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

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

**COMMISSION STAFF’S RESPONSE TO WESTWOOD SHORES MUNICIPAL
UTILITY’S DISTRICT’S OBJECTIONS TO AND MOTION TO STRIKE DIRECT
TESTIMONY OF COMMISSION STAFF WITNESS JAMES EUTON**

I. INTRODUCTION

On December 18, 2024, Staff (Staff) of the Public Utility Commission of Texas (Commission) filed its Direct Testimony of James Euton On January 17, 2025, Westwood Shores Municipal Utility District (Westwood) filed its Objections to and Motion to Strike Direct testimony of Commission Staff Witness James Euton (Motion). Pursuant to State Office of Administrative Hearings (SOAH) Order No. 6, responses to objections to testimony must be filed within five working days of the date of the objection. Therefore, this pleading is timely filed.

II. STAFF’S RESPONSE TO TWU’S OBJECTION AND MOTION TO STRIKE

On January 17, 2025, Westwood filed its Motion. Specifically, Westwood objects to and moves to strike Mr. Euton’s testimony at page 7, line 2, through page 8, line 5, on the basis of relevance, lack of basis, and that the information is misleading and confuses the issues.¹ Westwood’s arguments are without merit and should be overruled.

The two Commission cases referenced by Mr. Euton are connected to the present case on clear and self-evident grounds. Mr. Euton speaks to how other regulated utilities under the Commission’s appellate jurisdiction manage their Operations and Maintenance reserves.² Reference to other utility’s management practices that are under the jurisdiction of the Commission is a self-evident fact that supports Mr. Euton’s use of the same in his testimony. The clear and self-

¹ Motion at 3-5.

² Direct Testimony of James Euton at 7.

evident fact is that Westwood is a utility subject to the Commission's appellate jurisdiction, just as Austin Water and the City of Celina are.³

So too is Westwood's second argument similarly baseless. Westwood asserts that Austin Water or City of Celina's policies are "not controlling," which is true. However, that does not mean the evidence isn't probative, relevant, or appropriately supported on a self-evident basis. Westwood has provided no facts, precedent, or authority to show that the Commission can't consider the practices of other utilities to determine what is appropriate for this utility.

Further, Westwood's argument under TRE 403 is without merit. The practices of other utilities, presumably larger utilities with greater Operations and Maintenance needs, are not "random facts" that "serve merely to confuse or mislead the trier of fact."⁴ They provide relevant and useful context for the administrative law judge (ALJ) and Commission to consider when determining what is reasonable for another utility. Westwood attempts to characterize precedential examples, an almost universally accepted method of demonstrating how new cases should be handled, as "random facts." Taken to its logical conclusion, Westwood would seem to assert that Mr. Euton's testimony should be devoid of references to any prior Commission action or similar reference to contextualize his testimony. Westwood attempts to discredit Mr. Euton's testimony as being of low probative value but has chosen to use the inappropriate method of a motion to strike and evidentiary objections rather than to cross examine Mr. Euton in a hearing, which is the appropriate venue for such tactics.

Finally, proceedings at SOAH differ from those in civil or criminal court. In civil and criminal court the finder of fact is often a jury of common laypeople. However, rate appeals such as this come before SOAH ALJs who specialize in this particular area of law. The honorable ALJ in this matter has several years of experience adjudicating Commission proceedings, and Commission Staff is confident that the ALJ can give appropriate weight to presented evidence. It is inappropriate for Westwood to accuse Commission Staff of attempting to mislead the ALJ by introducing clearly relevant information for the court's consideration. Therefore, Westwood's objections should be overruled and its motion to strike denied.

³ Texas Water Code § 13.043.

⁴ Motion at 4-5.

III. PRIOR COMMISSION DIRECTION ON STAFF TESTIMONY

The Commission has spoken before about the exclusion of any testimony of Commission Staff in PUC Docket 49337 – *Application of Woodland Hills Water, LLC for Authority to Change Rates*.⁵ The Commission explicitly noted that the rules of evidence do not supplant cross-examination to attack evidence, which accurately sums up Westwood’s attempts herein to discredit Commission Staff through motions to strike.⁶ In Docket 49337, a motion to strike was granted by the SOAH ALJ, and subsequently vacated when the Commission stated its concerns regarding the dangerous precedent set by allowing Commission Staff’s testimony to be struck without allowing for the development of a record, including cross-examination that may inform the weight of the testimony given. This clear guidance from the Commission should inform the ALJ’s consideration of Westwood’s unconventional tactics.

IV. CONCLUSION

For the reasons given above, Staff respectfully requests the ALJ overrule Westwood’s objections and deny Westwood’s motion to strike and grant any such other relief to which Staff may show itself to be entitled to.

⁵ 49337 Memo.

⁶ *Id.*

Dated: January 27, 2025

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 January 27, 2025, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Kevin Pierce
Kevin Pierce