majority were in the $400,000 to $500,000 range, with some as high as $700,000 and only a handful below $300,000. This shows that both Celina and Light Farms are prosperous and economically affluent.
Interestingly, Light Farms appears to have developed differently than was envisioned when the MUD was first presented to the City in 2004. At that time it was referred to as "Light Ranch" and it was assumed that it would consist primarily of starter homes, in the $100,000 to $150,000 range, with residents of more limited income. Clearly the development has resulted in substantially more affluent homes occupied by residents with higher incomes.

This is not surprising, given how the Frisco/Prosper/Celina corridor has developed in recent years, and its proximity to what has come to be referred to as the "$5 billion mile" of development along the Dallas North Tollway and spilling over into Preston Road. Within just a few miles of Celina and Light Farms will be, among other developments, the headquarters of the PGA (Professional Golfers Association) with multiple championship golf courses; the Star mixed-use development that serves as headquarters to the Dallas Cowboys; and Toyota USA, Liberty Mutual and other corporate headquarters. None of these developments existed in the year 2010. Today the land is more valuable, the development more

expensive, and the incomes are higher all across this corridor, particularly in Light Farms.

So to put this in perspective, we have residents of a subdivision living in homes of an average value of $415,000, with median incomes of $136,642, and whose rate increase in the first year under the City's plan is $0.58 to $0.96 greater than the increase experienced by inside city residents. For those interested in the math, the $0.96 per month is equivalent to 0.008% of the average Light Farm resident's monthly household income. With this perspective it is fairly easy to understand why the developer signed an agreement stating that the City's 1.5 multiplier was "reasonable".

Table DVJ-13 calculates the approximate percentage of median 1 household income devoted by residents of the City and of Light Farms for water and wastewater service. The following is notable about this table:

• For 5,000 gallons of service the household income of Light Farms residents devoted to water and wastewater service does not exceed 1.0%. For 10,000 gallons the total reaches approximately 1.5%. Therefore the vast majority of residents of Light Farms pay 1.5% or less of their monthly income for water and wastewater service from Celina. Only residents who use significant amounts of discretionary, outdoor water usage would exceed 1.5%.

• The analysis is conservative, as it assumes a 2017 household income level for both the City and Light Farms, and no increase in household income in the next three years. Given the economic activity in the Collin-Denton County corridor, it is much more likely that household income levels have continued to increase. Unfortunately I have been unable to locate more recent household income data than 2017.

• Although Light Farms residents pay a higher monthly charge for water and wastewater service, in every year of the period, the average Light Farms resident is forecast to pay a lower percentage of their household income for service than residents inside the City of Celina.

The monthly charges are well within international standards set by such organizations as the World Bank, the North American Development Bank and the United Nations Development Program, all of which define "affordable" water and wastewater rates as between 3.0% and 5.0% of monthly household income. Light Farms customers pay a lower percentage of their household income for water and wastewater service than residents of the City of Celina. Therefore, I conclude that the City's rate plan does not implement an unreasonable economic hardship for either inside or outside city customers. Once again, with rates this low compared to monthly income, it is easy to understand why the developer and Light Farms residents repeatedly acknowledged that the City's rate plan was "reasonable".

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 and offered to prove the truth of the matters asserted. This includes Exhibits DVJ-12 and 13 which are out of court statements apparently based on non-credible sources, U.S. Census Bureau for Celina and a website, point2homes offered to establish the household incomes of Light Farms residents. Petitioners also object to the testimony as irrelevant and assuming facts not in evidence under Rules 401 and 402. Mr. Jackson has no basis for knowing the household income of Light Farms residents and he fails to provide any evidence of their "repeated acknowledgment" that the City's rate plan was reasonable. More importantly, the City's projected growth is irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected growth is neither actual nor known and measurable. The testimony should be stricken as irrelevant.

Mr. Jackson's testimony is also argumentative and speculative opinion testimony prohibited under Tex. R. Civ. Evid. 702. Mr. Jackson is not an attorney. By testifying as he did above, Mr. Jackson not only offers his legal opinion on the developer's intent in entering into the 2007 development agreement which is irrelevant to the subject matter of this docket, but he misquotes the agreement alleging that its provisions explicitly state the 1.5 multiplier is "reasonable" when they do not. Mr. Jackson has no legal knowledge, skill, experience, training, or education that would qualify him as an expert to render this opinion about the development agreement.

S. Jackson Testimony at page 55, line 1, through line 2, in response to the Question at page 54, line 4.

Q. What is the purpose of this section of your testimony?

A. ... It is the cornerstone of Willdan's rate practice and is generally recognized as one of the premier ratemaking tools in the nation. (emphasis added)

Petitioners object to the referenced testimony, because it is unreliable and unsubstantiated testimony that is inadmissible under Rule702. Mr. Jackson simply asserts in a self-serving manner that his own model is "one of the premier ratemaking tools in the nation," citing no concurring expert opinions and providing no evidence or facts to support

his assertion. His statement is simply a bold attempt to bolster his own opinion about his Excel file by asserting his workbook has somehow been declared "one of the premier ratemaking tools in the nation." However, he provides no evidence to support his assertion. Mr. Jackson's Excel file is exactly that, his workbook. It has not been peer reviewed and it has not been given any special status by any independent body in any way. In fact, Mr. Jackson works very diligently to prevent any peer review of his model, claiming that he development of his Excel file is somehow proprietary and a trade secret and alleging that reviewing consultants might somehow "steal" his secret calculations and work product.

T. Jackson Testimony at page 57, line 16, through line 18, in response to the Question at page 56, line 16.

Q. Did you prepare a Hybrid Approach calculation in the 2018 rate study?

A. ... Now the outside city ratepayers have appealed the very rates they have agreed were "reasonable" for the past thirteen years, and which they explicitly waived their claims against the City.

