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

<b>PETITION BY OUTSIDE CITY RATEPAYERS APPEALING THE WATER RATES ESTABLISHED BY THE CITY OF CELINA</b>	<b>§ § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**CITY OF CELINA'S RESPONSE TO  
RATEPAYERS' OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF THE  
DIRECT TESTIMONY OF AND ATTACHMENTS OF GEORGIA N. CRUMP**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

NOW COMES the CITY OF CELINA ("CELINA") and files this its Response to RATEPAYERS' Objections to and Motion to Strike Portions of the Direct Testimony and Attachments of Georgia N. Crump. As explained herein, all of the Ratepayers' objections should be overruled and the motion to strike should be denied.

**I. BACKGROUND**

The City of Celina ("City") timely prefiled the Direct Testimony of Georgia N. Crump on March 17, 2020, pursuant to SOAH Order No. 2.<sup>1</sup> The Ratepayers' filed their Objections to this Direct Testimony on March 31, 2020. Pursuant to the aforementioned order, this response is timely filed.

**II. INTRODUCTION**

The Ratepayers' objections to testimony and attachments propounded by the City's witness, Georgia N. Crump, are without merit and should be overruled. The Ratepayers' objections to this testimony would strike evidence that is clearly relevant to the affirmative questions that

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<sup>1</sup> SOAH Order No. 2 Memorializing Prehearing Conferences; Adopting Procedural Schedule; Notice of Hearing (Jan. 29, 2020); see also Direct Testimony of Georgia N. Crump on Behalf of the City of Celina (March 17, 2020).

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must be addressed in this docket. Specifically, the testimony and attachments are relevant to the determination of the reasonable expenses incurred by the City in this proceeding.<sup>2</sup> Further, Procedural Rule § 22.221(a) states:

When necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.<sup>3</sup>

Therefore, even if there is substance to the Ratepayers' relevancy objections (which there is not), Ms. Crump's expertise has not been challenged and ample evidence demonstrates that the attachments reviewed by Ms. Crump, specifically, Attachment B, are the type of information reviewed in the course of developing an opinion of this nature.

### **III. RESPONSE TO OBJECTIONS AND MOTION TO STRIKE**

#### **A. Crump Testimony at page 12 line 10 through page 13 line 22 is relevant.**

In its Preliminary Order, the Commission identified the following issue to be addressed in this proceeding: "What are the reasonable expenses incurred by the City of Celina in this proceeding under TWC § 13.043(e) and 16 TAC § 24.101(e)(2) and (5)?"<sup>4</sup> The following testimony the Ratepayers seek to exclude is evidence of reasonable expenses incurred by the City and which, in the opinion of Ms. Crump, the City should be entitled to recover under this proceeding:

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

A. The Rate Appeal petition in Docket No. 49225 was filed by individual ratepayers residing in Collin County Municipal Utility District (MUD) No. 1, on February 14, 2019, appearing initially to be acting pro se. On March 13, 2019, the firm of Gilbert Wilburn, PLLC made an appearance for the ratepayers. On April 15, 2019, Collin County MUD No. 1 filed a separate petition in Docket No. 49448, appealing the same rates that are being appealed in Docket No. 49225. The same firm, Gilbert Wilburn, represents Collin

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<sup>2</sup> Preliminary Order at 5 (Jan. 17, 2020).

<sup>3</sup> 16 Tex. Admin. Code § 22.221(a).

<sup>4</sup> Preliminary Order at 5 (Jan. 17, 2020).

County MUD No. 1 in Docket No. 49448. DTRG represents the City of Celina in both of these dockets. As part of my review to determine the relationship of these two dockets to each other and to determine whether the legal fees could, or should, be separated for each docket, I reviewed Petitioners' Joint Motions to Consolidate, to Align Parties, and to Designate a Party Representative, filed in both dockets. In that pleading, the Joint Petitioners (ratepayers and Collin County MUD No. 1) requested that the two dockets be consolidated, based upon their statements that: (1) the rate appeals involve common issues of law or fact, involving the same rates and same ratemaking action taken by the City; (2) the ratepayers are all residents of the MUD; (3) the standard of review is the same and both involve the City's cost of service; (4) consolidation would serve the interest of efficiency and prevent unwarranted expense and delay; (5) the parties and their legal representatives are all the same people; (6) the subject matter is identical; (7) consolidation would reduce rate case expenses for all parties; and (8) consolidation would avoid duplicate hearings.

