



## Filing Receipt

**Received - 2021-12-30 12:52:58 PM**  
**Control Number - 50788**  
**ItemNumber - 164**

**SOAH DOCKET NO. 473-20-4071.WS  
PUC DOCKET NO. 50788**

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

**WINDERMERE OAKS WATER SUPPLY CORPORATION'S  
INITIAL BRIEF**

**LLOYD GOSSELINK ROCHELLE &  
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)

JAMIE L. MAULDIN  
State Bar No. 24065694  
[jmauldin@lglawfirm.com](mailto:jmauldin@lglawfirm.com)

**ATTORNEY FOR WINDERMERE OAKS  
WATER SUPPLY CORPORATION**

**DECEMBER 30, 2021**

**WINDERMERE OAKS WATER SUPPLY CORPORATION'S  
INITIAL BRIEF**

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	3
II.	VALIDITY OF THE PETITION (UNCONTESTED) (ISSUES 1 AND 2) .....	4
	A.    Effective Date of Rate Change .....	5
	B.    Ratepayers Eligible .....	5
	C.    Protests.....	5
	D.    Notice.....	5
III.	INTERIM RATES (UNCONTESTED) (ISSUE 3).....	6
IV.	JUST AND REASONABLE RATES (ISSUES 4, 5, 6, 7, 8, 10, AND 11).....	6
	A.    Requirements of 13.043(j) (Issues 4 and 5).....	7
	B.    Information Available to WOWSC at the Time of the Rate Change (Issue 6) .....	9
	C.    Revenue Requirement (Issue 7).....	12
	1.    Outside Legal Expenses (Issue 8).....	15
	2.    Rate Methodology.....	18
	3.    Rate Design and Allocation .....	19
	4.    Appropriate Effective Date of Rates Fixed by Commission (Issue 10) .....	19
	5.    Refunds or Surcharges (Issue 11) .....	19
V.	RATE CASE EXPENSES (ISSUE 9) .....	20
VI.	CONCLUSION.....	21

**SOAH DOCKET NO. 473-20-4071.WS**  
**PUC DOCKET NO. 50788**

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

**WINDERMERE OAKS WATER SUPPLY CORPORATION'S**  
**INITIAL BRIEF**

TO THE HONORABLE CHRISTIAAN SIANO AND DANIEL WISEMAN,  
ADMINISTRATIVE LAW JUDGES (ALJs), STATE OFFICE OF ADMINISTRATIVE  
HEARINGS (SOAH):

COMES NOW, Windermere Oaks Water Supply Corporation (WOWSC), and files this Initial Brief in the above-styled and numbered docket. Pursuant to SOAH Order No. 15, this brief is timely filed, and in support thereof, WOWSC shows the following:

**I. INTRODUCTION**

The case before the Administrative Law Judges (ALJs) and the Public Utility Commission (Commission) is a novel one, as this is a case of first impression. This case boils down to one issue: whether outside legal expenses may be included in rates charged by a water supply corporation for provision of water and wastewater service. The rates approved by WOWSC's Board of Directors on February 1, 2020 and effective March 23, 2020 that are the subject of this appeal, include \$171,337 of outside legal expenses. These legal expenses were incurred defending WOWSC in several lawsuits filed by the appellant ratepayers (Ratepayers), consulting outside general counsel for further legal protections against a certain group of ratepayers, and responding to an inordinate amount of Public Information Act (PIA) requests directly related to ongoing litigation. These outside legal costs are still ongoing.

The Commission shall conduct a de novo review of an appeal brought under the Texas Water Code (TWC). The Commission may consider only the information that was available to the governing body at the time it made its decision, and evidence of reasonable expenses incurred in the appeal proceedings.<sup>1</sup> Further, the Commission must make a threshold determination as to

---

<sup>1</sup> Tex. Water Code Ann. §§ 13.043(b) and (e) (TWC); *See also* 16 Tex. Admin. Code § 24.101(e) (TAC).

whether the appealed rates are preferential, prejudicial, and discriminatory as they affect classes of customers.<sup>2</sup> If the Commission determines that the rates fail that threshold determination, then it must set just and reasonable rates.<sup>3</sup> In the first phase, there must be evidence that the rates set by, in this case, the WOWSC Board, are preferential, prejudicial, and discriminatory. There is no such evidence in this case. Therefore, the Commission does not need to set just and reasonable rates.