Any testimony about whether someone may have agreed to prior rates is irrelevant under Rules 401 and 402 because it has nothing to do with whether the City's rates are just, reasonable, and based on the cost of service. Additionally, the rates charged in prior years are irrelevant to the *de novo* calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners required under Texas Water Code §13.043(b) and §13.043(e). The testimony should be stricken as irrelevant.

Petitioners object to the referenced testimony, because Mr. Jackson is speculating about whether the outside City ratepayers "agreed" the rates calculate with a 1.5 multiplier reasonable. His testimony assumes facts not in evidence about their thought process regarding same. He further claims that the Petitioners have "waived their claims against the City." Mr. Jackson does not purport to be nor does he have the specialized knowledge or personal experience to testify as an expert in legal matters related to Petitioners agreements or waivers with the respect to the rates. Rule 701 ***bars speculative lay opinion*** testimony because the witness has no specialized knowledge or personal experience. The burden is on the proponent of the witness to show that the witness is an expert in their particular field. Generalized experience in a particular area may not qualify the witness as an expert. Despite other qualifications as an expert, Mr. Jackson does not

have the expertise to testify regarding any agreement or waiver by petitioners. As such the testimony is mere speculation by a lay witness, and it must be stricken.

Petitioners object to the referenced testimony, because Mr. Jackson assumes facts not in evidence and therefore his opinion is irrelevant. Even if it were determined that Mr. Jackson's testimony regarding what customers may have allowed previously is relevant, it is in violation of Rule 403 of the Texas Rules of Civil Evidence, which states that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues." Mr. Jackson's exploration of theoretical opinions regarding past rates is clearly confusing the issues and is irrelevant to this proceeding. Mr. Jackson's testimony regarding customer's opinions of prior rates should be stricken from the record.

U. Jackson Testimony at page 59, line 34, through page 60, line 2, in response to the Question at page 56, line 16.

Q. Please explain the City's water cost of service.

A. ... How to handle the demands of growth is the single most important issue facing the City of Celina in the second decade of the 21st Century.

Petitioners object to the referenced testimony, because Mr. Jackson is speculating about what the "single most important issue facing the City" might be. His testimony assumes facts not in evidence about the City's thought process. Rule 701 ***bars speculative lay opinion*** testimony because the witness has no specialized knowledge or personal experience. As the testimony is mere speculation by a lay witness, it must be stricken.

In addition, Rule 401 deems irrelevant any testimony that assumes facts not in evidence, like the significance of the demands of growth to the City, which Mr. Jackson no personal knowledge of.

V. Jackson Testimony at page 60, line 15, through line 19, in response to the Question at line 12.

> **Q. Please discuss the first three components of the City's water cost of service –operating expenses, transfers and capital outlays.**
>
> *A. ... The budget reflects the professional judgment of City staff, with decades of experience managing the City's water and wastewater utility, regarding the financial resources required to provide an acceptable level of service to the City's ratepayers. It was evaluated in detail by the City's elected leaders, presented in open session and approved by the City Council.*

Petitioners object to the referenced testimony, because Mr. Jackson is speculating about what the "experience" of City staff might be. In addition, he is speculating about the evaluation conducted by the City's elected officials. His testimony assumes facts not in evidence about the City staff's experience and the City Council's actions. Rule 701 ***bars speculative lay opinion*** testimony because the witness has no specialized knowledge or personal experience. As the testimony is mere speculation by a lay witness, it must be stricken.

In addition, Rule 401 deems irrelevant any testimony that assumes facts not in evidence, like the experience of City staff and the quality of evaluation by the City Council, of which Mr. Jackson no personal knowledge.

W. Jackson Testimony at page 63, line 10 through 11, Table DVJ-16, Forecast Operating Expenses, Transfers and Capital Outlays,

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's total operating expenses, transfers and capital outlays in 2018. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the total operating expenses, transfers and capital outlays in 2018 must be stricken as hearsay and unreliable.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

X. Jackson Testimony at page 64, line 6 through page 64, line 10, in response to the Question at page 63, line 13.

> **Q. What are the next components of the cost of service?**
>
> *A. ... Table DVJ-17 presents the City's current water utility debt service for the three-year period encompassing the adopted rate plan. The table reveals that the City currently maintains ten separate bond issues, from Series 2004 to Series 2017. Debt service exceeds $1.0 million in each year of the forecast. Further, the table reveals that the debt service is included under the Cash Basis but excluded under the Utility Basis.*

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's debt service in 2018. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the debt service in 2018 must be stricken as hearsay and unreliable.

Petitioners also object to testimony on projected debt service as not relevant under Rule 403. The City's projected debt service is irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected debt service is neither actual nor known and measurable. The testimony should be stricken as irrelevant.

Finally, the testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

Y. Jackson Testimony at page 64, line 11 through line 12, Table DVJ-17, Current Debt Service,

Table DVJ-17, Column "2018" - Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's total operating expenses, transfers and capital outlays in 2018. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony

simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the total operating expenses, transfers and capital outlays in 2018 must be stricken as hearsay and unreliable.

Table DVJ-17, Columns "2019," "2020" and "2021" - Petitioners also object to these three columns as not relevant under Rule 403. The City's projected debt service is irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected debt service is neither actual nor known and measurable. The testimony should be stricken as irrelevant.

