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Filing Date - 2025-02-27 02:52:56 PM

Control Number - 54713

Item Number - 112

**SOAH DOCKET NO. 473-23-22448.WS
PUC DOCKET NO. 54713**

PETITION BY RATEPAYERS	§	BEFORE THE STATE OFFICE
APPEALING THE WATER AND	§	
SEWER RATES ESTABLISHED BY	§	OF
WESTWOOD SHORES MUNICIPAL	§	
UTILITY DISTRICT	§	ADMINISTRATIVE HEARINGS

JOINT OBJECTIONS AND MOTION TO STRIKE

COMES NOW, the Staff of the Commission (“Commission Staff”), and Westwood Shores Municipal Utility District, Respondent in this proceeding (“District”), and file this Joint Objections and Motion to Strike. Commission Staff and the District re-urge the Administrative Law Judge to admit only those exhibits as shown in the Parties’ Agreed Exhibit List and to strike all filing of Ms. Ellison. In support thereof, the Commission Staff and the District would respectfully show as follows:

I. BACKGROUND

This proceeding is the result of a Petition to Appeal Rates Established by Westwood Shores Municipal Utility District (the “Petition”), which was filed with the Commission on behalf of the District’s Ratepayers on March 3, 2023 (the “Ratepayers”). On February 18, 2025, the ALJ issued SOAH Order No. 11 Canceling Hearing on the Merits; Requiring Submission of Exhibits and Identification of Stipulated Facts; Restating Post-Hearing Briefing Deadlines. In conformance with this Order, on February 21, 2025, the Parties filed an Agreed Exhibit List and Agreed Stipulated Facts. On February 24, 2025, the ALJ issued SOAH Order No. 12 Requiring Response, which was in response to random filings of Ms. Ellison, which are counter to the Parties’ agreement.

**II. OBJECTIONS TO DOCUMENTS FILED BY LAURA ELLISON
AND REQUEST TO STRIKE**

Counsel for Commission Staff, the District and Ratepayers, (collectively the Parties), to this case conferred and agreed on the list of documents to be admitted. The Parties filed that list on February 21, 2025, and it may be found in the PUC Interchange as AIS No. 109. The Parties specifically agreed to not submit any of Ms. Ellison’s or Ms. Gray’s documents, as those documents are not relevant, not filed timely in accordance with SOAH Order No. 6, not filed in

accordance with Commission Rules, and the issues addressed are not within the Commission's jurisdiction.

As reflected in the Parties' Agreed Exhibit List filed on February 21, 2025, the counsel for the Parties conferred on February 20th and 21st regarding the list of exhibits and agreed on the list included therein. This conference included multiple phone calls, emails, and text messages between counsel for the District, counsel for Staff, and counsel for Ratepayers. The conferences included discussion of the documents submitted by Ms. Ellison on February 20, 2025. The documents referenced in Ms. Ellison's February 22, 2025 filing are the same documents discussed with Ratepayers' counsel on February 20th and 21st. Simply stated, Ratepayers' counsel agreed that the Agreed Exhibit List should exclude all of the documents that Ms. Ellison references. See the February 21, 2025 emails between District's Counsel Wilburn and Ratepayers' Counsel Smith wherein Mr. Smith agreed to the evidence list excluding the filings of Ms. Ellison and Ms. Gray, which is attached as Exhibit 1. See also the February 21, 2025 email from Katy Hennings, paralegal for District's Counsel to Mr. Smith transmitting the exhibits that make up the District's evidence, attached as Exhibit 2.

Ms. Ellison's documents were not filed in accordance with Commission Rules. None of her documents were filed in accordance with the Commission's strict filing requirements found in 16 TAC Chapter 22, Subchapter E.

In addition to Ratepayers' agreement to exclude the documents, Ms. Ellison's filing on February 22, 2025, was untimely in two respects. First, the deadline for Ratepayers to file Direct Testimony was November 20, 2024.¹ Ms. Ellison's filing includes a list of documents filed in the Commission's interchange, denoted as Exhibits.² Most of the documents were filed on February

¹ SOAH Order No. 6 Memorializing Third Prehearing Conference: Lifting Abatement; Rulings on Pending Motions; Adopting Procedural Schedule; Setting Prehearing Conference and Hearing on the Merits and Addressing Procedures at 3-4 (May 16, 2024).

² Ms. Ellison's filing consists of a list of seven references to documents filed in the interchange, denoted as exhibits. Exhibits P1 and P2 are documents filed in the Interchange on February 12, 2025. Exhibits P3, P4, P5, and P6 were filed in the Interchange on February 20, 2025. Exhibit P7 was filed in the interchange on November 8, 2024.

12, 2025 or later, three months after the deadline for filing direct testimony.³ The ALJ should not allow this individual to submit this information into the record at this late date.