WOWSC provides evidentiary support that there is only one customer class, and that the utility established the appealed rates are equitably distributed among all customers. Because there is only one class, there can be no reasonable proclamation that the one class prefers, prejudices, and discriminates against itself. Furthermore, the board members who approved the rate increase are customers themselves and pay the appealed rates.

Importantly, the TWC requires that the Commission use a methodology in setting rates that preserves the financial integrity of the utility.<sup>4</sup> The record shows that if the Commission grants the rate appeal and/or adopts Commission Staff's proposed rates, the utility will be unable to provide safe and adequate water and wastewater service to its members. As such, the Commission must deny the rate appeal and allow WOWSC to continue charging the rates effective in March 2020.

## **II. VALIDITY OF THE PETITION (UNCONTESTED) (ISSUES 1 AND 2)**

The TWC and the Commission's substantive rules require a petition to meet specific requirements.<sup>5</sup> Ratepayers of a nonprofit water supply or sewer service corporation may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission.<sup>6</sup> The petition was properly filed, meeting the requirements of TWC § 13.043(b), (c), and (d); 16 TAC §§ 24.101(b) and (c); and 16 TAC §§ 24.103(a) and (b). No party contested the validity of the petition. As such, this is an uncontested issue.

---

<sup>2</sup> *Ratepayers' Appeal of the Decision by Bear Creek Special Utility District to Change Rates*, Docket No. 49351, Order on Rehearing at 9 (Nov. 19, 2021); *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex.App.—Austin 1994, writ denied).

<sup>3</sup> *Id.*

<sup>4</sup> TWC §13.043(j).

<sup>5</sup> See TWC §§ 13.043(b), (c), and (d); See also 16 TAC §§ 24.101(b), (c), and (d); and 16 TAC §§ 24.103(a) and (b).

<sup>6</sup> See TWC § 13.043(b).

#### **A. Effective Date of Rate Change**

The petition was filed within ninety (90) days after the effective date of the rate change as required by TWC § 13.043(c) and 16 TAC § 24.101(b). WOWSC approved its tariff at the Open Meeting held on February 1, 2020.<sup>7</sup> Ratepayers filed the original petition on April 27, 2020, thereby meeting the timing requirements.<sup>8</sup>

#### **B. Ratepayers Eligible**

In its initial rate design structure, WOWSC indicated that 253 ratepayers were affected by the rate change.<sup>9</sup> However, the rate change affects 271 ratepayers.<sup>10</sup> As of January 31, 2021, there were 287 water accounts and 263 wastewater accounts, as explained in Section IV, below.<sup>11</sup>

#### **C. Protests**

Ten percent (10%) of ratepayers filed valid protests to the rate change, in accordance with TWC § 13.043(c); and 16 TAC §§ 24.101(b) and 24.103(a) and (b).<sup>12</sup>

#### **D. Notice**

WOWSC provided written notice of the hearing to all affected customers as required by 16 TAC § 24.101(c)(6) initially at the February 2, 2021 Open Meeting, where the agenda was properly posted and the original procedural schedule was provided.<sup>13</sup> However, due to several continuances and modifications to the procedural schedule, WOWSC provided continuous updates verbally at the August 17, 2021, August 24, 2021, September 30, 2021, and

---

<sup>7</sup> See WOWSC 12, WOWSC's Response to Ratepayers Representatives Third Request for Information (RFI) 3-6 and attached Tariff; *see also* Ratepayers Ex. 18, Notice of Rate Change.

<sup>8</sup> *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788 (Apr. 27, 2020).

<sup>9</sup> See WOWSC Ex. 13, WOWSC's Response to Ratepayers RFI 1-3, with Attachment 1-1, at 29; *see also* WOWSC Ex. 7, Direct Testimony of Mike Nelson at 7:22-23 and 8:1-3.

<sup>10</sup> See WOWSC Ex. 7, Direct Testimony of Mike Nelson at 7:22-23 and 8:1-3.

<sup>11</sup> See WOWSC Ex. 2, Direct Testimony of Joe Gimenez III at 9:4-6.