Finally, the table is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

Z. Jackson Testimony at page 65, line 1 through line 30, in response to the Question at page 63, line 13.

> **Q. What are the next components of the cost of service?**
>
> *A. ... However, the current debt service is only one component of the forecast. The forecast must also take into account the future debt that the City must issue to fund anticipated capital improvements. A forecast of the City's capital improvements over the next decade is presented in Table DVJ-18. The table reveals that the City is forecast to incur $71,346,000 in water-related capital improvements in the next decade. This is the water portion of the overall capital improvements for the City, which is forecast to reach $164,283,000 over the next decade.*
>
> *As a result of this, at the time of the rate study in 2018, the City forecast that it would issue approximately $69,000,000 in water-related long-term debt. This included $18,000,000 in 2018, $30,000,000 in 2020, $13,000,000 in 2022, $6,000,000 in 2024 and $2,000,000 in 2026. After discussions with City staff during the rate study process, we settled on debt assumptions of a 25-year term, 2.0% issuance costs, 4.1% annual interest rate and level principal and interest payments.*
>
> *The table further shows that $48,000,000 of this debt was anticipated to be issued in the three-year forecast period encompassing the rate plan. This level of debt is simply unprecedented for a city the size of Celina. I have discussed these debt assumptions at length with City staff and none of us are certain as to what the*

ultimate impact will be on the City's financial condition. It is entirely possible that as more debt is issued the City's bond rating may fall, thus requiring higher interest rates. Further, at present the City assumes that all of its bond issues will be in revenue bonds, that will be funded through water and wastewater rates. It is also possible that the City may have to either issue certificates of obligation, which are backed by the taxpayers of the City of Celina, or issue General Obligation bonds, that will be paid off by inside city residents.

Petitioners object to the referenced testimony, because Mr. Jackson assumes facts not in evidence and therefore his opinion is irrelevant. Even if it were determined that Mr. Jackson's testimony regarding what debt the City incur in the future is relevant, it is in violation of Rule 403 of the Texas Rules of Civil Evidence, which states that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice [or] confusion of the issues." Mr. Jackson's exploration of theoretical expenditures for future debt is clearly confusing the issues and is irrelevant to this proceeding. Mr. Jackson's testimony regarding theoretical debt that the City may incur in the future is unrelated to the current cost of service-based rates and should be stricken from the record.

Petitioners also object to testimony on projected debt service as not relevant under Rule 403. The City's projected debt service is irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking may be a prospective activity, the proposed rates must be based on actual data adjusted for known and measurable changes. The City's projected debt service is neither actual nor known and measurable. The ALJ should strike the testimony as it is irrelevant.

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's debt service in 2018. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the debt service in 2018 must be stricken as hearsay and unreliable.

Finally, the testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show

they are reliable. Mr. Jackson's own testimony admits the speculative nature of his debt service projections.

AA. Jackson Testimony at page 66, line 5 through line 6, Table DVJ-18, Water Utility Capital Improvement Plan

Table DVJ-18, Column "2018" - Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's capital improvement costs in 2018. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the capital improvement costs in 2018 must be stricken as hearsay and unreliable.

Table DVJ-18, Columns "2019," through "2027" - Petitioners also object to these nine columns as not relevant under Rule 403. The City's projected capital improvement costs are irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking maybe be a prospective activity, the proposed rates must be based on actual data adjusted for known and measurable changes. The City's projected capital improvement costs are neither actual nor known and measurable. The ALJ should strike the as it is irrelevant.

Finally, the table is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

BB. Jackson Testimony at page 66, line 9 through page 67, line 4.

> **Q. Can the City use impact fees to fund all or a part of this CIP?**
>
> *A. Once again this issue illustrates the enormous financial challenge the City of Celina is facing. The City recovers approximately $1.1 million per year from water impact fees. It uses the lion's share of these funds to service its existing growth-related debt service. This is prudent as it minimizes the annual cash flow requirements from the utility, and minimizes the initial need for rate increases. Many of my client cities follow similar policies. However, it means that the City*

will not have large impact fee fund balances to offset capital spending requirements, and therefore it must issue more debt to cover capital costs.

Ironically, if the City devoted all of its impact fees to up front financing of capital improvements, the effect of this would be to lower the City's annual debt service. This would only impact the cost of service under the Cash Basis. It would not affect the Utility Basis. And a lower cash basis cost of service calculation would mean 1 an even greater disparity between the cost of service for residential outside customers as opposed to residential inside customer. The net impact of the City's policy regarding impact fees is therefore to benefit the City's Residential Outside customers.

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's debt service in 2018. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate the amount of annual water impact fee recovery and the balances that the City will or will not have. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the annual water impact fee recovery and fund balance must be stricken as hearsay and unreliable.

Petitioners also object to testimony on projected impact fee recovery and fund balances as not relevant under Rule 403. The City's projected impact fee recovery is irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking may be a prospective activity, proposed rates must be based on actual data adjusted for known and measurable changes. The City's projected impact fee recovery and fund balances are neither actual nor known and measurable. The ALJ should strike the testimony as it is irrelevant.

Finally, the testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable. Mr. Jackson's own testimony admits the speculative nature of his annual impact fee recovery and fund balance projections.

CC. Jackson Testimony at page 67, line 6 through line 13, in response to the Question at page 9, line 10.

> **Q. Can the City use impact fees to fund all or a part of this CIP?**
>
> *A. ... Table DVJ-19 presents the forecast debt service for the future debt required to fund the City's CIP during the three-year period encompassing the adopted rate plan. The table reveals that the City is forecast to incur annual future debt service exceeding $4.5 million by FY 2027. This debt service is in addition to the current debt service the City has already incurred.*
>
> *Table DVJ-19 also reveals that future debt service is included in the Cash Basis cost of service but not in the Utility Basis cost of service.*

Petitioners also object to testimony on projected debt service as not relevant under Rule 403. The City's projected debt service is irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking may be a prospective activity, the proposed rates must be based on actual data adjusted for known and measurable changes. The City's projected debt service is neither actual nor known and measurable. The ALJ should strike the testimony as it is irrelevant.

