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RATEPAYERS APPEAL OF THE	§	BEFORE THE STATE OFFICE
DECISION BY WINDERMERE OAKS	§	
WATER SUPPLY CORPORATION TO	§	OF
CHANGE WATER AND SEWER	§	
RATES	§	ADMINISTRATIVE HEARINGS

**RATEPAYERS’ RESPONSE TO OBJECTION OF
WINDERMERE OAKS WATER SUPPLY CORPORATION
TO RATEPAYERS’ WITNESS AND EXHIBIT LIST**

COME NOW the RATEPAYERS of Windermere Oaks Water Supply Corporation (“Company”) and files this Response requesting denial of the Company’s Objection to Ratepayers’ Witness and Exhibit List (“Ratepayers’ List”) and would show as follows:

1. ***Ratepayers’ List Meets the Requirements of Order No. 14.*** The Company’s suggestion that Ratepayers’ List is not “in conformity” with Order No. 14 (“Order”) is without merit. The Company identifies no aspect in which it claims Ratepayers’ witness list is noncompliant. The Company claims that Ratepayers’ exhibits are not “properly labeled” because the List does not earmark each item for use during direct examination, cross-examination or both. The Order, however, requires only that each party list all exhibits it “intends to offer at the hearing (including, for example, on cross-examination).” The Order does not require that each exhibit be earmarked. Significantly, neither the PUC Staff nor the Company itself earmarked their respective exhibits in the manner the Company now insists is required.

2. ***The Company’s Objections to Ratepayers’ Exhibits 02, 03 and 04 Are Without Merit.*** Pursuant to Order No. 9, Ratepayers redacted from the written testimony of Patricia Flunker, Danny Flunker and Bill Stein portions to which the Company’s objections were sustained. The redacted versions were filed as “errata” under Item No. 130. The Company made

no objection to the “errata.” Those “errata” are identified as Exhibits 02, 03 and 04 on Ratepayers’ List.

3. ***The Company’s Objections to Ratepayers’ Exhibits 05 and 06 Are Without Merit.*** In its Objection and Motion to Strike Portions of the Direct Testimony of Kathryn E. Allen filed under Item No. 99, the Company claimed that portions of Allen’s written testimony (and/or the exhibits attached thereto) are not relevant, are hearsay and do not demonstrate her personal knowledge. Those objections appear to have been overruled in Order No. 9. The undersigned’s appearance as counsel in this matter does not impact in any way whether her written testimony is relevant, constitutes hearsay or demonstrates her personal knowledge of the litigation in which she has been counsel of record for more than two years. The Company’s reliance on Rule 3.08, Tex. Disciplinary R. Prof. Conduct, is misplaced. First, Rule 3.08 does not govern the admissibility of evidence, and the Company cites no authority suggesting it does. Significantly, the Company’s objection fails to identify any particular evidence it contends should be excluded on the basis of Rule 3.08. Rule 3.08 governs the relationship between a lawyer and her client; it expressly authorizes a lawyer to continue as an advocate even if she knows she may be a witness necessary to establish an essential fact on behalf of her client. The Company does not seek to disqualify the undersigned and articulates no circumstances upon which such relief could be ordered.

4. ***The Company’s Objections to Ratepayers’ Exhibits 01 and 07 – 17 are, at best, premature.*** Pursuant to the PUC’s Procedural Rules,¹ all evidence in contested cases must be offered at the time of the hearing. As a general matter, the Procedural Rules² and the Texas

¹ See, e.g., Sections 22.221, 22.225 and 22.226.

² See, e.g., Section 22.221(c) – “Failure to object to evidence at the time it is offered constitutes a waiver”

Rules of Civil Procedure and Rules of Evidence³ all require that objections to evidence must be made at the time the evidence is offered. Premature objections do not preserve error.⁴ The requirement that evidentiary rulings be made in proper context arises from the recognition that evidence admissible in some circumstances may not be admissible in others. Ratepayers were required to include on their exhibit list materials they could anticipate might be needed in connection with cross-examination. As a result, their exhibit list is almost certainly over-inclusive. Every item, however, is admissible in proper circumstances. By way of example, the Company's discovery responses (e.g., Ratepayers' Exhibits 11 – 17) are not hearsay and are admissible on matters to which they are relevant.⁵ Likewise, to the extent they are "prior statements," Ratepayers' discovery responses (e.g., Ratepayer's Exhibits 07-10) are not hearsay and are admissible.⁶ The Company's production of documents in response to discovery (e.g., exhibits within Ratepayers' Exhibits 11 – 12) authenticates those documents for use against the Company at trial.⁷ It should go without saying that the hearing has not commenced and that Ratepayers' List does not offer anything into evidence. Setting aside at least certain objections to written direct testimony and accompanying exhibits, there is no Rule or Order in this proceeding that authorizes the prehearing evidentiary rulings sought by the Company's Objection.

WHEREFORE, Ratepayers request that the Company's Objection to their Witness and Exhibit List be overruled in all respects and that they receive such other and further relief to which they may show themselves entitled.

³ See *MBank Dallas, N.A. v. Sunbelt Mfg., Inc.*, 710 S.W.2d 633, 638 (Tex. App. – Dallas 1986, writ ref'd n.r.e.) and cases cited therein.

⁴ *Bushell v. Dean*, 803 S.W.2d 711, 712 (Tex. 1991).

⁵ See Rule 801(e)(2), Tex. R. Evid., Rule 197.3, T.R.C.P., and Procedural Rule 22.225(a)(5).

⁶ E.g., Rule 801(e)(1)(B), T.R.E.

⁷ Rule 193.7, T.R.C.P.

Respectfully Submitted,

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Certificate of Service

I hereby certify that, unless otherwise ordered by the Presiding Officer, notice of this filing was provided to all parties of record via electronic mail on November 28, 2021.

/s/ Kathryn E. Allen