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

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

The Ratepayers incorrectly argue that this testimony is irrelevant under Rules 401<sup>5</sup> and 402<sup>6</sup> of the Texas Rules of Evidence. The Ratepayers assert that because Docket No. 49448 was dismissed after the City filed a Motion to Dismiss based on section 13.044(a) of the Texas Water Code ("TWC") and Title 16 of the Texas Administrative Code ("TAC"), and because the Ratepayers in this docket have appealed under TWC section 13.043(a), neither the testimony about Docket No. 49448 legal fees nor the fees themselves are relevant in this docket. However, as stated by the Ratepayers, both dockets "share common characteristics."<sup>7</sup> Both Docket No. 49225 and

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<sup>5</sup> Tex. R. Evid. 401.

<sup>6</sup> Tex. R. Evid. 402.

<sup>7</sup> Petitioners' Objections to and Motion to Strike Portions of the Direct Testimony and Attachments of Georgia N. Crump at 3 (March 31, 2020).

Docket No. 49488 are based on an appeal of the same rates. Further, Petitioners in both dockets are represented by the same legal counsel. The fact that the Ratepayers in this docket have appealed under a different provision is immaterial as the Petition in both dockets is/was based on an appeal of the exact same rates. Ms. Crump's expert opinion is that, because of the aforementioned similarities, the City should be able to recover here for certain rate case expenses attributable to its defense of Docket No. 49448. The Ratepayers cannot dismiss the City's argument in favor of collecting certain reasonable expenses solely by claiming it is irrelevant. The Ratepayers themselves acknowledged the interconnectedness of both Dockets when they filed, jointly with the Petitioners of Docket No. 49448, a motion to consolidate Docket Nos. 49225 and 49448.<sup>8</sup>

The testimony the Ratepayers seek to exclude is relevant to the City's argument identifying certain reasonable expenses incurred by the City and which the City believes should be recovered here. Further, Ms. Crump is offering this testimony as an expert on rate case expenses. The Ratepayers fail to recognize Rule 702 of the Texas Rules of Evidence which states the following:

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 issue.<sup>9</sup>

As Ms. Crump's qualifications as an expert have not been challenged, Ms. Crump can testify in the form of an opinion so long as her specialized knowledge helps the trier of fact understand the evidence or to determine a fact issue.<sup>10</sup> Here, the Commission has specifically asserted in its

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<sup>8</sup> Petitioners' Joint Motions to Consolidate, to Align Parties, and to Designate a Party Representative (June 27, 2019).

<sup>9</sup> Tex. R. Evid. 702 (emphasis added).

<sup>10</sup> *Id.*; see also *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995) ("To be relevant, the proposed testimony must be 'sufficiently tied to the facts of the case that it will aid the jury in resolving the factual dispute.'"); see also 16 Tex. Admin. Code § 22.221(a).

Preliminary Order that one issue to be addressed is what the reasonable expenses of the City are. This specific testimony specifically seeks to answer that question.

Further, Rule 401 of the Texas Rules of Evidence is to be broadly construed. The rule states that evidence is relevant if it 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.” Here, Ms. Crumps testimony will be used to determine an issue specifically recognized by the Commission—the reasonable expenses incurred by the City. Additionally, in its Preliminary Order, the Commission specifically states that the “list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary[.]”<sup>11</sup>

**B. Exhibit B of Crump’s Testimony is necessary to address the issue concerning reasonable expenses incurred by the City.**

As previously stated, the Commission determined that one issue to be addressed by the Administrative Law Judge (“ALJ”) is the reasonable expenses incurred by the City of Celina in this proceeding under TWC § 13.043(e) and 16 TAC § 24.101(e)(2) and (5).<sup>12</sup> The Ratepayers assert that, “For the same reasons stated above, that Ms. Crump’s testimony about legal fees incurred by the City to keep the District from appealing rates under an entirely different statutory scheme is irrelevant to this docket, the legal fees themselves are likewise irrelevant.”<sup>13</sup> For the same reasons stated above at Section A., the City argues that the legal fees demonstrated in

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<sup>11</sup> Preliminary Order at 5 (Jan. 17, 2020).

<sup>12</sup> Preliminary Order at 5 (Jan. 17, 2020).

<sup>13</sup> Petitioners’ Objections to and Motion to Strike Portions of the Direct Testimony and Attachments of Georgia N. Crump at 4 (March 31, 2020).