Finally, the testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable. Mr. Jackson's own testimony admits the speculative nature of his debt service projections.

DD. Jackson Testimony at page 68, line 1 through line 2, Table DVJ-19, Future Debt Service

Petitioners also object to this table as not relevant under Rule 403. The City's projected debt service costs are irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected debt service costs are neither actual nor known and measurable. The testimony should be stricken as irrelevant.

Finally, the table is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

EE. Jackson Testimony at page 70, line 5 through line 6, Table DVJ-20, Depreciation and Return

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's depreciation expense and rate base on existing assets and CIP. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate the amount of depreciation or rate base on the City's existing assets or CIP. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the depreciation and rate base must be stricken as hearsay and unreliable.

Petitioners also object to this table as not relevant under Rule 403. The City's projected depreciation and rate base for 2019 through 2021 are irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected depreciation costs and rate base are neither actual nor known and measurable. The testimony should be stricken as irrelevant.

Finally, the table is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

FF. Jackson Testimony at page 71, line 12 through line 18, including Table DVJ-21, Weighted Cost of Debt 2018, in response to the Question on page 70 at line 8.

> **Q. Let's examine your Return on Investment calculation in more detail. How did you come up with your rate of return?**
>
> *A. ... Table DVJ-21 summarizes my calculation of an 8.79% weighted average cost of capital to be used in this calculation. Again, it is modeled entirely on Chapter II-*

5, page 47 of Manual M-1. It combines the City's weighted cost of debt, which is 3.14%, with a reasonable return on equity.

Petitioners object to the testimony and table because Mr. Jackson is not qualified as an expert on the determination of the appropriate rate of return on equity in this case. He simply restates the Commission's rule and applies an arbitrary adjustment for risk. An expert must be qualified to render such opinions; and Rule 702 allows expert testimony if the "witness (is) qualified as an expert by knowledge, skill, experience, training or education." The party offering such expert testimony has the burden to prove the expert witness is qualified. The City offers no such proof with regard to Mr. Jackson's expertise in determining reasonable return on equity. Mr. Jackson's testimony in not grounded "in the methods and procedures of science" and amounts to no more than "subjective belief or unsupported speculation." His testimony provides no underlying scientific technique or principle in order to test its reliability as required by *Robinson* and *Daubert*. As a result, his testimony must be stricken under Rule 702.

In addition, if Mr. Jackson is testifying as a lay witness on this issue, his testimony fails to satisfy the requirements of Rule 701 because it is misleading and not helpful to determining a fact issue in this case. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate the proposed rate of return on equity. His testimony simply asserts the rate to be correct. Mr. Jackson's testimony on return on equity must be stricken as hearsay and unreliable.

Finally, the testimony and referenced table are also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

GG. Jackson Testimony at page 72, line 2, through line 6.

Q. How did you determine that the equity 2 factor of 12.0% is reasonable?

A. I base my conclusion on a combination of two factors:
- *PUC guidelines*
- *Specific Risk Factors and Considerations for the City of Celina.*

Petitioners object to the testimony and table because Mr. Jackson is not qualified as an expert on the determination of the appropriate rate of return on equity in this case. He simply restates the Commission's rule and applies an arbitrary adjustment for risk. An expert must be

qualified to render such opinions; and Rule 702 allows expert testimony if the "witness (is) qualified as an expert by knowledge, skill, experience, training or education." The party offering such expert testimony has the burden to prove the expert witness is qualified. The City offers no such proof with regard to Mr. Jackson's expertise in determining reasonable return on equity. Mr. Jackson's testimony in not grounded "in the methods and procedures of science" and amounts to no more than "subjective belief or unsupported speculation." His testimony provides no underlying scientific technique or principle in order to test its reliability as required by *Robinson* and *Daubert*. As a result, his testimony must be stricken under Rule 702.

In addition, if Mr. Jackson is testifying as a lay witness on this issue, his testimony fails to satisfy the requirements of Rule 701 because it is misleading and not helpful to determining a fact issue in this case. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate the proposed rate of return on equity. His testimony simply asserts the rate to be correct. Mr. Jackson's testimony on return on equity must be stricken as hearsay and unreliable.

Finally, the testimony and referenced table are also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

HH. Jackson Testimony at page 73, line 1 through line 2, Table DVJ-22, Moody's BAA Rates - Percent

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the Moody's BAA rates. Mr. Jackson offers no evidence to support the underlying facts and data used to determine the rates. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the Moody's BAA rates must be stricken as hearsay and unreliable.

Finally, the table is also inadmissible as expert opinion testimony under Rule 702, because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

II. Jackson Testimony at page 73, line 8, through page 74, line 4.

Q. How did you determine that the equity 2 factor of 12.0% is reasonable?

A. ... It must be noted, however, that this formula applies to all utilities between 500 and 10,000 accounts. Many of these utilities are stable, with low growth rates, and are not subjected to the enormous risk that the City of Celina is undertaking over the next decade to service its existing and forecast explosive growth of outside and inside city customers.

For these reasons, I believe that setting the return on equity factor on the "average" ROE as outlined by the PUC shortchanges the enormous risk the City of Celina is facing as a community in the next decade. I would be surprised if there was a single other Class B utility in the state of Texas that will be growing by 400% and facing the need to invest $164,283,000 in capital improvements in the next decade. This enormous level of investment, and the risk inherent in doing so, clearly warrants setting the ROE at a level above the "average".

Despite this, I have implemented a 12.0% equity factor 1 which is only nominally above the average. I consider this to be a very conservative estimate, because as I will discuss below, the specific risk factors pertaining to the City of Celina would justify a substantially higher equity factor.