Only one document referenced in Ms. Ellison's filing was uploaded to the Commission's interchange before the November 20, 2024 deadline. This document contains "testimony" previously struck by the ALJ.⁴ The Parties, in their conference and filing of their Agreed Exhibit list, had agreed to exclude all of the Ratepayers' testimony, including Ms. Ellison's documents, as none of the information is relevant to how the District set rates. The ALJ should not circumvent the Parties' agreement and admit these exhibits and "testimony" at this time.

Second, pursuant to SOAH Order No. 11, the deadline for filing an agreed list of exhibits with exhibit numbers was February 21, 2025. If Ms. Ellison's filings were supposed to be filings of exhibits, her filing missed this deadline as well. Per the Commission's Interchange, she filed this document with the Commission on February 22, 2025, after the ALJ's deadline. Because the documents referenced in Ms. Ellison's filing were submitted well after the deadlines established by SOAH in Orders No. 6 and 11, or contain testimony the Parties previously agreed to strike and testimony previously struck by the ALJ in SOAH Order No. 8, the District respectfully requests the ALJ deny admittance of Ms. Ellison's November 22, 2025 list of exhibits and all of the documents referenced therein.

Additionally, pursuant to SOAH Order No. 11, each party was required to submit the final, record set of exhibits via SOAH's Kiteworks platform. SOAH's Kiteworks platform does not afford the parties an ability to see what has been uploaded by any party or person so the District is unable to verify whether Ms. Ellison uploaded anything and if so, whether the documents met the form and filing requirements. The District was not served any documents by Ms. Ellison and thus,

³ *Id.* The District also notes that the Public Utility Commission of Texas Rules provide no opportunity to file sur-rebuttal testimony in administrative hearings for water utility rate appeal cases.

⁴ Ms. Ellison's filing includes reference to Exhibit P7, 54713-62 Ratepayers' Testimony. On November 8, 2024, Ratepayers filed a series of affidavits and personal statements from nine individuals, including hearsay, conclusory opinions from lay witnesses and information that occurred after the Board of directors adopted the rates at issue. In SOAH Order No. 8, the ALJ granted the District's Motion to strike some of the testimony, including the entirety of Robin Gray's testimony and sentences from Laura Ellison, James Hamrick, and Candice Barron's personal statements. See SOAH Order No. 8 Granting in Part and Denying in Part Motion to Strike Testimony; Denying Staff Motion to Compel at 1-4 (Jan. 9, 2025).

if submitted, the ALJ should reject and strike from the record any document uploaded to Kiteworks by or on behalf of Ms. Ellison.

Even if the documents had been submitted timely by Ms. Ellison, the documents should be disallowed because they do not meet the standards for admissible evidence in this case. None of the documents submitted as Exhibits P1 through P6 were accompanied by any direct testimony or affidavits from expert witnesses in accordance with Texas Rule of Evidence (“TRE”) 702 or lay witnesses demonstrating personal knowledge as required by TRE 602 and 701.⁵ No testimony or evidence has been presented to authenticate the documents as required by TRE 901.⁶ Therefore, at best, the documents represent inadmissible hearsay pursuant to TRE 801 and 802.⁷

In sum, because the documents referenced in Ms. Ellison’s filing were untimely, unauthenticated, contain irrelevant information, contain information outside the permissible scope of time for this case, are not supported by any witness, expert or lay, and are not the exhibits that the Parties have agreed for submittal in this case, the Commission Staff and the District respectfully request the ALJs strike and exclude Ms. Ellison’s February 22, 2025 list of exhibits and all of the documents referenced therein.

III. CONCLUSION

The Ratepayers are represented by counsel, which includes representation of Ms. Ellison. Ms. Ellison has caused a needless increase in the cost of the proceeding and has abused the administrative process. Ms. Ellison’s filing resulted in confusion for the ALJ and thus the need

⁵ 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. This rule does not apply to a witness’s expert testimony under Rule 703. *In re Christus Spohn Hosp. Kleberg*, 222 S.W.3d 434, 440 (Tex. 2007) (orig. proceeding).

⁶ Rule 901(a) of the Texas Rules of Evidence defines authentication as a “condition precedent” to the admissibility of evidence that requires the proponent to make a threshold showing that would be “sufficient to support a finding that the matter in question is what its proponent claims.” *Jurgens v. Martin*, 631 S.W.3d= 385, 414 (Tex. App.-Eastland 2021, no pet.) citing *Elness Swenson Graham Architects, Inc. v. RLJ II-C Austin Air, LP*, 520 S.W.3d 145, 158 (Tex. App.—Austin 2017, pet. denied).