<sup>12</sup> See *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788 at Ex. B. (Apr. 27, 2020).

<sup>13</sup> Transcript (Tr.) at 589:18-25 and 590:1-8.

November 18, 2021 Open Meetings.<sup>14</sup> Agendas were properly posted indicating discussion of the same, and minutes from the August 17, 2021 Open Meeting reflect the December hearing.<sup>15</sup>

### **III. INTERIM RATES (UNCONTESTED) (ISSUE 3)**

No party in this proceeding has moved to establish interim rates. Furthermore, any order of interim rates which are less than the board-approved current rates would cause financial harm for WOWSC. WOWSC is unable to issue refunds or operate on reduced rates and function as a utility able to provide safe and adequate water and sewer service to its customers.<sup>16</sup>

### **IV. JUST AND REASONABLE RATES (ISSUES 4, 5, 6, 7, 8, 10, AND 11)**

The rates established by the Texas Rural Water Association (TRWA) and effective in March 2020 are just and reasonable. WOWSC engaged TRWA to conduct a rate analysis after receiving legal invoices in late 2019 that totaled over \$100,000.<sup>17</sup> WOWSC (correctly) anticipated that these significant legal costs would continue into 2020 and budgeted legal costs of \$250,000.<sup>18</sup> Prior to 2019, WOWSC budgeted between \$1,500 and \$2,500 for legal costs.<sup>19</sup> WOWSC previously used TRWA to establish its rates and rate design in 2018.<sup>20</sup>

The appellants filed this appeal based upon the Board's approval of rates which include outside legal expenses in base rates. The evidence in this case shows that a handful of WOWSC members have filed actions against WOWSC and engaged in behavior that has caused the utility to incur these extraordinary legal costs, including filing this rate appeal.<sup>21</sup> These costs, while not recurring prior to 2020, are indeed recurring, at least in the short-term, and are unfortunate, but necessary costs of providing service to its members. WOWSC cannot avoid incurring these costs, and has made many concerted efforts to engage in mediation and other alternative dispute

---

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See WOWSC Ex. 9, Rebuttal Testimony of Grant Rabon at 11:3-5 and 13:17-8 (refunds or reduction of rates "would result in significant financial harm that would impair WOWSC's financial integrity"); WOWSC Ex. 2 at 11:10-11.

<sup>17</sup> WOWSC Ex. 7 at 6:20-22.

<sup>18</sup> *Id.* at 6:22-23, 9:6-7.

<sup>19</sup> *Id.* at MN 5, p. 2 of 3.

<sup>20</sup> *Id.* at 7:1-2.

<sup>21</sup> WOWSC Ex. 2 at 21:10-22:11.

resolution in the various past and ongoing legal proceedings.<sup>22</sup> The rates are not unreasonably preferential, prejudicial, or discriminatory. They are sufficient, equitable, and consistently applied across WOWSC's one customer class. Lastly, they are just and reasonable, and provide the utility with enough revenue in rates to provide safe and adequate water and sewer service while maintaining loan covenants and paying its past due and ongoing legal fees.

**A. Requirements of 13.043(j) (Issues 4 and 5)**

In a rate appeal such as this proceeding, the Commission has the duty to ensure that every appealed rate is just and reasonable.<sup>23</sup> Further, rates must not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers.<sup>24</sup> The same Section of the TWC mandates that the Commission use a methodology that preserves the financial integrity of the utility.<sup>25</sup>

The Commission has a two-phase process in this appellate proceeding.<sup>26</sup> First, the Commission must determine whether the rates in this case are unreasonably preferential, prejudicial, or discriminatory.<sup>27</sup> The threshold issue must be overcome and affirmative in nature in order to reach the second phase to determine whether the rates are just and reasonable.<sup>28</sup> The WOWSC rates are not unreasonably preferential, prejudicial, nor discriminatory. In fact, each rate is uniform for all customers, as there is only one class.<sup>29</sup> It is virtually impossible to be discriminatory "in application to each class" when there is only one class to which the rates apply. In fact, while gallonage charges were included in the TRWA analysis, WOWSC only adjusted its base rates in order to ensure its customers shared the cost equally.<sup>30</sup> Even more compelling is that the WOWSC Board members are customers themselves, and essentially

---

<sup>22</sup> WOWSC Ex. 2 at 18:4-19.