Petitioners object to the testimony and table because Mr. Jackson is not qualified as an expert on the determination of the appropriate rate of return on equity in this case. He simply restates the Commission's rule and claims that the resulting rate is too low and subject to an arbitrary adjustment for risk. An expert must be qualified to render such opinions; and Rule 702 allows expert testimony if the "witness (is) qualified as an expert by knowledge, skill, experience, training or education." The party offering such expert testimony has the burden to prove the expert witness is qualified. The City offers no such proof with regard to Mr. Jackson's expertise in determining reasonable return on equity. Mr. Jackson's testimony in not grounded "in the methods and procedures of science" and amounts to no more than "subjective belief or unsupported speculation." His testimony provides no underlying scientific technique or principle in order to test its reliability as required by *Robinson* and *Daubert*. As a result, his testimony must be stricken under Rule 702.

In addition, if Mr. Jackson is testifying as a lay witness on this issue, his testimony fails to satisfy the requirements of Rule 701 because it is misleading and not helpful to determining a fact issue in this case. Mr. Jackson offers no evidence to support the underlying facts and data used to

calculate the proposed rate of return on equity. His testimony simply asserts the rate to be correct. Mr. Jackson's testimony on return on equity must be stricken as hearsay and unreliable.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

In addition, Rule 401 deems irrelevant any testimony that assumes facts not in evidence, like growth rates and risks of utilities across the state or the capital investment needs of other utilities in the state, of which Mr. Jackson no personal knowledge.

JJ. Jackson Testimony at page 74, line 27, through page 79, line 7, in response to the Question on page 73 at line 8.

Q. How did you determine that the equity 2 factor of 12.0% is reasonable?

A. Business Risk

Business risk relates to the uncertainty and consequences of events that may result in the inability of the City to recover sufficient revenues to cover costs. For Celina, this risk is closely tied to its expected unprecedented level of growth. I refer the reader back to Table DVJ-1. It shows that as of 2017, Celina had a population of 9,836. In 13 short years, by 2030, Celina is forecast to have a population of 48,000. This is an increase of almost 400% in just a decade and a half Importantly, Table DVJ-3 reveals that approximately 25% of this growth is forecast to be from accounts that will be located outside the City limits of Celina. Due to the availability of land for residential development in the ETJ surrounding Celina, the City anticipates that its outside customer class will continue to grow far beyond just the Light Farms development in the coming years. Residential outside accounts are forecast to be a principal component of the City's future growth. And remember, the City is responsible for servicing this forecast outside city growth, and the City and its inside city ratepayers are financially liable for the cost of the infrastructure needed to service this growth. The outside city residents who will benefit from the City's taking on of this responsibility will bear no financial responsibility themselves. Therefore the use of a Utility Basis with a reasonable rate of return to calculate the cost of service for these outside customers is further justified.

This kind of spectacular growth can overwhelm a City if it is not planned for and managed properly. And this includes investment in sufficient infrastructure to service the growth. The City must undertake the significant business risk of constructing and operating a system that has the capability of absorbing this

growth. In other words, it must issue the debt, make the investments and construct the infrastructure before the growth occurs.

But what if the growth doesn't occur? What if the City expends all, or a large portion, of these capital expenditures, and then the growth does not happen? Many factors can adversely impact growth, factors that are outside the control of the City. This includes such factors as economic recessions, rampant inflation, wars, terrorist attacks, epidemics, and natural disasters. In the last month alone, we have seen the adverse impact on the world economy of the coronavirus, a disease of which virtually no one had even heard of at the beginning of 2020. All of these factors could not only limit growth, but could also result in higher interest rates, liquidity crises within the utility, and cash flow issues.

It is the citizens of Celina who own the water and wastewater system, and who are responsible for it. If the growth does not occur the existing citizens must still pay the debt, through taxes or higher rates. Those who live outside the City, including the residents of Light Farms, have no such ultimate responsibility for the 1 system. This is why the AWWA allows for cities' outside customers to share in the risk that is undertaken to provide service.

One such example of this disproportionate risk involves none other than the Light Farms development. Mr. Gray discusses in his testimony how after the 2007 development agreement was signed with Light Farms, the City immediately increased its Authorized Demand from Upper Trinity Regional Water District from 1.5 MGD to 2.0 MGD. This was in anticipation of new demand from Light Farms. But then the Great Recession of 2009 came along, and the new homes in Light Farms were not constructed initially or according to schedule. For a period of six years the City had to pay the higher Upper Trinity costs even though Light Farms failed to develop. And who paid those costs, which amounted to $1,600,000? It was the City's inside ratepayers. This is a classic example of the business risk the City faces from serving expected growth from outside city customers.

And there is one additional business risk that pertains specifically to outside city customers. That is the risk that these customers not only never annex into the City, but eventually choose to be served by another source, either another city of the formation of their own special utility district. If this were to happen the City would lose revenue and potentially have substantial levels of stranded investment. Mr. Gray outlines in his testimony how it is even possible that Light Farms could be served by another provider. The degree to which other outside customers could receive service from other providers depends on how they eventually develop.

Interest Rate Risk

The City is forecasting the need to fund ***$164,283,000*** *in water and wastewater capital improvements necessary to meet existing demand and the needs of growth in the next decade alone. For a City that as of 2017 had a population of 9,836 to undertake this incredible amount of liability is simply astounding At present the*

City's water and wastewater system has outstanding 1 debt of approximately $32,000,000. Over the next decade the City is forecast to increase its outstanding water and wastewater debt by $161,000,000, an increase of approximately ***400%****. There cannot be more than a handful of cities in the United States that will experience this magnitude of growth. And as I have shown earlier, much of this growth is forecast to come from new outside customers of the City of Celina.*

The challenges the City will face in securing debt of this magnitude to pay for this growth will be formidable. Rating agencies and creditors are going to be hesitant to extend this magnitude of credit without assurance that the City has a rate and financing plan in place to service this growth. It will be a challenge to secure the "favorable terms" referenced by the AWWA for this growth.

At present the City's plan is to fund all of this debt through revenue bonds paid for by water and wastewater rates. However, it is entirely possible that the City will find itself in the position of having to fund a portion of this debt from either Certificates of Obligation backed by taxes, or by actual General Obligation Bonds. In either case, that debt becomes a liability of the citizens of Celina, the owners of the system, and the outside city customers will have no such responsibility for this debt.

Further, the City's creditors will be watching the City's growth very carefully. If the City's growth does not meet expectations, then the City's credit rating may suffer, which would lead to higher interest rates, all of which must be guaranteed by the City's inside customers.

Finally, interest rates may increase due to factors beyond the City's control – inflation, recessions, outbreaks, wars, etc. Interest rates are currently at historic lows, so it would be unsurprising if rates increased in future years. Once again this adds to the City's overall level of risk. It also may result in the debt interest portion of the City's return increasing as well.

Financial Risk and Liquidity Risk

Manual M-1 defines Financial Risk as risk that utility will not have adequate cash flow to meet its financial obligations. Liquidity Risk is related, as it represents the ability to service debt. For the City of Celina, these risk factors are closely tied to the Business Risk as outlined above. The City is investing significantly in infrastructure to service expected growth inside and outside the City. The debt is expected to be serviced in large part from these new accounts. If the new accounts do not materialize, the City must still service the debt. This may lead to significant cash flow problems, as well as the need for the City's General Fund to support the water and wastewater fund. And of course the General Fund is the responsibility of the City of Celina and its inside city residents, not those who live outside the City.

Growth benefits the City's outside customers, both existing and future customers. Growth creates jobs, results in more retail choice, and increases the overall wealth of the communities. In 2010 residents in and around Celina had to drive 20 miles to find a decent grocery store or a Wal-Mart. Today there are at least three Wal-Marts and numerous shopping centers within 3-5 miles of Celina. There is more choice, more jobs, more City resources like libraries and community centers, all due to growth. Growth typically benefits everyone.

Growth benefits water systems as well, because water utilities' economics are based on economies of scale. The more customers a utility has, in general, the larger pool over which the utility can spread its fixed costs. Light Farms and other outside customers will benefit from system growth every bit as much as inside city residents, so they should be required to share the risk as well.

The bottom line is this – every city takes risks providing service to outside customers. But by any objective measure, the City of Celina's spectacular and virtually unprecedented growth places its level of risk at the very top of the spectrum. I have already shown that a reasonable equity risk factor, based on PUC guidelines, is between 11 and 12%. And this includes cities and utilities with far less risk than Celina.

Petitioners object to the testimony and table, because Mr. Jackson is not qualified as an expert on the determination of the appropriate rate of return on equity in this case or to evaluate the risk factors set forth in the AWWA M-1 Manual. He simply restates the discussion in the manual and claims a number of unsubstantiated and speculative facts that he argues demonstrate risk. An expert must be qualified to render such opinions; and Rule 702 allows expert testimony if the "witness (is) qualified as an expert by knowledge, skill, experience, training or education." The party offering such expert testimony has the burden to prove the expert witness is qualified. The City offers no such proof with regard to Mr. Jackson's expertise in determining reasonable return on equity. Mr. Jackson's testimony in not grounded "in the methods and procedures of science" and amounts to no more than "subjective belief or unsupported speculation." His testimony provides no underlying scientific technique or principle in order to test its reliability as required by *Robinson* and *Daubert*. As a result, his testimony must be stricken under Rule 702.

In addition, if Mr. Jackson is testifying as a lay witness on this issue, his testimony fails to satisfy the requirements of Rule 701 because it is misleading and not helpful to determining a fact issue in this case. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate the proposed rate of return on equity or the relevant risks. His testimony simply asserts

the rate to be correct. Mr. Jackson's testimony on return on equity must be stricken as hearsay and unreliable.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

In addition, Rule 401 deems irrelevant any testimony that assumes facts not in evidence, like growth rates and risks of utilities across the state or the capital investment needs of other utilities in the state, of which Mr. Jackson no personal knowledge.

KK. Jackson Testimony at page 80, line 3 through 4, Table DVJ-23, Total Cost of Service and Net Revenue Requirements to be Raised from Rates

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's Total Cost of Service and Net Revenue Requirements to be Raised from Rates for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The testimony should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

LL. Jackson Testimony at page 82, line 1 through page 83, line 3, Tables DVJ-24, Net Revenue Requirement – Outside City Customers and DVJ-25, Net Revenue Requirement – Inside City Customers

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the Net Revenue Requirement for the outside City customers for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony asserting the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The testimony should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

MM. Jackson Testimony at page 85, line 3 through line 4, Tables DVJ-26, Rate Plan Period, Net Revenue Requirement by Customer Class

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the Net Revenue Requirement for the City customers for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony is based on unreliable assertions regarding the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony to the extent it relies on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service-based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The testimony should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

NN. Jackson Testimony at page 7, lines 5 asserting that the "City's comprehensive, internationally-recognized rate model," has been used (*underlining added for emphasis*)

Petitioners object to the referenced testimony, because it is unreliable and unsubstantiated testimony that is inadmissible under Rule702. Mr. Jackson simply asserts that his own model is "internationally recognized," citing no concurring expert opinions and providing no evidence or

facts to support his assertion. His statement is simply a bold and unqualified attempt to bolster his own opinions by asserting his model has been "internationally recognized." However, he provides no evidence to support his assertion. Mr. Jackson's model is exactly that, a simple Excel model. His Excel file has not been peer reviewed, and it has not been "internationally recognized" in any way. In fact, Mr. Jackson works very diligently to prevent any peer review of his Excel workbook, claiming that the development of his Excel file is somehow proprietary and a trade secret and alleging that reviewing consultants might somehow "steal" his secret calculations and work product.