⁷ Hearsay is defined as a statement that: the declarant does not make while testifying at the current trial or hearing; and a party offers in evidence to prove the truth of the matter asserted in the statement. TRE Rule 801(d). Hearsay is not admissible unless a statute, the rules of evidence or other rules prescribed under statutory authority provides otherwise. TRE Rule 802. Pursuant to 16 TAC §22.221, the Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases.

for her issuance of SOAH Order No. 12 Requiring Response.⁸ Ms. Ellison's refusal to act through her counsel of record and the filing of her documents after the agreement of all Parties has caused the Parties significant time and needless cost to prepare this responsive pleading and facilitate additional discussions with counsel for the Ratepayers, the District and Commission Staff. These costs needlessly drive up the rate case expenses for this matter and demonstrate an utter disregard for the administrative process.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the District and Commission Staff respectfully request that the Administrative Law Judge admit only those exhibits as listed on the Parties' Agreed Exhibit List and strike Ms. Ellison's February 22, 2025 list of exhibits and all documents referenced therein, as requested above, and grant such other relief to which the Parties may show itself to be entitled.

Respectfully submitted,



Randall B. Wilburn

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ATTORNEYS FOR RESPONDENT

⁸ SOAH Order No. 12 expresses the ALJ's confusion regarding whether all parties agreed to the filings by the District and thus requires the parties to respond, addressing this issue and whether there are any objections to the Ratepayers exhibits filed by Ms. Ellison. See SOAH Order No. 12. (Feb. 24, 2025).

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/

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CERTIFICATE OF CONFERENCE

On February 26, 2025, counsel for the District, Commission Staff, and the Ratepayers conferred to address the issues raised in SOAH Order No.12.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 27th day of February 2025.



Randall B. Wilburn

Exhibit 1

From: pas@pasmithlaw.com <pas@pasmithlaw.com>
Date: Friday, February 21, 2025 at 12:12 PM
To: Randall Wilburn <randy@carltonlawaustin.com>, Kevin Pierce <Kevin.Pierce@puc.texas.gov>, 'Erin Selvera' <erin@carltonlawaustin.com>
Subject: Re: Exhibit List with Links for Kiteworks

OK. I agree with that evidence list.

PAS

From: Randall Wilburn <randy@carltonlawaustin.com>
Sent: Friday, February 21, 2025 11:28 AM
To: pas@pasmithlaw.com <pas@pasmithlaw.com>; Kevin Pierce <Kevin.Pierce@puc.texas.gov>; 'Erin Selvera' <erin@carltonlawaustin.com>
Subject: Re: Exhibit List with Links for Kiteworks

Paul,

I appreciate the desire to avoid future litigation and the call.

As we discussed, you agreed to the filing as Erin sent to you yesterday. You are going to send us an email confirming.

Regarding settlement discussions for next week, I am pretty much available all week to talk with you. You mentioned that you may have additional items to add to the discussion. I look forward to seeing those

Exhibit 1

as well.

Send us that ok email, please.

Thanks,

Randy

Randall B. Wilburn



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Exhibit 2

From: Katy Hennings
To: pas@pasmithlaw.com
Cc: "Randall Wilburn"; "Erin Selvera"; "John Carlton"
Subject: RE: Westwood Shores MUD's Exhibits - PUC Docket 54713; SOAH 473-23-22448.WS
Date: Friday, February 21, 2025 4:13:43 PM
Attachments: 2025.01.30 SOAH Order No. 9 - Adopting PO, Canceling PHC.pdf

Paul—

In follow-up to the below, please note that a portion of Exhibit WSMUD-2 contains confidential documents. A Protective Order has been adopted for this proceeding – please see SOAH Order No. 9, which was entered on January 30th. After Petitioners' Protective Order Certifications have been filed, we may provide you with those confidential documents.

Thank you,
Katy

Katy Hennings
Senior Paralegal



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From: Katy Hennings <katy@carltonlawaustin.com>

Sent: Friday, February 21, 2025 4:08 PM

To: 'Kevin Pierce' <Kevin.Pierce@puc.texas.gov>; pas@pasmithlaw.com

Cc: 'Randall Wilburn' <randy@carltonlawaustin.com>; 'Erin Selvera' <erin@carltonlawaustin.com>;
'John Carlton' <john@carltonlawaustin.com>

Subject: Westwood Shores MUD's Exhibits - PUC Docket 54713; SOAH 473-23-22448.WS

Good afternoon, Kevin and Paul.

Westwood Shores Municipal Utility District's marked exhibits have been uploaded to SOAH's Kiteworks platform. Here is a link to access a zipped file containing the exhibits,

Exhibit 2

for your reference: <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:0e0ca12f-bec7-41bf-b316-7d27be32e763>

If you have any issues using the link or accessing the documents, please let me know.

→Kevin – At your convenience, please provide us with Staff's marked exhibits.

Thank you!

Katy

Katy Hennings
Senior Paralegal



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