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**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**PETITION BY RATEPAYERS APPEALING THE
WATER RATES ESTABLISHED BY WESTWOOD SHORES
MUNICIPAL UTILITY DISTRICT**

**SOAH ORDER NO. 8
GRANTING IN PART AND DENYING IN PART MOTION TO STRIKE
TESTIMONY; DENYING STAFF MOTION TO COMPEL**

I. WSMUD MOTION TO STRIKE

On November 27, 2024, Westwood Shores Municipal Utility District (WSMUD) filed a motion to strike the direct testimony filed by certain WSMUD ratepayers (Ratepayers). No party responded to the motion.¹ For the reasons set forth below, the motion is **GRANTED IN PART** and **DENIED IN PART**.

¹ See SOAH Order No. 6 at 4 (May 16, 2024) (setting deadline of five working days for any responses to objections to testimony).

A. BACKGROUND

Ratepayers filed a petition with the Public Utility Commission of Texas (Commission) appealing WSMUD's decision to change its water and sewer rates effective February 1, 2023, which were approved by the WSMUD board of directors on December 19, 2022.²

The Commission has jurisdiction over this case under Texas Water Code (TWC) § 13.043(b). Pursuant to that authority, the Commission must ensure that every appealed rate is just and reasonable.³ The Commission hears the appeal *de novo* and must fix in its final order the rates WSMUD should have fixed in the action from which the appeal was taken.⁴ The Commission may consider only the information that was available to WSMUD's board of directors at the time it made its decision.⁵

The deadline for Ratepayers to file direct testimony was November 20, 2024.⁶ On that date, Ratepayers filed the affidavits and personal statements of nine individuals in the Ratepayers group.

² Petition to Appeal Rates Established by Westwood M.U.D. Board of Directors (Mar. 3, 2023).

³ Tex. Water Code § 13.043(j).

⁴ Tex. Water Code § 13.043(e).

⁵ Tex. Water Code § 13.043(c). The Commission may also consider evidence of reasonable expenses incurred by WSMUD in the appeal proceedings.

⁶ SOAH Order No. 6 at 3 (May 16, 2024).

B. WSMUD’S OBJECTIONS

WSMUD objects to the entirety of Ratepayers’ direct testimony as irrelevant. Under the Commission’s rules, irrelevant evidence must be excluded.⁷ 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.⁸

WSMUD asserts that Ratepayers’ direct testimony consists of lay witness statements about “irrelevant issues such as water quality, length of time paying other rates, rates of other utility systems, length of time living in the community, number of members in the household, personal finances, personal opinion on what is ‘right,’ [and] statements about paying the highest water rates in Texas.” Some of the statements also focus on matters that occurred after the WSMUD board of directors’ decision to change rates, which is outside the statutory timeframe and, thus, irrelevant. WSMUD also contends that some of the statements are hearsay. In sum, WSMUD emphasizes that none of Ratepayers’ complaints address WSMUD’s cost of service or how the rates were set.

C. RULING

As an initial matter, the Administrative Law Judge (ALJ) agrees with WSMUD that Ratepayers’ direct testimony includes information that occurred after its board of directors adopted the rates at issue. Under TWC § 13.043, such

⁷ 16 Tex. Admin. Code § 22.221(a).

⁸ Tex. R. Evid. 401.

information cannot be considered.⁹ The testimony also includes hearsay statements¹⁰ and conclusory opinions of lay witnesses. Accordingly, the ALJ concludes that such information should be stricken, as set forth below.

Regarding the remainder, Ratepayers stated in discovery that their testimony is “intended to show the effect of the current rates on the Ratepayers.”¹¹ While their testimony primarily addresses issues that are not directly related to calculating the utility’s cost of service, the ALJ does not find that the impact of WSMUD’s rates and quality of service on its customers is irrelevant for purposes of determining whether the rates are just and reasonable.

Accordingly, WSMUD’s motion is **GRANTED** as to the following:

- The sentences in Laura L. Ellison’s personal statement that:
 - “I don’t think it’s fair that WWS Mud residents are being forced to pay the highest rates in the State of Texas.”
 - “We now have a 7 million dollar bond again that is going to raise our mud tax in 2026.”
- The entirety of Robin Gray’s personal statement and attached email, which address a billing dispute that occurred in 2023.
- The sentences in James J. Hamrick’s personal statement that: “Even contaminants in the water. I remember receiving one such email saying that there was cancer causing agents found in our water.”

⁹ Tex. Water Code § 13.043(e).

¹⁰ See Tex. R. Evid. 801(d) (“‘Hearsay’ means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.”).

¹¹ Ratepayers Responses to Staff’s First Set of Requests for Information (RFI) at RFI No. 1-2.

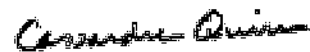
- The sentences in Candice Barron’s personal statement that:
 - “The Highest in Texas I’m told.”
 - “I remember them saying something about how the people that Westwood hired before had embezzled some money and basically they were having to raise our fees to make up that money somewhere. To me that should be on Westwood Mud not the community. They should have done accurate Credit/background checks on their employees before hiring them to make sure they would be less likely to do something like that.”

The remainder of the motion is **DENIED**. This ruling is limited to admissibility of the testimony and does not address its weight. The parties may address the appropriate weight to give the testimony through evidence and argument.

II. STAFF’S MOTION TO COMPEL

On December 16, 2024, Commission staff (Staff) filed a motion to compel Ratepayers to respond to Staff’s first set of requests for information (RFIs). On December 23, 2024, Ratepayers responded to the RFIs. Accordingly, the ALJ finds that Staff’s motion is moot, and it is **DENIED**.

SIGNED January 9, 2025



Cassandra Quinn

Presiding Administrative Law Judge