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



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

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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**ORDER NO. 6  
DENYING PETITIONERS' MOTIONS TO STRIKE**

On March 31, 2020, the Outside City Ratepayers of the City of Celina (Petitioners) filed motions to strike all or part of the direct testimonies of City of Celina (City) witnesses Georgia N. Crump, Jason Gray, and Dan V. Jackson on various grounds, including relevance and lack of expertise. The City responded on April 7, 2020, arguing that the motions should be denied.

***Testimony of Ms. Crump***

The Petitioners contend that portions of Ms. Crump's testimony and attachments are not relevant because they pertain to the City's rate-case expenses for a different proceeding, Docket No. 49448,<sup>1</sup> which was dismissed. The Petitioners argue that rate-case expenses incurred in Docket No. 49448, which addressed a different statute for water rate appeals, are not recoverable in this proceeding. They acknowledge, however, that prior to its dismissal, they had supported consolidating Docket No. 49448 with this proceeding and that both cases involve the same legal counsel and City rate determination. The City contends that the similarities warrant the recovery of rate-case expenses for both proceedings in this case. Under the Texas Water Code, the Commission may allow recovery of reasonable expenses incurred in water rate appeals.<sup>2</sup> The Administrative Law Judges (ALJs) conclude that the testimony is relevant to the City's argument

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<sup>1</sup> *Petition of Collin County Municipal Utility District No. 1 Appealing City of Celina Utility Rates*, Docket No. 49448, Order of Dismissal on Rehearing of Interim Appeal (Jan. 20, 2020).

<sup>2</sup> Tex. Water Code § 13.043(e).

that the two proceedings were in effect the same water rate appeal.<sup>3</sup> Accordingly, the Petitioners' objection is overruled.

*Testimony of Mr. Gray*

The Petitioners object to the entirety of Mr. Gray's testimony. First, they contend he is not an expert witness because he is not an engineer, lawyer, or rate expert, and that he impermissibly provides opinions and relies on hearsay. In response, the City cites Texas Rule of Evidence 702, which states that a person may qualify as an expert "by knowledge, skill, experience, training, or education." The City points out that Mr. Gray's testimony details his experience working with wholesale and retail water systems, including working as the city manager for the City. The ALJs conclude that the City has met its burden to show that Mr. Gray's experience qualifies him to testify as an expert on the matters addressed in his testimony, and the objections are overruled. Further, because Mr. Gray is testifying as an expert witness, he is not prohibited from providing opinions or relying on hearsay or information that is not based on personal knowledge.<sup>4</sup> Accordingly, the Petitioners' objections on those grounds are also overruled.

The Petitioners further object to Mr. Gray's testimony on grounds that it addresses a 2007 development agreement between the City and developers of the Collin County Municipal Utility District No. 1 (CCMUD#1), which the Petitioners contend is irrelevant to determining the cost of service in this proceeding. According to Mr. Gray's testimony, the development agreement provided the City's consent to the creation of CCMUD#1, which contains most of the City's outside-city customers, and addressed water and wastewater services. The City argues the testimony is relevant to issues identified in the Commission's Preliminary Order, including whether the rates charged are just and reasonable and how costs for service differ between

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<sup>3</sup> See Tex. R. Evid. 402 ("Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.").

<sup>4</sup> Tex. R. Evid. 703; see also *In re Christus Spohn Hosp. Kleberg*, 222, S.W.3d 434, 440 (Tex. 2007) ("[I]n many instances, experts may rely on inadmissible hearsay, privileged communications, and other information that the ordinary witness may not.").

outside-city and in-city customers.<sup>5</sup> There is no dispute that the rates at issue in this proceeding are charged pursuant to a City ordinance, not the development agreement. However, the development agreement provides information about the plant required to serve outside-city customers and was information available to the City at the time it made its decision.<sup>6</sup> Accordingly, the ALJs conclude that the testimony regarding the development agreement is relevant to issues in this proceeding, and the objections are overruled.<sup>7</sup>

