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**SOAH DOCKET NO. 473-24-13127.WS
PUC DOCKET NO. 54617**

APPLICATION OF TEXAS WATER	§	PUBLIC UTILITY COMMISSION
UTILITIES, LP AND SOUTHERN	§	
HORIZONS DEVELOPMENT, INC. FOR	§	OF TEXAS
SALE, TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN LIBERTY AND	§	
MONTGOMERY COUNTIES	§	

**COMMISSION STAFF’S OBJECTIONS TO AND MOTION TO STRIKE PORTIONS
OF THE REBUTTAL TESTIMONY OF BRIAN D. BAHR**

On February 2, 2023, Texas Water Utilities, LP (TWU) and Southern Horizons Development, Inc. (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Liberty and Montgomery Counties. On March 5, 2024, this proceeding was referred to the State Office of Administrative Hearings (SOAH).

Pursuant to SOAH Order No. 3, objections to Applicants’ rebuttal testimony are due on July 2, 2024. Therefore, the Staff (Staff) of the Public Utility Commission of Texas’s (Commission) objections are timely filed.

I. STANDARD FOR ADMISSIBILITY OF PRE-FILED WRITTEN TESTIMONY

The Commission rule governing evidence in contested cases provides that “[t]he Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases.”¹ Pre-filed written testimony offered in a contested case is subject to the same evidentiary objections as oral testimony,² and thus subject to the same admissibility standards and objections as are applicable under the Texas Rules of Evidence.

**II. OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF THE
REBUTTAL TESTIMONY OF BRIAN D. BAHR**

¹ 16 Texas Administrative Code (TAC) § 22.221(a).

² 16 TAC § 22.225(b).

Staff objects to lines 4:1-13 of the rebuttal testimony of Brian D. Bahr, filed to respond to the direct testimony of James Harville on behalf of Staff,³ due to its misrepresentation of Mr. Harville's testimony. Texas Rule of Evidence (TRE) 701 states that lay witnesses may testify in the form of an opinion 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 determining a fact in issue." Similarly, TRE 701 provides that an expert witness "may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed." As detailed below, the facts in this proceeding do not support lines 4:1-13 of Mr. Bahr's rebuttal testimony. As Mr. Bahr's rebuttal testimony states that he reserves the right to supplement his rebuttal testimony based on discovery responses received for TWU RFI Nos. 1-5, 1-6, 1-7, 1-9, 1-10, 1-14, 1-15, and 1-16,⁴ his rebuttal testimony indicates that he reviewed Staff's response to TWU 1-8 before filing his rebuttal testimony, and therefore is aware of the facts in the proceeding that contradict his rebuttal testimony. Therefore, Staff objects to and moves to strike lines 4:1-13 of Mr. Bahr's rebuttal testimony.

Although TWU stated that the purpose of its motion to compel Staff's responses to its first request for information (RFI) was so that it may adequately prepare its rebuttal testimony,⁵ the rebuttal testimony of Mr. Bahr filed on June 20, 2024 directly contradicts Staff's responses to TWU's RFI filed on June 17, 2024,⁶ and misconstrues Mr. Harville's direct testimony. Specifically, Mr. Bahr's rebuttal testimony contradicts Staff's response to TWU 1-8.

The relevant portions of Mr. Bahr's rebuttal testimony state as follows:

1 Q. WHAT IS THE BASIS FOR MR. HARVILLE'S REVERSAL OF THE

³ Redacted Rebuttal Testimony of Brian D. Bahr on behalf of Texas Water Utilities, L.P. at 2 (June 20, 2024) (Bahr Redacted Rebuttal).

⁴ Bahr Rebuttal at 10.

⁵ Texas Water Utilities, L.P.'s Motion to Compel Discovery Responses from Commission Staff at 1 (June 13, 2024).

⁶ See Commission Staff's Response to Texas Water Utilities, LP's First Request for Information to Commission Staff Question Nos. TWU 1-1 through 1-17 and Response to Texas Water Utilities, LP's Motion to Compel at Response to TWU 1-8 (June 17, 2024).

2 **RECOMMENDATION IN HIS TESTIMONY RELATIVE TO HIS PREVIOUS**
 3 **RECOMMENDATION?**

4 A. To support his recommendation, Mr. Harville States that the Villas of Willowbrook
 5 rates "could be applied as a contingency to alleviate rate shock for the current customers
 6 and ratepayer parties in this docket."

7 Q. **DOES MR. HARVILLE PRESENT ANY ANALYSIS TO SUPPORT HIS**
 8 **CHANGE IN POSITION?**

9 A. Mr. Harville included a billing comparison of the Southern Horizons current rates, the
 10 initial rates requested by Texas Water Utilities, and the Villas of Willowbrook rates at
 11 2,000, 5,000, and 10,000 gallons of usage. He does not provide any narrative analysis
 12 interpreting this billing comparison, an explanation of its significance, or a defense of
 13 why his opinion differs from his original recommendation.

However, Staff's response to TWU 1-8, filed on June 17, 2024, provides:

TWU 1-8 Reference the direct testimony of James Harville at 12:1—14:2. Please
 admit or deny that this recommendation differs from the recommendation
 in the memorandum of James Harville filed with Commission Staff's
 Recommendation on Approval of the Transaction on July 17, 2023. If the
 response is anything other than an unqualified admit, please explain. The
 applicable section of that memorandum reads:

***3.12. Consideration of the probable improvement in service or lowering
 of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8),
 24.239(h)(5)(H)).***

The customers' rates will be higher than the current rates for the Southern
 Horizons. Reliability and quality of water service is expected to improve
 under Texas Water's management.

RESPONSE: While the entirety of the direct testimony of James Harville does not duplicate the entirety of the memorandum of James Harville filed with Commission Staff's Recommendation on Approval of the Transaction filed on July 17, 2023, Staff continues to recommend that if the transaction is approved as proposed, the customers' rates will be higher than the current rates for Southern Horizons. Reliability and quality of water service are still expected to improve under TWU's management.

Prepared by: Counsel
Sponsor: James Harville

As evidenced above, Staff's response to TWU 1-8 confirms that Mr. Harville did not "change" his recommendation in his direct testimony. Staff continues to support the statements made in Staff's recommendation on approval of the transaction, including those in Mr. Harville's memorandum attached to Staff's recommendation. Mr. Bahr is aware of this fact, as it was included in Staff's RFI response to TWU 1-8, filed prior to Mr. Bahr's rebuttal testimony. While TWU seems to believe that because the direct testimony of Mr. Harville does not duplicate the entirety of the memorandum of James Harville filed with Staff's Recommendation on Approval of the Transaction filed on July 17, 2023, Staff has now "reversed" its previous recommendation and "changed its position", TWU has not provided any legal authority supporting this restrictive view of testimony. TWU has not provided any legal authority for its conjecture that a party's direct testimony can only duplicate what is written in any and all prior memoranda, because there is none. Therefore, Staff objects to and moves to strike lines 4:1-13 of Mr. Bahr's rebuttal testimony.

III. CONCLUSION

For the reasons detailed above, Staff objects to and respectfully moves to strike lines 4:1-13 of Mr. Bahr's rebuttal testimony. Staff respectfully requests the entry of an order consistent with this pleading.

Dated: July 2, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on July 2, 2024, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Kelsey Daugherty
Kelsey Daugherty