OO. Jackson Testimony at page 87, line 15 through line 16, Tables DVJ-27, Rate Plan Period, Revenues and Revenue Requirement by Customer Class

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the Revenues and Revenue Requirement by Customer Class for the City customers for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony is based on unreliable assertions regarding the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony to the extent it relies on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The testimony should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

PP. Jackson Testimony at page 89, line 3 through line 4, Tables DVJ-28, Rate Plan Period, Water Utility Summary

Petitioners object to the referenced testimony, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the Water Utility Summary for the City customers for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony is based on unreliable assertions regarding the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony to the extent it relies on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The testimony should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

QQ. Jackson testimony beginning at page 90 regarding Wastewater Utility Cost of Service through page 115, including Tables DVJ-29, DVJ-30, DVJ-31, DVJ-32, DVJ-33, DVJ-34, DVJ-35, DVJ-36, DVJ-37, DVJ-38, DVJ-39, DVJ-40, DVJ-41, DVJ-42, DVJ-43, DVJ-44, DVJ-45, DVJ-46

Mr. Jackson's testimony on the Water Utility Cost of Service is essentially repeated for Wastewater Utility Cost of Service. To avoid unnecessary duplication of argument, Petitioners object to the referenced testimony in its entirety on the same bases as set forth for the same portions of testimony tables and testimony set forth in the Water Utility Cost of Service.

The testimony and tables contain prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony is based on unreliable assertions regarding the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony to the extent the testimony and tables rely on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The testimony should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

RR. Jackson testimony beginning at page 90 regarding Wastewater Utility Cost of Service through page 115, relating to current wastewater rates and proposed wastewater rates not including a multiplier as required by the development agreement offered as Appendix H.

This is however one additional point of objection to Mr. Jackson's testimony on the Wastewater Utility Cost of Service. Petitioners object to Mr. Jackson's testimony in this regard because it assumes facts not in evidence. In fact, Mr. Jackson's own appendices contain evidence contradicting Mr. Jackson's assertions. Appendix G contains the "Utility Rate Correction Ordinance" presented to City Council and approved on March 19, 2019, which is a modification of the rates that are the subject of Petitioners original appeal. Bates page 0436 of that exhibit clearly show that the City has adopted wastewater rates that use a multiplier to increase the rates for the Residential-Outside customers.

Mr. Jackson offers no evidence to support the underlying facts and data used to support his claim that the current wastewater rates are the same for both inside and outside City customers. His testimony simply asserts this fact to be true. Mr. Jackson's testimony is based on unreliable assertions regarding the current and future wastewater rates and must be stricken as hearsay and unreliable.

IV. OBJECTIONS TO ATTACHMENTS

A. Appendix B to Jackson Testimony.

Petitioners object to the appendix, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's budgeted and actual data related to total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return, non-rate revenues, customer usage and allocation factors for base, max day/extra capacity and customer billing for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses

provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony is based on unreliable assertions regarding the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony to the extent it relies on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return, non-rate revenues, customer usage and allocation factors for base, max day/extra capacity and customer billing as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The appendix should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

B. Appendix I to Jackson Testimony.

Petitioners object to the appendix, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's budgeted and actual data related to total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return, non-rate revenues, customer usage and allocation factors for base, max day/extra capacity and customer billing for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony is based on unreliable assertions regarding the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony to the extent it relies on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return, non-rate revenues, customer usage and allocation factors for base, max day/extra capacity and customer billing as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The appendix should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

C. Appendix K to Jackson Testimony.

Petitioners object to the appendix, because it is prohibited hearsay under Rule 801 that is offered to prove the truth of the matter related to the City's budgeted and actual data related to total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return, non-rate revenues, customer usage and allocation factors for base, max day/extra capacity and customer billing for the period from 2018 through 2021. Mr. Jackson offers no evidence to support the underlying facts and data used to calculate these amounts. His testimony simply asserts these facts to be true. In addition, neither of the City's other witnesses provide evidence of the underlying data and facts referenced by Mr. Jackson. Mr. Jackson's testimony is based on unreliable assertions regarding the total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return and non-rate revenues and allocation factors for base, max day/extra capacity and customer billing in 2018 and future years must be stricken as hearsay and unreliable.

Petitioners also object to testimony to the extent it relies on projected total operating expenses, transfers, capital outlays, current debt service, future debt service, depreciation expense, return, non-rate revenues, customer usage and allocation factors for base, max day/extra capacity and customer billing as not relevant under Rule 403. The City's projected amounts are irrelevant to the calculation of cost of service based rates at the time the City set the rates appealed by

Petitioners. While ratemaking is a prospective activity, rates must be based on actual data adjusted for known and measurable changes. The City's projected amounts are neither actual nor known and measurable. The appendix should be stricken as irrelevant.

The testimony is also inadmissible as expert opinion testimony under Rule 702 because Mr. Jackson offers no evidence to support his assertion of these facts and data and show they are reliable.

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 Dan V. Jackson as requested above and grant such other relief to which Petitioners may be entitled.

Respectfully submitted,

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State Bar No. 00786263
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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.

Randall B. Wilburn / John J. Carlton

EXHIBIT A

THE CARLTON LAW FIRM P.L.L.C.

