



Control Number: 50788



Item Number: 114

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SOAH NO. 473-20-4071.WS

PUC DOCKET NO. 50788

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<b>RATEPAYERS APPEAL OF THE DECISION BY WINDERMERE OAKS WATER SUPPLY CORPORATION TO CHANGE WATER AND SEWER RATES</b>	§ § § § § § § §	<b>BEFORE THE STATE OFFICE  OF  THE ADMINISTRATIVE  HEARINGS</b>
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**MOTION TO COMPEL WINDERMERE OAKS WATER SUPPLY CORPORATION  
TO RATEPAYERS THIRD REQUEST FOR INFORMATION**

**TO THE HONORABLE JUDGE WISEMAN AND JUDGE SIANO:**

COMES NOW, the Ratepayers Representatives of the Windermere Oaks Water Supply Corporation ("Ratepayers") and files this Motion to Compel in response to the Windermere Oaks Water Supply Corporation (WOWSC) Objections to Ratepayers' Third Set of Request of Information and, in support thereof, respectfully shows as follows:

**BACKGROUND**

On April 30, 2021, Ratepayers filed and served their third set of requests for information ("RFIs") on WOWSC. On May 10, 2021 WOWSC filed their Objections to the Ratepayers' Third Request for Information. The specific objections to Ratepayers' RFI included 3-8, 3-9, 3-13, 3-14 and 3-22. Pursuant to 16 Tex. Admin. Code §22.144(e), the party seeking discovery must file a motion to compel no later than five working days after an objection is received. Five working days after May 10, 2021 is May 17, 2021; therefore, this motion has been filed timely by the Ratepayers.

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Respectfully submitted,

Josephine Fuller

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Josephine Fuller, Ratepayer Representative  
328 Coventry Road  
Spicewood, Texas 78669  
(512) 743-2553  
[ratepayersrepjosiefuller@gmail.com](mailto:ratepayersrepjosiefuller@gmail.com)

Patti Flunker

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Patti Flunker, Ratepayer Representative  
307 Coventry Road  
Spicewood, Texas 78669  
(512) 699-1082  
[ratepayersrepjosiefuller@gmail.com](mailto:ratepayersrepjosiefuller@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic email on May 17, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

*Josephine Fuller*

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Josephine Fuller, Ratepayer Representative

*Patti Flunker*

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Patti Flunker, Ratepayer Representative

## MOTION TO COMPEL

The WOWSC objects to the Ratepayers following RFI's because they believe the requests are related to issues outside the scope of the Preliminary Order issued by the Commission on July 16,2020. Additionally, they cite that the request seeks information that is neither relevant to the issues presented in this matter nor reasonably calculated to lead to the discovery of admissible evidence and that the information requested does not have any tendency to make the existence of any fact that is of consequence to the determination of this proceeding more probable or less probable than it would be without the evidence.<sup>1</sup>

RATEPAYERS RFI 3-8: Admit or Deny the WOWSC filed on March 19,2021 a Civil Action lawsuit in United States District Court for The Western District of Texas, Case 1:21-CV-00258- RP; in which WOWSC and former and current board members Dana Martin, William Earnest, Thomas Michael Madden, Robert Mebane, Patrick Mulligan, Joe Gimenez, David Bertino, Mike Nelson, Dorothy Taylor, and Norman Morse are named as plaintiffs in an Original Complaint, by the Shidlofsky Law Firm against Defendant Allied World Specialty Insurance Company.

RATEPAYERS 3-9: If the answer to RFI 3-8 is admit, state whether the WOWSC is paying litigation expenses for the individual plaintiffs and the legal and factual bases (if any) on which the WOWSC is doing so.

RATEPAYERS 3-13: What financial account/fund/bank account is the WOWSC pulling funds from to pay the Shidlofsky Law Firm's for representation of the WOWSC and the individual plaintiffs in Case 1:21-cv-00258-RP?

RATEPAYERS 3-14: Are any of WOWSC funds used to pay the Shidlofsky Law Firm for representation of the WOWSC and past and current directors' representation in Case 1:21-cv00258-RP generated by the income of the water and/or sewer rates? RATEPAYERS 3-22: Provide the WOWSC's determination and calculation of the demand of \$250,000 in Case 1:21-CV-00258-RP and if this demand includes legal expenses from 2019 which the WOWSC included in the 2020 WOWSC rate increase.

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<sup>1</sup> [https://interchange.puc.texas.gov/Documents/50788\\_113\\_1126745.PDF](https://interchange.puc.texas.gov/Documents/50788_113_1126745.PDF)

The ratepayers disagree with WOWSC's assertion that the above RFI's do not relate to issues in the preliminary order issued by the Commission on July, 16, 2021. It is Unquestionable that the WOWSC has exceeded the \$171,000 in legal fees which was included in the rate study and in the new water and sewer rates implemented in March of 2020. The WOWSC is now embroiled in a new lawsuit as plaintiffs and it appears the WOWSC continues to collect from the Ratepayer's fees for water and sewer service above and beyond the \$171,000 legal expense reported on the TRWA rate study that are potentially being used to finance additional lawsuits the WOWSC is involved with as plaintiffs. The WOWSC appears to have no concerns for their own financial integrity as there are no benefits to the Ratepayers in this new lawsuit they are involved with, specifically the lawsuit related to the above mentioned RFI's. It appears the WOWSC is putting the needs of former and current directors before the needs of the Ratepayers. This lawsuit appears to have the potential to impact the financial integrity of the water system which could have an effect on their ability to refund the Ratepayers the overcharges in water and sewer rates if the Commission should consider refunds for overpayments made by the Ratepayers of the WOWSC

In the Preliminary Order issued by the Commission on July 16, 2020, #11 states If the Commission establishes rates different from the rates set by Windermere Oaks, should the Commission order refunds or allow surcharges to recover lost revenues under TWC § 13.043(e) and 16 TAC § 24.101(e)(4)? If so, what is the appropriate amount and over what period should the refund or surcharge be in place? The Commission along with the Administrative Law Judges have the authority to recommend and decide of whether to refund the Ratepayers the overcharges and to consider the WOWSC's financial integrity. If the WOWSC is continuing to involve themselves in legal battles that have no benefit to the Ratepayers yet will impact the financial integrity of the system and their ability to refund the overcharges because of poor decisions by the WOWSC then

we believe these RFI's are relevant to the Preliminary Order issued by the Commission on July 16, 2020, specific to #11.

### CONCLUSION

The WOWSC's assertion that the Ratepayers are using these RFI's to harass the WOWSC for information unrelated to the proceeding is a feeble avoidance of providing full transparency of the WOWSC's prodigal habits to run up legal bills which are passed on to the Ratepayers that serve no other purpose but to pursue legal battles as plaintiffs for former and current WOWSC directors with no end in sight, no check and balances and more importantly will inevitably impact the financial integrity of the water system.

### PRAYER

WHEREFORE, PREMISES CONSIDERED, Ratepayers request these motions to compel be permitted requiring the WOWSC to provide responses to Ratepayers RFIs. The Ratepayers also request any other relief to which it may show itself justly entitled.

Respectfully submitted,

*Josephine Fuller*

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Josephine Fuller, Ratepayer Representative

*Patti Flunker*

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Patti Flunker, Ratepayer Representative