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**SOAH DOCKET NO. 473-20-4071.WS
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RATEPAYERS APPEAL OF THE	§	BEFORE THE STATE OFFICE
DECISION BY WINDERMERE OAKS	§	
WATER SUPPLY CORPORATION TO	§	OF
CHANGE WATER AND SEWER	§	
RATES	§	ADMINISTRATIVE HEARINGS

**RATEPAYERS' REPRESENTATIVES OBJECTION TO GRANT RABON
SUPPLEMENTAL TESTIMONY**

COMES NOW, the Staff of the Public Utility Commission (Staff) and files this Motion to Strike the Supplemental Testimony of Grant Rabon filed on October 28, 2022, on behalf of Windermere Oaks Water and Sewer Supply (Windermere). Pursuant to SOAH Order No. 23, this motion is timely filed.

II. GENERAL STATEMENTS OF LAW REGARDING OBJECTIONS

Under the Texas Rules of Evidence, "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony." TEX. R. EVID. 602. Therefore, a court may not admit a witness's testimony if it constitutes speculation.

Under the Texas Rules of Evidence 701, "If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony or to determine a fact in issue." TEX. R. EVID. 701. Additionally,

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.

Under Texas case law, the Texas Rules of Evidence "do not permit an expert to state an opinion or conclusion on a pure question of law because such a question is exclusively for the court to decide"¹

III. OBJECTIONS AND MOTION TO STRIKE PORTIONS OF SUPPLEMENTAL DIRECT TESTIMONY OF GRANT RABON

Ratepayers maintain that Mr. Rabon's Supplemental Testimony offers unsubstantiated opinions which are based on insufficient facts and data.² Ratepayers respectfully requests that the ALJ strike certain portions of the following testimony of Mr. Rabon offered on behalf Windemere;

A. Page 7, lines 8 – 11

Mr. Rabon's testimony asserts that all Windermere are in the same location (within the same subdivision. However, in Ratepayers First Request for Information, RFI 1-22 Windermere does not deny they have customers in different subdivisions within their service area. Windermere states: "*WOWSC does not maintain its books in a manner that breaks down customers by subdivision. See Confidential Attachment Ratepayers 1-22*". Furthermore, Mr. Rabon asserts that all Windermere Customers are Members. Windermere's Tariff specific to tenants allow nonmembers to be customers under an Alternate Billing Agreement. Additionally attached to Gimenez Rebuttal testimony Attachment JG-30, Billing Register tenants make payments for utility service.

¹ See Dickerson v. DeBarbieris, 964 S.W. 2d 680, 690 (Tex. App.—Houston [14th Dist.] 1998, no pet.).

² See Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 590 (1993)

B. Page 7, lines 12-24, page 8 1-12 and page 9 1-12.

Mr. Rabon's testimony on Page 7 lines 12 – 24 page 8 lines 1-12 and page 9 lines 1 – 12 attempts to distinguish Hangar customers from Single Family Residential customers without addressing the characteristics of the customers, such as irrigation use, peak demand by short term rental business or discussing proximity of customers to the water and wastewater plant. Mr. Rabon's testimony avoids any assignment of high usage accounts without addressing the sharing of water and wastewater service among customers.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Portland respectfully requests that the ALJ sustain these objections and strike those portions of the direct testimony identified herein. Portland further requests such other and further relief to which it is entitled.

Respectfully Submitted,

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Certificate of Service

I hereby certify that, unless otherwise ordered by the Presiding Officer, notice of this filing was provided to all parties of record via electronic mail on November 10, 2022.

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