Fwd: Celina Direct Testimony

1 message

---------- Forwarded message ---------
From: **Scott Smyth** <SSmyth@dtrglaw.com>
Date: Mon, Mar 23, 2020 at 3:57 PM
Subject: RE: Celina Direct Testimony
To: John Carlton <john@carltonlawaustin com>
Cc. rashmin asher@puc.texas.gov <rashmin.asher@puc texas gov>, Patrick Lindner <PLindner@dtrglaw.com>

John,

With the size of the filing, and the Central Records office being overwhelmed, we have been having trouble getting things filed. Fortunately the Commission's Order in Docket No. 50664 has suspended Chapter 22 to the extent it requires that filings be made in a certain amount of time (see attached).

We will continue to work on resolving these minor issues and will update you as we are able.

Scott

Scott Smyth

DT RG DAVIDSON TROILO REAM & GARZA

ATTORNEYS AT LAW

Capitol Center

919 Congress Ave., Suite 810

Austin, Texas 78701-2444

512.469.6006 Office

EXHIBIT A

512.473.2159 Fax

www.dtrglaw.com

From: John Carlton <john@carltonlawaustin.com>
Sent: Friday, March 20, 2020 2:57 PM
To: Scott Smyth <SSmyth@dtrglaw.com>
Cc: rbw@gwtxlaw.com; hgilbert@gwtxlaw.com; rashmin.asher@puc.texas.gov; Diana A. Ramirez <DRamirez@dtrglaw.com>; Lourdes Gutierrez <LGutierrez@dtrglaw.com>; Patrick Lindner <PLindner@dtrglaw.com>; Katy Hennings <katy@carltonlawaustin.com>
Subject: Celina Direct Testimony

Scott and Pat

The filings you have made on behalf of Celina do not comply with the Commission's rules because they do not include "native file formats used to create and edit the file" nor do they include "active links and formulas that were used to create and manipulate the data in the spreadsheet" as required for Microsoft Excel spreadsheets. Your filings were simply PDF versions of those native files. I have copied the rule below.

Please let me know when you will be filing the required native files.

Sincerely,

John

22.72(i) states:

File format standards.
(1) Electronic filings shall be made in accordance with the current list of preferred file formats available in Central Records and on the commission's World Wide Web site.
(2) Electronic filings shall be made using the native file format used to create and edit the file, unless the native file format is not on the current list of preferred file formats maintained by the commission referenced in paragraph (1) of this subsection. Microsoft Excel spreadsheets shall have active links and formulas that were used to create and manipulate the data in the spreadsheet. An application that fails to include the native file filings is materially deficient.
(3) Electronic filings that are submitted in a format other than that required by paragraph (1) of

EXHIBIT A

this subsection will not be accepted until after successful conversion of the file to a commission standard.

On Tue, Mar 17, 2020 at 3:42 PM Lourdes Gutierrez <LGutierrez@dtrglaw.com> wrote:

PART 4 OF 4

If you had any issues receiving any of the four emails, please let me know.

Thank you,

Lourdes Gutierrez

Legal Secretary to Paul M. Gonzalez,

Richard E. Lindner, Justin J. Nail and E. Spencer Nealy

DAVIDSON
TROILO
REAM
GARZA

ATTORNEYS AT LAW

601 NW Loop 410, Suite 100

San Antonio, Texas 78216

210-349-6484 Main Office

210-349-0041 Fax

Email: lgutierrez@dtrglaw.com

www.dtrglaw.com

From: Lourdes Gutierrez
Sent: Tuesday, March 17, 2020 3:40 PM

EXHIBIT A

To: 'john@carltonlawaustin.com' <john@carltonlawaustin.com>; 'rbw@gwtxlaw.com' <rbw@gwtxlaw.com>; 'hgilbert@gwtxlaw.com' <hgilbert@gwtxlaw.com>; 'rashmin.asher@puc.texas.gov' <rashmin.asher@puc.texas.gov>
Cc: Scott Smyth <SSmyth@dtrglaw.com>; Diana A. Ramirez <DRamirez@dtrglaw.com>
Subject: Celina Direct Testimony PART 3 OF 4

PART 3 OF 4

From: Lourdes Gutierrez
Sent: Tuesday, March 17, 2020 3:39 PM
To: 'john@carltonlawaustin.com' <john@carltonlawaustin.com>; 'rbw@gwtxlaw.com' <rbw@gwtxlaw.com>; 'hgilbert@gwtxlaw.com' <hgilbert@gwtxlaw.com>; 'rashmin.asher@puc.texas.gov' <rashmin.asher@puc.texas.gov>
Cc: Scott Smyth <SSmyth@dtrglaw.com>; Diana A. Ramirez <DRamirez@dtrglaw.com>
Subject: Celina Direct Testimony PART 2 OF 4

Part 2 of 4.

Lourdes

From: Lourdes Gutierrez
Sent: Tuesday, March 17, 2020 3:38 PM
To: 'john@carltonlawaustin.com' <john@carltonlawaustin.com>; 'rbw@gwtxlaw.com' <rbw@gwtxlaw.com>; 'hgilbert@gwtxlaw.com' <hgilbert@gwtxlaw.com>; 'rashmin.asher@puc.texas.gov' <rashmin.asher@puc.texas.gov>
Cc: Scott Smyth <SSmyth@dtrglaw.com>; Diana A. Ramirez <DRamirez@dtrglaw.com>
Subject: Celina Direct Testimony PART 1 OF 4

Dear Counsel –

On behalf of Scott Smyth, I have attached City of Celina Direct Testimony which was submitted to the PUC today for filing.

This is email 1 of 4.

Thank you,

Lourdes Gutierrez

Legal Secretary to Paul M. Gonzalez,

Richard E. Lindner, Justin J. Nail and E. Spencer Nealy

EXHIBIT A

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Before printing this e-mail, please consider if it is necessary.

--

John J. Carlton

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--

John J. Carlton

EXHIBIT A

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