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**SOAH DOCKET NO. 473-19-5674.WS
PUC DOCKET NO. 49351**

**RATEPAYERS APPEAL OF THE
DECISION BY BEAR CREEK SPECIAL
UTILITY DISTRICT TO CHANGE
RATES**

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§

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

DIRECT TESTIMONY

OF

JOHN J. CARLTON

ON BEHALF OF BEAR CREEK SPECIAL UTILITY DISTRICT

EXHIBIT BCSUD-5

AUGUST 3, 2020

**PUC DOCKET NO. 49351
SOAH DOCKET NO. 473-19-5674.WS**

**DIRECT TESTIMONY OF JOHN J. CARLTON
WITNESS FOR BEAR CREEK SPECIAL UTILITY DISTRICT**

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**DIRECT TESTIMONY OF
JOHN J. CARLTON,
WITNESS FOR BEAR CREEK SPECIAL UTILITY DISTRICT**

I. INTRODUCTION

1

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is John J. Carlton. My business address is The Carlton Law Firm, P.L.L.C, 4301
4 Westbank Drive, Suite B-130, Austin, Texas 78746.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. I am filing direct testimony on behalf of Bear Creek Special Utility District (“Bear Creek”).
7 Bear Creek’s rates were appealed by some of its ratepayers under Texas Water Code
8 §13.043(b) (“Rate Appeal”) to the Public Utility Commission of Texas (“PUC”) in this
9 case.

10 **Q. WHAT IS YOUR RELATIONSHIP TO THE APPLICANT IN THESE**
11 **PROCEEDINGS?**

12 A. My law firm was retained by Bear Creek to represent Bear Creek regarding the Rate
13 Appeal. I am lead litigation counsel and am responsible for providing legal assistance and
14 legal advice to Bear Creek throughout this proceeding.

15 **II. PROFESSIONAL TRAINING AND EXPERIENCE**

16 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

17 A. I graduated from the University of Texas at Austin in 1988 with a Bachelor of Arts degree.
18 I obtained my law degree from the University of Texas School of Law in 1991. I have been
19 licensed to practice law in the State of Texas since 1991.

1 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

2 A. I have extensive experience in water utility regulation in Texas, having practiced in the
3 area for over 26 years. My practice focuses on representation of governmental entities,
4 including special utility districts, water control and improvement districts, and other
5 companies as general and special counsel in matters before State agencies. I have
6 represented clients in utility rate cases, service area and permitting matters at the Texas
7 Commission on Environmental Quality (“TCEQ”) and PUC, including water, wastewater
8 and electric rate matters, applications for certificates of convenience and necessity
9 (“CCNs”), and land use and planning proceedings before local governments.

10 **Q. IS EXHIBIT JJC-1 A TRUE AND CORRECT COPY OF YOUR RÉSUMÉ**
11 **PREPARED BY YOU?**

12 A. Yes. It accurately represents my educational and work experience.

13 **III. PURPOSE OF TESTIMONY**

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A. I will present testimony on the reasonableness and necessity of rate case expenses paid to
16 date by Bear Creek for legal representation and to process this contested Rate Appeal.

17 **IV. EXPENSES**

18 **Q. WHAT ARE THE LEGAL EXPENSES THAT BEAR CREEK IS SEEKING TO**
19 **RECOVER IN THIS CASE?**

20 A. Bear Creek has sought legal advice and representation relating to the Rate Appeal,
21 preparing and filing its testimony in support of its proposed rates, preparing for SOAH
22 hearings, responding to Requests for Information, and continuing to prepare for a contested

1 case hearing. Bear Creek will continue to incur legal costs related to the Rate Appeal as
2 the contested case hearing proceeds and reserves the right to request additional rate case
3 expenses, including legal fees and expenses, at a later date.

4 **Q. PLEASE GENERALLY DESCRIBE THE LEGAL WORK TO PREPARE**
5 **EVIDENCE AND TESTIMONY IN SUPPORT OF THE UTILITY'S RATES AND**
6 **PROSECUTE THE UTILITY IN THIS CASE TO DATE AND THE TYPES OF**
7 **EXPENSES THAT THE UTILITY HAS INCURRED.**

8 A. Since this Rate Appeal was filed by some of Bear Creek's retail customers, the legal work
9 performed on this case by my firm in this matter includes, without limitation:

- 10 a. Review of the facts surrounding the appeal and the rates that are subject to the
11 appeal and conferences with the Bear Creek's representatives to develop legal
12 strategy;
- 13 b. Conferences with the PUC staff regarding the appeal, including responses to PUC
14 staff requests for information;
- 15 c. Legal research and analysis of the PUC staff and Ratepayers' challenges to Bear
16 Creek's rates;
- 17 d. Conferences and correspondence with the consultants;
- 18 e. Preparation for and attendance at multiple hearings, including hearings before
19 SOAH related to Ratepayers' challenges to Bear Creek's rates;
- 20 f. Preparation and response to written discovery requests propounded by PUC Staff,
21 including production of almost 1,000 pages of documents;
- 22 g. Correspondence to and conferences with Bear Creek's staff and representatives
23 regarding the case, settlement, and status;

- 1 h. Conferences with and correspondence to Ratepayers' representatives regarding
2 various legal issues, settlement and other rate case issues;
- 3 i. Analysis of legal and factual issues for prefiled testimony;
- 4 j. Coordinating and drafting prefiled testimony for Bear Creek's witnesses; and
- 5 k. Assembly and preparation of exhibits to be included with Bear Creek's prefiled
6 testimony.

7 This is by no means the complete list of tasks performed by the firm but is a representative
8 description of the tasks that the firm has performed in this rate case.

9 **Q. WHO IS RESPONSIBLE TO DIRECT LEGAL WORK AND TO ACCURATELY**
10 **INVOICE THE LEGAL EXPENSES TO BEAR CREEK?**

11 A. I am responsible for directing the firm's legal work relating to representing Bear Creek on
12 its Rate Appeal. I am also responsible for ensuring the invoices accurately reflect the
13 amount of time spent for the work described.

14 **Q. DOES THE APPEAL OF BEAR CREEK'S RATES INCLUDE ANY UNUSUAL**
15 **ISSUES THAT A TYPICAL WATER UTILITY RATE APPEAL DOES NOT**
16 **INCLUDE?**

17 A. No.

18 **Q. ARE THE HOURLY RATES REASONABLE?**

19 A. Yes, our rates are reasonable and comparable to rates charged by attorneys and staff at
20 other firms in the area with similar experience and expertise for these types of matters.

1 Q. ARE THE RATES CHARGED BY THE CARLTON LAW FIRM THE SAME AS
2 THE STANDARD RATES NORMALLY CHARGED TO ITS CLIENTS FOR
3 MATTERS LIKE THIS APPEAL?

4 A. Yes.

5 Q. HAVE YOU TAKEN ANY ADDITIONAL STEPS TO REDUCE LEGAL
6 EXPENSES?

7 A. I utilize non-billing administrative personnel and lower-rate associate and paralegal/legal
8 assistant resources whenever it is possible to do so. We make an effort not to duplicate
9 work and frequently mark down time as much as possible.

10 Q. HOW MUCH IN RATE CASE EXPENSES FOR LEGAL SERVICES FROM YOUR
11 FIRM HAS BEAR CREEK INCURRED AS OF JULY 31, 2020?

12 A. Bear Creek has incurred and paid approximately \$70,723.70 in fees, costs and expenses
13 from the Carlton Law Firm, P.L.L.C. through July 31, 2020. There is approximately
14 \$23,000 in unbilled time for work to prepare Bear Creek's prefiled direct case and
15 responses to discovery requests during July 2020. The total amount of attorneys' fees and
16 costs that will be required to finish prosecution of the Rate Appeal is not known, but the
17 utility will supplement its testimony as additional fees and expenses are incurred and paid.

18 Q. DO YOU EXPECT THAT BEAR CREEK WILL INCUR FUTURE LEGAL FEES
19 AND EXPENSES ASSOCIATED WITH THE RATE APPEAL?

20 A. Yes, I expect additional legal fees and expenses to be incurred as we proceed through the
21 contested case hearing process. Additional legal costs during this process will be necessary
22 for discovery, analyzing testimony of other parties, preparing and filing rebuttal testimony,

1 participation in the hearing on the merits, post-hearing briefing and attending PUC
2 meetings. The total amount of additional attorney fees and costs that Bear Creek may incur
3 is unknown at this time, but based upon my experience, I estimate that those fees will be
4 at least an additional \$80,000 to \$100,000, depending on the filings by the other parties,
5 future discovery, and the length of the hearing. This would result in total rate case expenses
6 related to legal fees and costs of at least \$170,000.

7 **Q. DO YOU HAVE AN OPINION REGARDING THE REASONABLENESS OR**
8 **NECESSITY OF THE AMOUNT OF RATE CASE EXPENSES THAT THE**
9 **UTILITY HAS ALREADY INCURRED?**

10 A. Yes.

11 **Q. WHAT IS YOUR OPINION?**

12 A. It is my opinion that the attorneys' fees incurred and paid by the utility through
13 July 31, 2020, and the unbilled time through July 31, 2020, were reasonable and necessary
14 to prepare, file and prosecute the utility's case in response to the Rate Appeal filed by some
15 of its ratepayers. I am familiar with the hourly rate charged by attorneys for the types of
16 work performed in this case. My hourly rates are reasonable. Given issues raised by the
17 PUC staff and issues raised by the customers who appealed the utility's rates, and the legal
18 and factual issues, the amount of rate case expenses paid by the utility to date is reasonable
19 and necessary.

20 **Q. DOES THIS CONCLUDE YOUR PREFILED DIRECT TESTIMONY?**

21 A. With the exception of supplementing the rate case expenses as they are later incurred and
22 paid, it does.



John J. Carlton

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Curriculum Vitae

Education:

The University of Texas School of Law, Austin, Texas
J.D. , Law , 1988 — 1991

Activities and Societies: Environmental Law Journal

The University of Texas at Austin, Austin, Texas
B.A. , Biology , 1986 — 1988

Vanderbilt University, Nashville, Tennessee
Biology, Chemistry, Math , 1984 — 1986

Licensure: Licensed to Practice Law in the State of Texas - 1991

Practice Background: Extensive experience in municipal and local government law, including: creation, management and representation of special districts (various water districts, emergency services districts and others); representation of public and private clients in complex utility regulatory matters and contested proceedings (water quality permitting and enforcement, water rights, water, wastewater and electric retail and wholesale rates and service area disputes) before the Texas Commission on Environmental Quality and the Public Utility Commission of Texas; representation of general law and home-rule cities as general or special counsel; representation of public and private clients in administrative hearings before state agencies and in land use and planning proceedings before local governments; contract and interlocal agreement negotiation and drafting; drafting, adoption and enforcement of state and local government rules and regulations; municipal and local government financing through loans and lease-purchase agreements and general counsel components of the process related to issuance of bonds and notes; and, representation of public and private clients before the Texas Legislature.

Exhibit JJC-1

Experience:

Managing Member, The Carlton Law Firm, P.L.L.C., February 2011 — present

Practice focused on representation of governmental entities, including emergency services districts, municipal utility districts, special utility districts, water control and improvement districts, and other utility companies as general counsel and special counsel in matters before State agencies, and representation of clients in utility rate, service area and permitting and enforcement matters at the Texas Commission on Environmental Quality (TCEQ) and the Public Utility Commission (PUC), including water, wastewater and electric rate applications, applications for certificates of convenience and necessity (CCNs), representation of clients in land use and planning proceedings before local governments, and work as a lobbyist before the Texas Legislature.

Armbrust & Brown, L.L.P.

Partner, January 1999 — February 2011

Associate, May 1997 — December 1998

Represented cities and special districts, including emergency services districts, municipal utility districts, special utility districts, water control and improvement districts, as general counsel and in matters before State agencies. Represented clients in matters at the Texas Commission on Environmental Quality (TCEQ) and the Public Utility Commission of Texas (PUC), including water, wastewater and electric rate applications, applications for certificates of convenience and necessity (CCNs), water quality/wastewater treatment plant permits. Represented clients as a lobbyist before the Texas Legislature.

Associate Attorney, Strasburger & Price, LLP, September 1993 — May 1997

Associate Attorney in Real Estate and Environmental practice groups representing local government entities in Central Texas and clients before the TCEQ.

Staff Attorney, Texas Water Commission and successor, Texas Natural Resource Conversation Commission, August 1991 — September 1993

Staff Attorney for Water Quality, Water Rates and Hazardous Waste program areas. Participated in various permitting and rate hearings and enforcement matters.

Additional Information

Frequent speaker on topics related to emergency services districts, water and wastewater utility regulation (Rates and Certificates of Convenience and Necessity), general local government operation and management (special districts), and legislative matters affecting emergency services districts, water, wastewater and local government issues.

Member, Texas Section of the American Water Works Association, AWWA

Member, Texas Water Conservation Association, TWCA

Member, Texas Rural Water Association, TRWA

Member, Association of Water Board Directors, AWBD

Member and General Counsel, Texas State Association of Fire and Emergency Districts, SAFE-D

Member, State Firemen's and Fire Marshals' Association of Texas, SFFMA

Eagle Scout