### *Testimony of Mr. Jackson*

The Petitioners object to portions of Mr. Jackson's testimony on the basis that they are hearsay and not supported by evidence. However, Mr. Jackson is testifying as an expert witness and, therefore, is not prohibited from relying on hearsay.<sup>8</sup> Expert witnesses may also state an opinion and give reasons for it without first testifying to the underlying facts or data.<sup>9</sup> Further, the City points out that Mr. Jackson testified that the data and analysis presented in his testimony are based on the Willdan 2018 Water and Wastewater Rate Study and Financial Forecast of the City of Celina included as Attachment B to his testimony.<sup>10</sup> Accordingly, these objections are overruled.

The Petitioners also contend that Mr. Jackson is not an expert on rate of return on equity, so his testimony on that topic should be struck. They allege the City provided no evidence that Mr. Jackson is qualified as an expert by knowledge, skill, experience, training or education. The City responds that, as shown by his resume attached to his testimony, Mr. Jackson is an expert on economic and financial consulting services for water and wastewater utilities. The ALJs conclude

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<sup>5</sup> See Preliminary Order at 3-4 (Jan. 17, 2020).

<sup>6</sup> See Tex. Water Code § 13.043(e).

<sup>7</sup> The Petitioners also argue that, even if the testimony is relevant, it should be excluded under Texas Rule of Evidence 403 because it confuses the issues. However, the ALJs find this objection unpersuasive.

<sup>8</sup> Tex. R. Evid. 703; see also *In re Christus Spohn Hosp. Kleberg*, 222, S.W.3d at 440.

<sup>9</sup> Tex. R. Evid. 705(a).

<sup>10</sup> See Direct Testimony of Dan V. Jackson at 6 (Mar. 17, 2020).

that the City has met its burden to show that Mr. Jackson's experience qualifies him to testify as an expert on rate of return on equity, and the objections are overruled.

The Petitioners further argue that portions of Mr. Jackson's testimony are not relevant. The relevance objections generally fall into two categories. First, the Petitioners object to Mr. Jackson's discussion of the 2007 development agreement. For the reasons discussed regarding Mr. Gray's testimony, the objections are overruled. Second, the Petitioners object to testimony regarding various City projections on grounds that they are irrelevant because rates must be based on actual test-year data adjusted for known and measurable changes. The City responds that the objected-to testimony is relevant to Preliminary Order Issue Nos. 4, 6, and 7, which generally address the reasonableness of the City's rates and the information that was available to the City when it changed them. Based on Mr. Jackson's testimony, the rates were adopted as part of a three-year rate plan and the projections were available to the City at the time it changed its rates. Further, municipally owned utilities are not prohibited from using budgeted data in setting rates.<sup>11</sup> Accordingly, the ALJs conclude that the testimony meets the standard for relevance, and the objections are overruled.

Finally, the Petitioners object to the admission of the tables and charts referenced in Mr. Jackson's testimony and the models attached as appendices because they were not filed in native file format with active links and formulas as required by 16 Texas Administrative Code § 22.72(i). The City responded that it has delivered a CD-ROM to the Petitioners and Commission Staff containing each of the documents in native file format with active links and formulas. Based on the City's representation, the ALJs conclude that the objection is moot.

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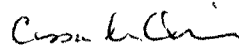
<sup>11</sup> See, e.g., *Petition of North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10 and Wells Branch Municipal District from the Ratemaking Actions of the City of Austin and Request for Interim Rates in Williamson and Travis Counties*, Docket No. 42857, Order on Rehearing at 11 (Jan. 14, 2016).

For the reasons discussed above, the Petitioners' motions to strike are **DENIED**. The ALJs' rulings are limited to admissibility of the testimony and do not address its weight. The parties may address the appropriate weight to give the testimony through evidence and argument.

**SIGNED May 5, 2020.**



CHRISTIAAN SIANO  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



CASSANDRA QUINN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS