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APPEAL OF WATER AND SEWER	§	BEFORE THE STATE OFFICE
RATES CHARGED BY THE	§	
TOWN OF WOODLOCH	§	OF
CCN NOS. 12312 AND 20141	§	
	§	ADMINISTRATIVE HEARINGS

PROTESTANT'S POST HEARING BRIEF

BY

CATHERINE LEWKOWSKI

ON BEHALF OF THE TOWN OF WOODLOCH'S OUTSIDE THE CITY LIMITS
WATER AND SEWER CUSTOMERS

JULY 30, 2015

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PROTESTANT'S POST HEARING BRIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Catherine Lewkowski, one of the three representatives of the outside rate payers of the Town of Woodloch, files this post hearing brief and presents the following arguments:

I. Procedural History

The Town of Woodloch, hereafter referred to as "Woodloch", raised the water and sewer rates to the outside city limits water and sewer customers, hereafter referred to as the "outside customers", in February 2013. Shown below is an illustration of the rate increase and the net amount of the rate increase as taken from Woodloch's fee schedules.¹

¹ Direct Testimony of Catherine Lewkowski, Protestants, at Ex. 17

<u>Inside Customer Previous Rates</u>		<u>Inside Customers New Rates</u>	<u>Amount of Increase</u>
Water	15.00	29.50	14.50
Sewer	30.00	30.00	-0-

Tierage Rates

3000-5000	1.50	2.40	.90
6,000-8000	2.00	2.40	.40
9000-12000	2.50	2.40	(.10)
13000-15000	3.00	2.40	(.60)
16000-20000	3.50	2.95	(.55)

<u>Outside Customers Previous Rates</u>		<u>Outside Customers New Rates</u>	<u>Amount of Increase</u>
Water	25.00	59.00	34.00
Sewer	35.00	60.00	25.00

Tierage

3000-5000	1.50	4.80	3.30
6000-8000	2.00	4.80	2.80
9000-12000	2.50	4.80	2.30
13000-15000	3.00	4.80	1.80
16000-20000	3.50	5.90	2.40

As can be plainly seen, the rate increase is preferential to the inside customers and discriminatory to the outside customers. The increase in rates to the inside customers is only \$14.50 with a \$0.90 increase in the tierage rates and actually turns into a credit at 9,000 gallons. The more water an inside customer uses, the less the increase is. This is not true for the outside customers as base rates and tierage rates are more than double what was previously being charged. The outside customers filed a rate appeal with the Texas Commission of Environmental Quality, hereafter referred to as "TCEQ." An initial hearing was held in Austin, Texas on August 20, 2013. At that hearing, three representatives were appointed to represent all of the outside customers, Mr. David Bonham, Ms. Miriam Gomez, and Ms. Catherine Lewkowski, hereafter referred to as "Protestants". The rate case was ordered to mediation in September 2013. The first mediation was scheduled for November 8, 2013, and the Mediators requested that Woodloch provide certain documents to the Protestants in order to facilitate the

mediation. This mediation was then rescheduled to November 22, 2013 because Woodloch did not provide the requested information. On November 21, 2013 ALJ/Mediator Penny Wilkov cancelled the mediation, due to Woodloch's continued failure to produce the documents in a timely manner and the case was referred for a procedural schedule.

The Protestants did eventually receive the requested documents and at that time began to proceed with settlement discussions with Woodloch without any mediators. On December 10, 2013, the Protestants met with Mayor Diane Lincoln, the city engineers, and the town's legal counsel, Marcia Tillman, to discuss settlement negotiations. On December 12, 2013, the Protestants met with Ms. Tillman and the city engineers to further discuss settlements. The Protestants made offers to settle but Woodloch countered every offer with rates that were even higher than the rates that were currently being appealed by the outside customers. On December 17, 2013, the Protestants were asked to meet with Mayor Lincoln at the Woodloch Municipal Building to discuss a settlement. When the Protestants arrived, the Mayor read aloud a prepared statement scolding the outside customers for appealing the water & sewer rates. Mayor Lincoln informed the Protestants at that time that Woodloch would be assessing a surcharge to only the outside customers in order for Woodloch to recover their "estimated" rate case expenses. Protestants requested a copy of the prepared statement but Mayor Lincoln refused and stated that a copy of the statement would not be provided as it was confidential. A copy of this statement was requested in the discovery process, and Mayor Lincoln did admit in discovery that she had read the statement to the Protestants, but failed to produce a copy of the statement stating that after a diligent search no such document could be found.

A procedural schedule was signed on February 27, 2014 ordering a hearing on the merits for September 22, 2014. On March 20, 2014, Mediator Todd Burkey reached out to all parties

suggesting possibly mediating this case. On June 19, 2014, a mediation was held in the City of Conroe, Texas but to no avail. This is the only mediation that occurred in this rate appeal case.

On June 20, 2014, Woodloch imposed a \$35.00 rate appeal surcharge on all outside customers' water bills. In July 2014, the outside customers filed an additional rate appeal with TCEQ to appeal the \$35 surcharge to pay for "estimated" rate appeal expenses.¹ On July 1, 2014, the Protestants filed a Motion for Interim Rates to remove the \$35 surcharge and to impose interim rates at \$48 for water and \$50 for sewer totaling a \$98 base rate. The Motion for Interim Rates was denied on August 29, 2014.

On September 1, 2014, the jurisdiction in this case was transferred from TCEQ to the Public Utility Commission, hereafter referred to as "PUC". The first rate appeal was assigned Docket No. 42862 and the appeal on the \$35 surcharge was assigned Docket No. 43720. On October 16, 2014, a new procedural schedule was put in place setting the hearing on the merits for March 3, 2015. The two rate appeal cases, Docket 42862 and Docket 43720 were consolidated into one case, Docket 42862 on April 10, 2015 and a new procedural schedule was set with the hearing on the merits to commence on June 2, 2015. A hearing on the merits was held on June 2 and 3, 2015 in Austin, Texas.

II. Background

The Town of Woodloch is not a town in any sense of the word "town". This is a very small residential subdivision that incorporated in the 1970's in order to "float municipal bonds".² There are no businesses, shops, street lights, police, fire, courts or Post Office located in Woodloch. There are only 73 residential homes, a town municipal building and a town swimming pool that has been closed since 2008. The area that is served by the Woodloch water

² Direct Testimony of Diane Lincoln, Woodloch, Ex. 1, Page 5, Lines 6-7

and sewer system, hereafter referred to as the "Utility", was developed in the early 1970's. It was developed as four separate subdivisions all connected by Needham Road. River Oaks was developed as the Oak Forest Subdivision and consists of only the one street, River Oaks Drive. River Ridge was developed as the Hickory Ridge subdivision and consists of only the one street, River Ridge Road. Woodloch was developed as the Whispering Oaks 1 subdivision and consists of two streets, North Woodloch and South Woodloch. Woodhollow Drive was part of a larger subdivision that was developed as the Whispering Oaks 2 subdivision. In the 1980's a terrible flood occurred in Montgomery County that wiped out most of Whispering Oaks 2, leaving only the one street Woodhollow Drive. Each subdivision had their own water supply and septic system.

In 1989, the Texas Natural Resource Conservation Commission, (TNRCC) made the request to Woodloch to take over the failing water system that served the outside customers. Shortly thereafter, Woodloch assumed ownership of the failing water systems of Consumer's Water Corporation³ which served the outside customers. Mayor Lincoln testified that Woodloch was forced by the TNRCC to take over the Consumer's Water Corporation.⁴ When questioned further about an order being issued forcing Woodloch to take over the water company, Mayor Lincoln testified that she was unsure whether there was an order, as she was not living there at the time.⁵ However, Mayor Lincoln stated in her Direct Testimony that she was first elected Alderman in Woodloch in 1988.⁶ This is one year prior to TNRCC's request.

Woodloch has received many Community Development Block Grants, hereafter referred to as "CDBG", to combine the water and sewer systems into one system, to improve and expand

³ Direct Testimony of Diane Lincoln, Woodloch, Ex. 1, Page 11, Lines 13-15

⁴ Direct Testimony of Diane Lincoln, Woodloch, Page 62, Lines 4-5

⁵ Direct Testimony of Diane Lincoln, Woodloch, Page 62, Lines 14-17

⁶ Direct Testimony of Diane Lincoln, Woodloch, Ex. 1, Page 3, Line 7

the utilities, and to repair or replace many of the components. In September of 1994, Woodloch received Grant #714961 in the amount of \$350,000 for the purpose of correcting the substandard water and sewer systems of the customers on River Oaks and Woodhollow Drive. This grant provided for: (1) drilling a 100 GPM water well with an 85,000 gallon bolted steel groundwater storage tank, (2) two 100 GPM booster pumps, (3) a 5,000 gallon pressure tank and electrical controls, (4) abandoning and plugging 2 inadequate wells, (5) constructing 5,250 linear feet of PVC transmission lines, with 30 service connections and two fire hydrants, (6) two new upgraded lift stations, one on River Oaks and one on Woodhollow Drive, (7) disconnect abandoned sewer lines in the Woodhollow area by installing a 4' force main from the lift station, and (8) installing new sewer line from the new lift station on Woodhollow Drive to the eastern subdivision line.⁷ Mayor Lincoln testified that Woodloch did not get a grant to combine the outside streets into Woodloch's system⁸. Also, at the time of this grant, all customers, inside and outside, paid the same rate for water and sewer as evidenced by their application for the grant.⁹ Mayor Lincoln further stated that Woodloch borrowed money to put all customers on one system.¹⁰ However, this is precisely what the aforementioned grant was to be used for and no documentation has been provided by Woodloch involving a loan used to combine the systems into one. According to the documents Woodloch provided to the Texas Municipal League for insurance purposes, the lift station on River Oaks was built in 1970.¹¹ It appears that a new lift station was not built on River Oaks with the grant funds that provided for this, but Woodloch did however, rehab this old lift station with a later Grant.

Immediately after the aforementioned grant was secured, Montgomery County

⁷ Direct Testimony of Mike Mathena, Woodloch, Ex. 7 at Pages 257-277

⁸ Direct Testimony of Diane Lincoln, Woodloch, Page 15, Lines 8-10

⁹ Direct Testimony of Mike Mathena, Woodloch, Ex. 7 at Page 258

¹⁰ Direct Testimony of Diane Lincoln, Woodloch, Page 15, Lines 15

¹¹ Direct Testimony of Mike Mathena, Woodloch, Ex. 7 at Page 201

experienced a devastating flood on October 17, 1994. This area, which encompasses the five streets served by Woodloch's Utility, was declared a disaster area. Mayor Lincoln testified that because their well went underwater, Woodloch got an urgent need grant that helped get the new water system and the new ground water storage tank.¹² No documents were produced by Woodloch regarding another grant being issued for a new water system or another groundwater storage tank. Because many homes were destroyed and could not be rebuilt, Woodloch did receive an Urgent Need Grant #715057 in 1994 in the amount of \$202,000 for the purpose of repairing an aggregate access road, repairs to Woodloch's park, and to provide the matching funds for a FEMA Grant that was received at the same time. The FEMA Grant in the amount of \$969,436 was for the purpose of disconnecting and purchasing 14 homes, and to demolish and clear 5 homes (*these are FEMA buyout lots*).¹³ The provision for the new water system and groundwater storage tank were in the 1994 Grant secured prior to the flood.

Mayor Lincoln testified that Woodloch received a grant in 1998 for a new groundwater storage tank.¹⁴ This should have already been accomplished with the 1994 grant. In 1999, Woodloch secured a revenue bond in the amount of \$350,000 to improve and expand the water and sewer service, to construct a municipal building, and to pay for professional services and this bond was to be paid with water and sewer revenues. A \$10 surcharge was put on all customers' bills. The municipal building was built and completed in April 2007. Prior to this building being constructed, the council meetings were held at the Mayor's home. The water bills could be paid at a neighboring convenience store at any time the store was open for business. After the municipal building was constructed, this convenient way of paying utility bills stopped and the utility bills have since had to be paid at the new municipal building on Monday, Tuesday, or

¹² Direct Testimony of Diane Lincoln, Woodloch, Page 15, Lines 19-22

¹³ Direct Testimony of Mike Mathena, Woodloch, Ex. 7, Pages 278-303

¹⁴ Direct Testimony of Diane Lincoln, Woodloch, Page 15, Lines 24-25 and Page 16, Line 1

Wednesday between the hours of 9:00 a.m. and 1:00 p.m. There has always been a drop box for the customers who do not wish to get a receipt.

In 2001, Woodloch received Grant #716527, in the amount of \$102,000, to replace the lift station located inside Woodloch which serves the 73 homes in Woodloch and the 46 homes on River Ridge.¹⁵ In 2008, Woodloch received Grant #728450 in the amount of \$350,000 in order to replace the sewer lines on River Oaks and River Ridge, to rehab the lift station and 8 manholes on River Oaks (*which should have been a new lift station built with the 1994 grant*), and to rehab 7 manholes on River Ridge.¹⁶ In 2010, Woodloch received Grant #710751 in the amount of \$350,000, in order to replace the water lines on River Ridge and to install 7 fire hydrants,¹⁷ as previously there were no fire hydrants for that street.

In 2013, Woodloch applied for two loans. The first loan from Government Capital was for \$52,500 in order to replace 250 meters.¹⁸ The second loan from Woodforest Bank in the amount of \$130,650 was to construct a new groundwater storage tank¹⁹ replacing the groundwater storage tank that was constructed with the 1994 or 1998 grant. Woodloch has applied for a loan through the Texas Water Development Board, hereafter referred to as "TWDB", in excess of two million dollars in order to replace the wastewater treatment plant. Woodloch has not produced any documents showing that these loan payments are being made and the loan payments do not appear as an expense item in any of Woodloch's budgets. Mayor Lincoln did testify that the San Jacinto River Authority (SJRA) or groundwater reduction plan (GRP) fees that Woodloch collects were used for the new meters when questioned by Mr. Tynes

¹⁵ Direct Testimony of Mike Mathena, Woodloch, Ex. 7, Pages 304-331

¹⁶ Direct Testimony of Mike Mathena, Woodloch, Ex. 7, Pages 332-367

¹⁷ Direct Testimony of Mike Mathena, Woodloch, Ex. 7, Pages 368-401

¹⁸ Direct Testimony of Mike Mathena, Woodloch, Ex. 7, Pages 48-62

¹⁹ Direct Testimony of Mike Mathena, Woodloch, Ex. 7, Pages 63-79

of the PUC Commission Staff as to where the GRP funds were spent.²⁰

Each of these grants require matching funds from the Town of Woodloch. The matching funds for a \$350,000 grant are \$17,500 as evidenced in the grant documents included in Mr. Mathena's Direct Testimony, Woodloch, Exhibit 7. The general ledgers show that the CDBG grant expenses are allocated only to the outside customers. The town does not match these funds. The town doesn't generate enough revenues to pay their actual expenses and salaries, much less the matching grant funds. Mr. Mathena testified that he had no documents to support Woodloch paying the matching funds for the grants.²¹

Woodloch has received over two million dollars in grants and loans to construct, replace, repair and expand the water and sewer system. However, because of Woodloch's failure to maintain the Utility properly, many of the system components now need to be repaired or replaced. Woodloch cannot expect to recover an unending amount of expenses via exuberantly high water rates imposed on only the outside customers, especially since it is those same customers who allow Woodloch to qualify for all of these grants due to their low income status. Woodloch does not have the financial stability to properly maintain and run a water and sewer utility. The Utility is too small to recover millions of dollars in repairs and replacement costs. The area would be better served by the neighboring Mud District 15 which is much larger and more efficiently run.

III. Revenue Requirement

Woodloch has a revenue requirement for the town and a revenue requirement for the Utility. The revenue requirement for the Utility should be only those expenses that are

²⁰ Direct Testimony of Diane Lincoln, Woodloch, Page 56, Lines 17-23

²¹ Direct Testimony of Mike Mathena, Woodloch, Page 101, Lines 11-19

reasonable and necessary for providing water and sewer service to its customers. The revenue requirement for the town should be the expenses for running the town. However, Woodloch does not allocate these expenses properly and maintains only one general ledger for both funds.

In Mayor Lincoln's Direct Testimony, she states the typical revenues for the town are \$52,000.²² She further states they have two employees and a municipal building that they maintain along with several pieces of equipment. Salary expenses total \$55,000 per year and non-salary expenses total \$12,000 per year for a total of \$67,000²³. With revenues at \$52,000 and expenses at \$67,000 there is at a minimum a deficit of \$15,000.

The general ledgers show that Woodloch also has town expenses that are being directly allocated to the Utility. These town expenses, also called Public Works, include the costs of maintaining a town pool, a town utility yard and costs associated with maintaining the FEMA buy-out lots that Woodloch owns. There are other town expenses being allocated to the Utility such as the town's legal counsel and the town's Tax Assessor Collector; clothing that the Mayor and City Secretary wear with the Woodloch city logo embossed on them; gasoline and repairs for the lawn mowing equipment; etc. By Mayor Lincoln's own testimony, the town is already \$15,000 over their revenues in town expenses and this does not include the other town expenses that are currently being allocated to the Utility.

Mayor Lincoln testified that Woodloch does not contract for mowing their FEMA buy-out lots.²⁴ However, according to their general ledger, Woodloch is expensing 80% of the costs to mow the town to the outside customers. When asked why the Utility is paying for these lots to be mowed, Mayor Lincoln testified that the lots were greenway and open to anyone to use.²⁵

²² Direct Testimony of Diane Lincoln, Woodloch, Ex. 1, Page 5, Line 21

²³ Direct Testimony of Diane Lincoln, Woodloch, Ex. 1, Page 6, Lines 1-4

²⁴ Direct Testimony of Diane Lincoln, Woodloch, at Page 33, Line 18

²⁵ Direct Testimony of Diane Lincoln, Woodloch, Page 88, Line 11

Because these lots were part of a FEMA buyout, they cannot be built on or improved, but must be maintained by the Town of Woodloch, just as the vacant lots on Woodhollow Drive were part of a FEMA buyout with Montgomery County; Montgomery County must and does maintain the vacant lots on Woodhollow Drive. There are FEMA buyout lots all over this County and they are not available for public use and water customers do not pay to maintain them. Woodloch's witness, Angela Rubottom, testified that the mowing expenses were utility related because the area around the fenced in lift stations must be maintained.²⁶ The lift stations on Woodhollow Drive sit on Montgomery County FEMA buyout lots and they are maintained and mowed by Montgomery County. Woodloch does not maintain these lots. The maintenance of the FEMA buy-out lots in Woodloch are a town expense and should not be allocated to the Utility. This is just one of the many examples of the misallocation of expenses that can be found in the general ledgers provided by Woodloch. Woodloch has been allocating the town's expenses to the Utility because Woodloch does not collect enough revenues to support itself. There are four lift stations located outside Woodloch. Only three can be mowed as the other one is underground and in the woods. Not only are the FEMA buy-out lots outside the fenced areas of the lift stations on Woodhollow Drive maintained by the County, so are all roads leading to these four lift stations as they are all accessed by County roads.

Woodloch has retained the services of an outside contractor, Gulf Utility formerly known as H2O, and hereafter referred to as "H2O", to service and maintain the Utility. Mayor Lincoln testified that the Utility pays the salary of one employee, Robert Baylor.²⁷ In 2012, the employee was Roderick Hainey with salary expense of \$16,298. H2O had not been contracted with while Mr. Hainey was employed. Mr. Hainey did indeed serve the Utility. However, Mr.

²⁶ Direct Testimony of Angela Rubottom, Woodloch, Page 181, Lines 21-25

²⁷ Direct Testimony of Diane Lincoln, Woodloch, Page 35, Lines 1-6

Baylor is a town employee who maintains the town. His salary is currently \$26,000 annually with mileage reimbursement of \$5,567 for a total of \$31,567. He does extremely little for the Utility and most of his duties are town related. However, his entire salary is paid for by the Utility with the town absorbing none of the costs. Tina Williams, the city secretary, also is getting a generous salary from the Utility. In 2014, she received \$30,662 in salary and \$7,095 in mileage reimbursement for a total of \$37,757 from the Utility and she also received a salary from the town for secretarial duties. Mayor Lincoln also receives a salary from the Utility as well as from the town. These are very generous salaries for a Utility and town that is only open part time, approximately, 12 hours a week and serves such a small area. The mileage reimbursement is very questionable as this is a very small area within a one mile radius. Mayor Lincoln testified that they drive all over town on city business,²⁸ yet the mileage reimbursement is allocated 100% to the Utility. If they are driving all over town on city business, why is the Utility paying the reimbursement? There is no justification in two part time employees driving over 20,000 miles in a year on utility business especially when H2O is the water/sewer contractor.

Woodloch has been assessing a SJRA/GRP fee for 5 years. The SJRA does not now nor has it ever assessed a GRP fee to Woodloch. Mayor Lincoln testified that Woodloch's GRP is based solely on conservation²⁹ yet Woodloch has been collecting these monies for almost 5 years. At \$0.90 cents per 1,000 gallons sold for the last 5 years, Woodloch has collected at least \$65,000 in GRP fees. When asked how Woodloch used these funds, Mayor Lincoln testified that they went with electronic meters.³⁰ Throughout testimony, Woodloch claims they secured a \$52,500 loan, which was part of the rate increase, in order to pay for new meters. If the GRP fund had been properly maintained and reserved, those monies would have been available to pay

²⁸ Direct Testimony of Diane Lincoln, Woodloch, Page 35, Lines 24-25 & Page 36, Line 1

²⁹ Direct Testimony of Diane Lincoln, Woodloch, Page 52, Lines 20-21

³⁰ Direct Testimony of Diane Lincoln, Woodloch, Page 56, Lines 19-22

the cost of the new meters. Because Woodloch has produced no invoices or cancelled checks regarding loan payments and because no loan payments appear in Woodloch's expense or budget reports, it is inconclusive whether Woodloch took a loan for the meters or if they were paid for with GRP fees as was testified by Mayor Lincoln.

The actual revenue requirement for the town does not justify the rate increase. Mike Mathena testified that the net income for the one year period prior to the rate increase was \$156,042.48.³¹ He also testified that for the period of January 2012 through February 2013, the net income was \$395,070.³² Mr. Mathena testified that \$36,000 was needed yearly for loan payments and that this is a significant amount.³³ With a net income of \$156,000 or \$395,000, whichever report is utilized, there was more than enough revenue to cover loan payments without a rate increase. Mr. Mathena's explanation for the increase was that they were looking at some loans they needed.³⁴ The loans were for meters with a monthly payment of \$702 and a loan for the groundwater storage tank with monthly payments of \$2,400 for a yearly total of \$37,000. If the rates had been fair, reasonable and nondiscriminatory each of the customers served by the Utility would have been assessed a surcharge in the amount of \$12.55 per month to cover the cost of the proposed loans. As previously shown, there was enough net income to cover the majority of cost for these two loans. There was absolutely no justification for raising only the outside customers' rates by more than \$65.00 a month.

While testifying, Mr. Mathena read aloud from a city council agenda. The agenda items addressed considering and approving loan applications.³⁵ However, no minutes were provided stating the loans had been approved or received before the rate increase was put in effect and no

³¹ Direct Testimony of Mike Mathena, Woodloch, Page 99, Lines 10-17

³² Direct Testimony of Mike Mathena, Woodloch, Page 106, Lines 15-16

³³ Direct Testimony, of Mike Mathena, Woodloch, Page 111, Lines 17-19

³⁴ Direct Testimony of Mike Mathena, Woodloch, Page 99, Lines 22-23

³⁵ Direct Testimony of Mike Mathena, Woodloch, Page 136, Lines 12-18

amounts were budgeted for these loans. Mr. Mathena again read from a council meeting that Woodloch was going after loans and that this is the first time in 10 years to raise rates.³⁶ This does not say Woodloch received the two loans. It is also untrue that they had not had a rate increase in 10 years. Mr. Mathena testified that he did not go back ten years and that his tenure with the city goes back to 2005, 2006.³⁷ This is 2015, so I believe that is 10 years. Woodloch raised rates in 2008 and those rates were also appealed through TCEQ. In 2010 Woodloch assessed the SJRA pass-through fee that was not passed through to the SJRA but was instead kept as revenue for the town, so in effect a rate increase. Again while testifying, Mr. Mathena admits that there was a rate increase in 2008³⁸ and that Woodloch added a pass-through fee in 2010, but that he wouldn't call it a rate increase.³⁹ Woodloch continues to charge these fees even though they're not actually passed through; therefore, a rate increase.

The expenses allocated to the outside customers include thousands of dollars in electric expense for the sewer plant (*allocated 100% to outside customers*), the town's swimming pool, the town's utility yard and the municipal building. It includes thousands of dollars in maintenance for the town's FEMA buy-out lots, the town's pool, the clothing, fuel for the mower, mower repairs and maintenance, Tax Assessor and legal fees that are not utility related but instead are town expenses. None of these expenses are reasonable and necessary to run and operate a water and sewer utility.

When asked about the multiplier, also referred to as an allocation factor, Woodloch uses in allocating expenses, Mayor Lincoln stated she didn't know it.⁴⁰ However, Mayor Lincoln

³⁶ Direct Testimony of Mike Mathena, Woodloch, Page 138, Lines 11-13

³⁷ Direct Testimony of Mike Mathena, Woodloch, Page 149, Lines 7-10

³⁸ Direct Testimony of Mike Mathena, Woodloch, Page 149, Lines 11-12

³⁹ Direct Testimony of Mike Mathena, Woodloch, Page 149, Lines 16-17

⁴⁰ Direct Testimony of Diane Lincoln, Woodloch, Page 67, Lines 1-3

testified that she was familiar with the finances of the utility and the town.⁴¹ She further states in her Direct Testimony, she is the Chief Financial Officer (CFO) and day to day manager of the Utility as well as being the mayor since 1994 (*excluding 2 years*).⁴² Therefore, it is reasonable to expect an individual claiming the aforementioned status to know the multiplier used in daily operations and budget preparations, however, this was not the case. The allocation factor Woodloch uses varied within the General Ledger. If an expense is construed to be an expense shared by the town and the Utility, the allocation factor is 16% to the town, 16% to the inside customers and 68% to the outside customers. If the expense is for the town's Public Works, the allocation factor is 0% to the town, 20% to the inside customers and 80% to the outside customers. These Public Works expenses are all town expenses and are not reasonable and necessary expenses to operate and maintain a water and sewer utility. If the expenses are Utility only, again, the allocation factor varies. At times the multiplier is 30% to the inside customers and 70% to the outside customers, other times the multiplier is 20% to the inside customers and 80% to the outside customers; and in some instances the multiplier is 0% to the inside customers and 100% to the outside customers. (*ie. 100% allocation to the outside customers for the electrical expense of the sewer plant*). There is no rational basis or explanation for the various allocations and multipliers use by Woodloch. Because Woodloch allocates more of the expenses to the outside customers, it appears the revenue requirement for the outside customers is at least 3 times more than the inside customers, but there is no rational reason for the expenses to be allocated this way.

Maintaining the town pool is not a reasonable and necessary expense to run or operate the Utility. Mayor Lincoln testified that the majority of the cost to maintain the town pool was being

⁴¹ Direct Testimony of Diane Lincoln, Woodloch, Page 47, Lines 10 - 25

⁴² Direct Testimony of Diane Lincoln, Woodloch, Ex. 1, Page 3, Lines 7 - 16

allocated to the outside customer because it is a public pool that anyone can use.⁴³ Under that reasoning, the outside customers would be paying a fee on their water bills for every public pool in the County. The idea that because there are more outside water customers who **might** use Woodloch's pool, they should, therefore, pay the majority of costs related to the pool, is ludicrous. It could be a reason to charge a higher admittance fee but nothing else. Public Pools are not maintained with the revenues of water customers. Pools are maintained with property taxes or home owners association dues. Woodloch's pool was built with a grant from the Texas Parks and Wildlife department and was to be maintained in perpetuity. Woodloch spent \$10,800 in pool repairs in 2007, but then never opened up the pool after that. It is still closed to this day. It is maintained however, and Woodloch now claims they need \$50,000 in repairs to reopen the pool.⁴⁴ A new pool could be built for less than \$50,000. This is yet another example of mismanagement of funds. Woodloch uses this same reasoning for their community events. These events are for the residents of the town and not the water customers. Many of the cities in the area sponsor community events but they are not paid for by passing the costs on to utility customers. These are costs that are absorbed by the sponsor of the event or by the admission fees.

Woodloch is pricing themselves out of the utility business. This is an economically depressed area with many people living on fixed incomes. This rate increase puts the outside customers' water bills at 10 to 15% of their monthly income. A fixed income does not allow for a water rate increase of \$100 per month. People are losing their homes, moving out, giving up needed medicine and other necessities in order to keep running water. Mike Mathena testified

⁴³ Direct Testimony of Diane Lincoln, Woodloch, Page 71, Lines 9-10

⁴⁴ Direct Testimony of Diane Lincoln, Woodloch, Page 90, Lines 15-16

that there are a lot of vacancies.⁴⁵ There are currently so many vacancies because of this rate increase. The water rates are so high one lady lost her house, at least 2 residents live in homes with no running water, renters have moved out because of the water rates, and all prospects looking for a new home, who are savvy enough to ask about water rates, don't buy here because of the rates. This is one of the reasons that the customer base has dropped from 250 to 244. This is an impoverished community that would be better served if Woodloch would relinquish their control of the water and sewer utility. Woodloch has no concern about the citizens outside the town, that they service, or the community as a whole.

Mayor Lincoln testified that if there is a repair or issue for a specific location outside, it is expended solely to the outside customers,⁴⁶ however, the town pool is located inside the town and its costs are expended 80% to the outside customers. The sewer plant is located inside the town and the electric expense is expended 100% to the outside customer and the light at the sewer plant is expended 80% to the outside customer. Woodloch does not separate water and sewer revenues in reference to the inside and outside customers. Mayor Lincoln stated all revenues go in one area and are looked at in a combined form.⁴⁷ The expenses to operate and maintain the Utility should also be "looked at in a combined form", as it is impossible to claim a cost in one area is higher than another if the revenue that covers that cost is not accounted for. Since Woodloch does not separate the revenues, they should not separate the expenses. All revenues pay all expenses and therefore, there should be one class of customer paying the same rate. This would allow for the outside customers revenues being at least double those of the inside customers, simply because the number of outside customers is more than double the inside customers.

⁴⁵ Direct Testimony of Mike Mathena, Woodloch, Page 104, Lines 21-22

⁴⁶ Direct Testimony of Diane Lincoln, Woodloch, Page 85, Lines 1-4

⁴⁷ Direct Testimony of Diane Lincoln, Woodloch, Page 20, line 21-23

The lift station that services River Ridge and Woodloch is allocated 100% to the outside customers. The inside customers assume no costs for this lift station even though it also serves the town and is inside the town's limits. When asked to elaborate on the reasons it costs so much more to service the outside customers, Mayor Lincoln testified that the lift stations outside the city cost more to maintain.⁴⁸ However, after reviewing the invoices from H2O, the total costs billed for service to the lift stations, inside the city and outside, were less than \$5,000 or 9% of H2O's total yearly invoice. Again, there is no justification for the outside customers paying double the rates of the inside customers when there is only one water and sewer system.

During the hearing there was a lot of confusion between the SJRA and the Lone Star Groundwater Conservation District (LSGCD). The LSGCD is an agency that monitors the water usage of all large groundwater users in Montgomery County. All large groundwater volume users are required to have a GRP that takes effect January 1, 2016. The SJRA is an agency that monitors Lake Conroe and the San Jacinto River. When the LSGCD put the mandate in place regarding the GRP, the SJRA developed a GRP for all county large volume users to join, therefore eliminating the need for them to come up with their own GRP. Woodloch did not ever, at any time, join the SJRA's plan, but instead submitted their own GRP to LSGCD, based solely on conservation. Currently, the LSGCD allows for each household to use 10,000 gallons per month, before going over the allotment. Effective January 1, 2016, the allowed usage per household drops to just over 8,000 gallons per household. The GRP that Woodloch submitted is based on conservation by raising rates. Woodloch raised the outside customers' rates so high that there is no affordability in using 8,000 gallons. 8,000 gallons for outside customers costs \$191.50 whereas for the inside customers the cost is only \$82.10. Woodloch's GRP is based on forcing the outside customers to cut their water usage to 2,000 to 3,000 gallons while allowing

⁴⁸ Direct Testimony of Diane Lincoln, Woodloch, Page 60, Lines 14-24

the inside users to continue using all of the water they have always used. Every customer should be able to afford and use their allotted amount of water without punishment. The costs for an outside customer to use water is covering for the inside user being able to use any amount of water they want to. No conservation of water is being forced on them. There needs to be one rate for all customers, so that everyone pays their fair share for the usage of water. It would appear that this is a situation where the town is protecting those who can vote and sticking it to those who cannot vote.

Woodloch assesses a \$1.00 fee to all customers as a pass-through fee from the LSGCD. The LSGCD fee is \$0.06 cents per 1,000 gallons based on a permitted usage of 36,000,000 gallons. This amount equals \$2,160 annually. Mayor Lincoln testified that Woodloch doesn't recover any more than what the actual fee is from its customers.⁴⁹ Woodloch does indeed collect more than their costs in pass-through fees, as they charge \$1.00 per month to each customer regardless of the amount of water used. With a minimum number of 244 connections at \$1 per month for 12 months, the minimum collected by Woodloch is \$2,928. Woodloch is collecting at least \$768 more than what is being passed through to the LSGCD. Effective January 1, 2016, Woodloch's permitted usage drops to 25,000,000 gallons, thus dropping the annual pass-through fees to \$1,500. At the current rate of \$1.00 per customer, Woodloch will receive an additional \$1,428 in pass-through fees that will not be passed through. Since there are no costs to implement their GRP, they collect at least \$10,500 in GRP fees that are not assessed to Woodloch at all.

Staff has recommended a Revenue Requirement of \$200,932 for Woodloch.⁵⁰ The

⁴⁹ Direct Testimony of Diane Lincoln, Woodloch, Page 57, Lines 12-15

⁵⁰ Direct Testimony of Fred Bednarski, Staff, Exhibit 1, Page 16, Line 5

Protestants recommended a revenue requirement of \$142,589.⁵¹ Protestants agree with Staff's recommended revenue requirement.

IV. Rate Design

The current rate design Woodloch uses for its customers is not only unjust and discriminatory to the outside customers, it is preferential to the inside customers. Woodloch alleges the outside customers are charged a higher rate for both water and sewer services due to a higher cost to maintain them. However, Woodloch has not proven this allegation, nor have they submitted any viable documentation to substantiate this claim. Furthermore, the documentation that has been provided shows the aforementioned claim to be false and inaccurate.

There is one water supply plant located on Woodhollow Drive outside the city limits of Woodloch. There is one wastewater treatment plant located inside the Woodloch city limits. The water supply plant and the wastewater treatment plant serve all of the customers of Woodloch.⁵² Therefore, there should be only one class of customer. For example, there are 2 homes on River Ridge that have been annexed into Woodloch.⁵³ The cost to service those 2 homes is exactly the same as the other homes on River Ridge. There should not be two classes of customers. Woodloch argues that it costs more to serve the outside customers because there are more of them. In the same respect, the outside customers' revenues are also greater, because there are more of them.

Mike Mathena testified that the way the rates are structured is the fairest way to everyone.⁵⁴ This is absolutely untrue. There is nothing fair in the way the rates are structured or in the way that expenses are allocated. It is not fair for the outside customers to pay 80% of the

⁵¹ Direct Testimony of Catherine Lewkowski, Protestants, Ex. 1, Page 5, Line 12

⁵² Direct Testimony of Diane Lincoln, Woodloch, Page 15, Lines 1-3

⁵³ Direct Testimony of Diane Lincoln, Woodloch, Page 41, Lines 8-15

⁵⁴ Direct Testimony of Mike Mathena, Woodloch, Page 113, Lines 14-15

costs to maintain the town, the town's pool, the town's park, the Woodloch FEMA buy-out lots, and the town's utility yard. It is not fair for the outside customers to pay 68% of all other costs including the town's costs. It is not fair for the outside customers to be the only customers forced to conserve water due to the rates. The rates that were put in effect are unfair and completely discriminatory to the outside customer. In other words, for the citizens who can vote, the rates increased \$14.50 and for those who cannot vote, the rates increased over \$60.00 plus a \$35 surcharge, making the increase \$95.00.

The rate increase was put in effect, in part, to cover a loan from the Texas Water Development Board (TWDB). However, the increase in sewer rates was only imposed on the outside customers. Mayor Lincoln testified that this did not suggest that only the outside customers would be paying back the loan as Woodloch does not separate the water and sewer revenues.⁵⁵ Therefore, there is no justification in separating the expenses. However, Woodloch does separate the expenses with the outside customers paying the vast majority of all expenses, including the inside customers' expenses, the town's expenses and most of the town's Public Works expenses. The outside customers are paying 100% of the sewer plant's electricity⁵⁶, 100% of the electricity for the town's pool,⁵⁷ and 68% of the city hall electricity.⁵⁸

The outside customers are paying thousands more for water than the inside customers even though they have drastically cut their usage. Prior to the rate increase, the average usage for all Utility customers was 8,000 gallons per month. Because the outside customers have been forced to reduce their usage, the average for all customers currently is only 4,000 gallons per month. Many of the outside customers have reduced their usage to 1,000 to 2,000 gallons per

⁵⁵ Direct Testimony of Diane Lincoln, Woodloch, Page 20, Lines 21-23

⁵⁶ Direct Testimony of Diane Lincoln, Woodloch, Page 27, Lines 1-7

⁵⁷ Direct Testimony of Diane Lincoln, Woodloch, Page 29, Lines 20-25

⁵⁸ Direct Testimony of Diane Lincoln, Woodloch, Page 27, Lines 17-23

month. Woodloch Witness, Mike Mathena testified that there are larger expenses outside the town and they took those into consideration when making the rate recommendation.⁵⁹ The only costs outside the town are the lift stations. According to the general ledger and the invoices from H2O and Entergy, the costs to repair, maintain and supply all five lift stations is less than \$10,000. The increase to the outside customers generates approximately an additional \$190,000 in revenues. The increase to the inside customers generates approximately an additional \$12,700 in revenues. So twice as many customers outside are generating 15 times more revenue. Again, there is no justification for the outside customers paying so much more than the inside customers.

Woodloch Witness Angela Rubottom was retained to do a rate analysis by Woodloch and their attorney Duncan Norton.⁶⁰ She was retained more than one year after the rate increase was put in effect.⁶¹ She states that her conclusions are based on the Fiscal Year 2012 actuals and Fiscal Year 2013 Budget. It has already been shown that no loans were budgeted for in the 2013 budget and according to Woodloch's documents submitted in the first RFI from PUC, the combined Town & Utility expense budgeted for 2013 was \$276,423.00.

Ms. Rubottom testified that the \$25,712 in expenses for unfunded mandates is for the expenses related to the preparation of the GRP.⁶² First, this is not unfunded as Woodloch assesses a \$0.90/1,000 GRP fee and a \$1.00 pass thru fee for LSGCD. Second, the GRP was prepared in 2010 and the cost to update should be minimal as the update consists only of updating the pumpage and sold information which are records that are kept in the normal course

⁵⁹ Direct Testimony of Mike Mathena, Woodloch, Page 100, Lines 18-21

⁶⁰ Direct Testimony of Angela Rubottom, Woodloch, Page 156, Lines 21-24

⁶¹ Direct Testimony of Angela Rubottom, Woodloch, Page 157, Line 7

⁶² Direct Testimony of Angela Rubottom, Woodloch, Page 163, Lines 6-13

of business. As Woodloch's GRP is based solely on conservation⁶³, there are no expenses in implementing it. The conservation method is to charge so much for water to the outside customer, that they must reduce their usage considerably so that the inside customer can continue to use the excess at no extra cost.

Ms. Rubottom testified that the differential between the inside and outside customers is 1.7 and that the 1.7 differential makes it reasonable to charge a 2.0 differential to the outside customer.⁶⁴ She based this differential on the expenses allocated to the outside customers by Woodloch. The allocation of expenses is not accurate in that Woodloch allocates 100% of the electric expense for the town's pool, utility yard, sewer plant and all 5 lift stations to the outside customers. Woodloch allocates 80% of the town's maintenance on the FEMA buy-out lots owned by Woodloch, the pool maintenance, the town's Tax Assessor Collector, legal representation, the town's employees' clothing, and all expenses of the town's Public Works that are not water or sewer related to the outside customers. Woodloch allocates 68% of all municipal building and insurance costs, municipal building maintenance, office supplies, etc. to the outside customers. Woodloch further allocates 100% of the town's maintenance man's salary to the Utility. The outside customers receive absolutely no services from Woodloch that are not water or sewer related.

Ms. Rubottom testified that the lift stations have a lot of costs.⁶⁵ There are 5 lift stations. Three are on Woodhollow Drive, and are accessed on Woodhollow Drive. Two of these lift stations sit on FEMA buy-out lots owned by Montgomery County. The third is underground and is in the woods. There is one lift station of River Oaks and is accessed by River Oaks. Woodhollow Drive and River Oaks are county roads and are maintained by the County. The

⁶³ Direct Testimony of Diane Lincoln, Woodloch, Page 16, Lines 8-13

⁶⁴ Direct Testimony of Angela Rubottom, Woodloch, Page 164, Lines 6-9

⁶⁵ Direct Testimony of Angela Rubottom, Woodloch, Page 165, Lines 20-21

fifth lift station is inside Woodloch, behind the sewer plant, and is accessed by South Woodloch. Woodloch is responsible for maintaining their roads as they are not county roads. The amount of mowing, the three lift stations outside the town, that can be mowed does not justify the expense allocated in street maintenance or the \$31,000 in salary and mileage expense that is currently being paid to Robert Baylor to maintain them. The electric charges, as evidenced by the invoices, run about \$1,352 annually to operate all of the lift stations and according to the H2O invoices the repairs and services to the lift stations was under \$5,000. Ms. Rubottom further stated that there are more distribution lines outside the city.⁶⁶ This may be true, however, Woodloch has received at least two \$350,000 grants to repair and/or replace most of these lines.

Angela Rubottom testified that the operation and maintenance expense is \$195,000. She allocated \$40,000 to the inside customers and \$155,000 to the outside customers. She further stated that she allocated the total cost of debt service which added up to a total cost of service of \$70,917 for the inside customers and \$275,082 to the outside customers.⁶⁷ The debt service includes the TWDB loan that Woodloch did not get and the other two loans amount to approximately \$182,500 with \$37,000 annual payments.

Ms. Rubottom did not do an audit of every expense but only a sampling.⁶⁸ She did look at the larger invoices like H2O and Entergy, and she did go over the method used by the mayor to assign costs. She did not adjust for some expenses because it was her understanding that those expenses were related to the utility.⁶⁹ She points out that the lift stations are one of these; that they have to be maintained and accessed.⁷⁰ She testified that wherever the town owns a facility,

⁶⁶ Direct Testimony of Angela Rubottom, Woodloch, Page 166, Lines 4-7

⁶⁷ Direct Testimony of Angela Rubottom, Woodloch, Page 175, Lines 1-9

⁶⁸ Direct Testimony of Angela Rubottom, Woodloch, Page 176, Lines 18-24

⁶⁹ Direct Testimony of Angela Rubottom, Woodloch, Page 181, Lines 2-6

⁷⁰ Direct Testimony of Angela Rubottom, Woodloch, Page 181, Lines 12-17

it has to be maintained which could involve, mowing, trimming, or pavement.⁷¹ However, as previously stated, the 2 lift stations on Woodhollow Drive sit on lots maintained by the County, the four lift stations outside the town are accessed by county roads, and the water plant is accessed by a county road. She accepted the mayor's method of allocating expenses, which is flawed, and therefore, Ms. Rubottom's rate analysis cannot be accepted as accurate.

The rate design also has provisions for security deposits and late fees. The security deposit for the outside customers is \$300. The late fees are 20% of the bill. This is unusually high and creates an extreme burden on any outside customer who cannot pay their bill in a timely manner. With utility bills over \$150 the late fees are \$30. If an outside customer gets their water turned off for not paying on time, the cost to restore water is prohibitive. The customer must pay the bill, the late fee, the costs involved in turning the meter off and on, and the security deposit. This amounts to approximately \$600 to restore service. There are no protections for senior citizens. One of our senior citizens, in fact one of the 3 representatives, Mr. David Bonham, had a water leak that went undetected for 2 days. His water bill was \$1,048 with a \$202 late fee. Woodloch made no negotiations or allowances to Mr. Bonham other than to allow a payment plan of \$200 per month plus the regular monthly bill. This would be difficult for any customer, but especially so for the ones living on fixed incomes.

Ms. Rubottom testified that there is a bit of judgement in ratemaking as to what is reasonable.⁷² Had Ms. Rubottom done a thorough audit, her revenue requirement might have been very different. There can be no judgement of reasonableness in this rate design. It does not cost five times more to serve the outside customers.

There is only one class of customer and therefore, all customers should pay the same

⁷¹ Direct Testimony of Angela Rubottom, Woodloch, Page 182, Lines 12-21

⁷² Direct Testimony of Angela Rubottom, Woodloch, Page 178, Lines 8-10

rates for water and sewer. Staff has also recommended that Woodloch have only one class of customers. Staff Witness Heidi Graham, in her Direct Testimony presented two different rate designs based on one class of customers.⁷³ Protestants are agreeable to either of the rate designs. The tierage rates need to be designed in order to promote conservation among all customers, not just the outside customers. Currently, at 9,000 gallons, the tierage rate for the inside customers is actually less than it was before the rate increase. Because the LSGCD has allotted 8,000 gallons of water per household, the tierage rates should reflect this.

V. Rate Appeal Expenses

The question at hand is not whether the parties who have participated in the rate case appeal process, on behalf of Woodloch, should be paid. These parties have been and continue to be paid by Woodloch. The question is whether Woodloch should be able to recover these costs from the customers. Woodloch has not proven that the rates that were put in effect were fair, just, reasonable, and nondiscriminatory. In fact, the opposite is true. Repeatedly within documentation and testimony, there is proof that the rates have been designed and imposed unjustly.

Woodloch, against typical TCEQ and PUC standards and procedures, began charging only the outside customers a surcharge to cover and recoup “estimated” rate appeal expenses effective June 2014. Outside customers should not have to bear the burden of Woodloch’s costs for this rate appeal while also bearing the burden to defend themselves against an unjust rate. This is nothing less than a ‘bullying’ tactic and it should be rejected.

The Protestants, on three different occasions, addressed Woodloch with hopes of negotiating a settlement. However, repeatedly Woodloch refused settlement options. Woodloch

⁷³ Direct Testimony of Heidi Graham, Staff, Exhibit 2, Pages 29 & 30

was informed during the meeting which was called by Mayor Lincoln, that the rate appeal costs may not be recoverable and if that were the case, any overpayment by the outside customers may result in a refund, but Woodloch imposed a surcharge fee regardless. Woodloch was given the opportunity to agree to interim rates but instead argued against them.

A small utility that services only 244 customers in a very small area of approximately a 1 mile radius should not be hiring an attorney and experts that they cannot afford, relying solely on the costs being absorbed by the outside customers. Woodloch's attorney fees for Mr. Duncan Norton alone are in excess of an entire year's revenue requirement. Attorney fees should not be more than the cost to operate and maintain the Utility for one year.

Mayor Lincoln testified that the \$35 rate appeal surcharge was placed on the outside customer's water bills in order for Woodloch to recover the rate appeal costs that had risen to over \$60,000 by June 2014. The outside customers had been paying the rate increase for 17 months no payments had to be made for the anticipated TWDB loan. When asked why those extra monies weren't applied to the rate appeal costs Ms. Lincoln testified that costs exceeded revenues.⁷⁴ With 147 outside customers paying a minimum of \$60 a month in rate increases for 17 months the extra revenue generated was at least \$149,940. This is more than double the \$60,000 rate appeal expenses that had accrued at that time. Since June 2014, the rate appeal costs have risen to over \$200,000 and continue to rise. The final costs are not, at this time, known. The outside customers continue to pay a \$35 surcharge on monthly utility bills to cover the costs of these, as yet, unknown and "estimated" rate appeal costs.

Mayor Lincoln further testified that the city passed another ordinance in April, 2015 to cover the expenses of the continuing rate appeal costs. This ordinance assesses a \$35 surcharge

⁷⁴ Direct Testimony of Diane Lincoln, Woodloch, Page 38, Lines 20-25 & Page 39, Lines 1-7

on the inside city customers.⁷⁵ The effective date of this ordinance is April 14, 2015 and will continue to such a time that rate appeal costs are recovered.⁷⁶ The water bills for the period April 22, 2015 through May 22, 2015 did not reflect the \$35 surcharge for the inside customers, but Mayor Lincoln testified that it was on their RVS billing system and though it didn't make it onto that bill it would be on the next bill. When asked when the next bill is issued Mayor Lincoln answered around the 21st.⁷⁷ However, this also did not occur. As of July 24, 2015 this charge is still not on the inside customer's water bills. The total rate appeal costs are not yet known and Woodloch should not be charging a fee to **any** of their customers to cover "estimated" rate appeal costs.

Woodloch has been paying the invoices tendered in regards to this rate case for their counsel and consultants. This is not a decision as to whether the attorneys or the consultants should be paid, as they are all being paid. This is a decision regarding whether Woodloch should be able to recover the expenses in the rate appeal case. There are many reasons why Woodloch should not be allowed to recover these expenses.

1. Woodloch had an attorney of record and chose to hire a \$350 an hour attorney, while keeping the first attorney on the case, thus providing themselves with dual counsel and dual financial obligation.
2. Woodloch is a small utility serving less than 250 connections and therefore, knew they could not afford the higher priced attorney, but retained him anyway based solely on the idea that the outside customers would have to pay all of his expenses.
3. Woodloch hired a rate expert over one year after the rates had been in effect in

⁷⁵ Direct Testimony of Diane Lincoln, Woodloch, Page 39, Lines 8-16

⁷⁶ Direct Testimony of Diane Lincoln, Woodloch, Page 40, Lines 21-24

⁷⁷ Direct Testimony of Diane Lincoln, Woodloch, Page 75 Line 5

order to justify the rate increase after the fact.

4. The invoices submitted by Bleyl Engineering are not sufficient for reimbursement because they provide no detail on the actual work performed.
5. The rate increase was not needed at the time it was put into effect.
6. No documents, i.e. invoices, bills, cancelled checks, etc. were produced to back up Woodloch's revenue requirement. All documents produced by Woodloch were generated by Woodloch and without the aforementioned back-up documents, it is impossible to verify the accuracy of the general ledges, profit and loss statements, the budgets, etc.
7. The rate increase is not defensible in that it was unfair and discriminatory.

VI. Financial Integrity of the Utility

Much was said about the dire need of the Utility. Woodloch has received many grants to build, repair, replace, and expand the utility. Woodloch has been collecting double rates from the outside customers for 29 months. It is the management of the Utility that needs to be addressed.

Woodloch's attorney, Duncan Norton, questioned Staff Witness Heidi Graham about her recommendation of applying a credit on each customer's bill over the same period of time that the appealed rates were collected.⁷⁸ He asked Staff Witness Leila Guerrero if she or anyone else had analyzed the effect on Woodloch of a combination of a surcharge refund and the implementation of a rate based on Staff Witness Fred Bednarski's revenue requirement.⁷⁹ These may appear to be viable questions, however, the real question is why Woodloch didn't consider

⁷⁸ Direct Testimony of Heidi Graham, Staff, Page 342, Lines 13-16

⁷⁹ Direct Testimony of Leila Guerrero, Staff, Page 384, Lines 11-15

the financial integrity of the system when they lavishly retained the services of attorneys, experts, and consultants they could not afford. Why didn't Woodloch consider the financial integrity of the system when they refused to compromise in any way other than raising the rates even higher than what was being appealed? Why didn't Woodloch consider the financial integrity of the system when they imposed a surcharge on only the outside customers for "estimated" rate appeal expenses? (*Especially when they knew those amounts may have to be refunded*).

When Woodloch imposed double rates on the outside customers, they did not consider the impact those rates would have on its outside customers. If the impact was considered, then Woodloch had no concerns about it. Did Woodloch consider that some families would be forced to move? Did they consider that some families would have to make a choice between the costs of medicine and the costs of a water bill? Did Woodloch consider that families would have to cut their usage considerably possibly causing a safety issue? No. Woodloch just assumed that the outside customers would just have to give up whatever was necessary in order to pay these double rates. It appears that Woodloch did not consider the effect of any of these actions and what this type of financial irresponsibility would do the financial integrity of the Utility. These are all actions that Woodloch could not afford as they are a small utility that serves low to moderate income customers and they cannot afford to bear the burden of such foolish acts.

Woodloch's continued failure to properly maintain the Utility should not be the burden of its customers. Angela Rubottom testified that Mr. Mathena had described the dire need for improvements and that there are many facilities that, because of their lack of being maintained are now in an emergency situation.⁸⁰ This creates the question, why hasn't the utility been maintained? Woodloch has received at least \$1.7 million dollars in Grant funds, monies, that do

⁸⁰ Direct Testimony of Angela Rubottom, Woodloch, Page 168, Lines 12-18

not have to be paid back, and yet the Utility was not maintained and is in dire need of repair. Woodloch's revenue requirement is approximately \$202,000 and they have been collecting over \$300,000 in revenues from just the outside customers. Woodloch is collecting pass-through fees that are not passed through. Woodloch has been receiving a rate appeal surcharge for over one year. There should be no reason for Woodloch claiming the financial integrity of the Utility is in a failing and critical state.

VII. Conclusion and Recommendation

A. Conclusion

Woodloch imposed an unfair and discriminatory rate increase. Woodloch has failed to provide documentation to prove up that there was any need for a rate increase. The manipulation of the rate structure was designed to shift the burden of payment to the outside customers. The lift stations are not a cause for outside customers to pay a higher rate as the revenues from outside customers are at least 5 times more than revenues from the inside customers. Mayor Lincoln even testified that the revenues and expenses for the outside customers sometimes balances out⁸¹ and this is with the misallocation of expenses to the outside customers. The only reason it costs more to serve the outside customers is because there are more outside customers. Costs are the same to serve if you are an inside customer or an outside customer. The same comparison can be made within the town's limits. There are 29 customers on North Woodloch, 42 customers on South Woodloch and 2 customers on River Ridge. Therefore, it costs more to serve North Woodloch than it does to service the two homes on River Ridge and it costs more to service the residents on South Woodloch than it does to service the customers on North Woodloch and River Ridge combined. Outside the town's city limits, the Utility serves 48

⁸¹ Direct Testimony of Diane Lincoln, Woodloch, Page 61, Lines 17-21

customers on River Ridge, 27 customers on Woodhollow Drive, and approximately 100 customers on River Oaks. All 5 of these streets are connected by Needham Road and are all within ½ mile-1 mile of each other. There is one water supply plant serving all 248 connections and one sewer plant serving all 248 connections. There is no justification in charging the outside customers double rates. With one class of customer, all paying the same rate, the revenues from outside customers, collected by Woodloch, would still be more than double the revenues collected from the inside customers rates.

There is no justification in any customer being charged the SJRA/GRP fee of \$0.90/1,000 gallons used. This is a pass-through fee that is not passed through, but instead is extra revenue for Woodloch. There are no costs involved in implementing Woodloch's GRP as it is based solely on conservation. Woodloch has not provided any documentation to show that there are costs involved in implementing the GRP plan.

Woodloch is currently collecting approximately \$2,928 in LSGCD fees per year. These, too, are pass-through fees. LSGCD charges Woodloch \$0.06/1,000 gallons permitted. Currently, the amount permitted for Woodloch is 36,000,000 gallons per year. This amounts to \$2,160 annually being passed through from Woodloch to LSGCD. This leaves Woodloch with a surplus of over \$750. Beginning January 1, 2016, the permitted amount of water usage for Woodloch drops to 25,000,000 gallons. At that time Woodloch will have pass-through fees from the LSGCD in the amount of \$1,500. This will give Woodloch a surplus of over \$1,400 in pass-through fees.

Rate appeal costs should not be recovered by Woodloch. Woodloch imposed an unfair and discriminatory rate increase. They have failed to prove that there was any need for a rate increase. Woodloch has provided no documentation that was not generated by Woodloch, other

than copies of loan agreements for two loans totaling payments of \$37,000 annually. They have provided no bills, invoices, or cancelled checks.

Throughout this very lengthy proceeding, of almost three years, Woodloch and their representation claimed the Utility's system components are in dire need of repair and Woodloch is in dire need of additional revenue. A barrage of statements have been made claiming the repair costs for serving the outside customers were elevated by at least 70%. Not once throughout this rate appeal has Woodloch proven these claims. To highlight what has been proven; the financial integrity of the Utility should not be in the state it is claimed to be in as the documents Woodloch "created" and produced show (1) a profit of \$86,000 for fiscal year ending 2011 (2) a profit of \$156,000 or \$395,000 for fiscal year 2012 (*the profit amount varies depending on which document you are using*). These totals do not include the additional revenues collected by Woodloch in rate increases amounting to at least \$470,000 for the duration of this rate appeal case. The only thing that has been clearly proven is Woodloch's entire evidentiary backing to their claims are financial documents that were "created" by Woodloch and Woodloch has provided zero documentation via evidence of invoices or cancelled checks that could prove their revenue requirement.

B. Recommendation

Protestants make the following recommendations:

1. There should be one class of customer all paying the same water and sewer rates.
2. Accept Staff's Revenue Requirement of \$200,932.
3. Keep separate accounting books for the town and the Utility.
4. Discontinue collection of the SJRA/GRP pass-through fees.

5. Reduce the LSGCD to \$0.50 per month per customer and \$1.00 per month for usage over 8,000 gallons.
6. Reduce the security deposit to \$100.
7. Reduce the late fee to 10% or \$10.00 whichever is greater.
8. Reduce the debt coverage ratio.
9. Refund the monies that have been overpaid by the outside customers for the past 29 months.

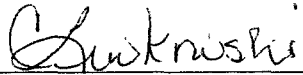
Respectfully Submitted,



Catherine Lewkowski
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(936)522-6186

CERTIFICATE OF SERVICE

I certify that on July 30, 2015, a true copy of the Protestant's Post Hearing Brief was served on all parties of record via First Class Mail or Fed-Ex Delivery.


Catherine Lewkowski

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