<sup>23</sup> TWC §13.043(j).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Tr. at 13:1-25 and 14:1-14.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Tr. at 82:16-20 and 94:2-5; *see* WOWSC Ex. 2 at 5:6-7; *see also* WOWSC Ex. 3, Rebuttal Testimony of Joe Gimenez III at 24:18-22.

<sup>30</sup> *See* WOWSC Ex. 8, Rebuttal Testimony of Mike Nelson at 11:7-14.



created a rate structure which directly affected each of them personally.<sup>31</sup> It would be both foolish and self-destructive to determine rates which would be harmful to themselves as ratepayers. The WOWSC rates do not benefit one customer over another, do not discriminate against any customers, are not prejudicial, apply equitably among the class of customers, and are consistent in application to one class.

WOWSC meets the threshold requirements, and Ratepayers have not provided evidence to rebut this. WOWSC provided substantial and sufficient evidence supporting the rate structure as one which is sufficient, equitable, and consistent in application to each (one) class of customers. Therefore, the Commission should not move to the second phase of the analysis of rates. Only *if* the Commission determines that WOWSC has not provided substantial evidence supporting sufficient, equitable, and consistent rates among its one class of customers can it move to the second phase.<sup>32</sup>

If the Commission determines it must continue its analysis to the “just and reasonable” phase, WOWSC has provided substantial and sufficient evidence illustrating the appealed rates are just and reasonable. Just and reasonable rates provide a utility with the amount necessary for a nonprofit water corporation to operate in order to provide continuous and adequate water service to its customers. The Commission must set rates that preserve its financial integrity.<sup>33</sup> It was necessary for WOWSC to raise its rates due to recurring legal costs that it incurred, despite efforts to avoid those costs.<sup>34</sup> Unlike investor-owned corporations, WOWSC is a non-profit water supply corporation with unpaid volunteer Board members. As such, there are no outside equity investors.<sup>35</sup> All revenue ultimately accrues to the benefit of ratepayers and expenses are the responsibility of ratepayers, with no remaining profits going to investors.<sup>36</sup> WOWSC reviewed its financials and information known to it at the time, hired outside analysts to determine its financial health, and ultimately determined that increasing rates was the only viable

---

<sup>31</sup> WOWSC Ex. 9 at 9:11-12 and 9:19-21.

<sup>32</sup> *Ratepayers’ Appeal of the Decision by Bear Creek Special Utility District to Change Rates*, Docket No. 49351, Order on Rehearing at 9 (Nov. 19, 2021); *Tex. Water Comm’n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex.App.—Austin 1994, writ denied).

<sup>33</sup> TWC § 13.043(j).

<sup>34</sup> WOWSC Ex. 9 at 8:21-22, 9:1-23, and 10:1-5.

<sup>35</sup> *Id.* at 9:17-18 and 10:13-14.

<sup>36</sup> *Id.* at 9:15-16.

route to take in order to maintain its financial integrity and continue operating to serve its customers. Upon guidance from its expert financial analysts, it had no other choice but to raise the rates. Explained further below, WOWSC did not have the option to utilize its CoBank loans to pay for the then-existing legal costs being incurred due to lawsuits filed by external parties against WOWSC.<sup>37</sup> Additionally, it was not an option to borrow capital for the purpose of paying operating expenses, such as legal expenses.<sup>38</sup>

**B. Information Available to WOWSC at the Time of the Rate Change (Issue 6)**

WOWSC made the decision to increase rates based on concrete information regarding its 2019 balance sheet and forecasting expenditures for 2020. The utility and its directors were sued by ratepayers over a land sale that occurred 2016 in two different lawsuits prior to 2019.<sup>39</sup> The utility incurred legal costs during the test year defending itself in the lawsuits. Several other legal matters spun out of these two lawsuits; these matters have been ongoing since the 2019 test year and continue into 2022. These legal costs were a critical factor when WOWSC decided it had no choice other than to increase the water and wastewater utility rates in order to continue providing service.

Additionally, there were several factors that impacted the overall financial health of WOWSC at the time WOWSC made its decision to raise rates. WOWSC made several improvements to its system, a necessary task in order to recover from an October 2018 flood event.<sup>40</sup> WOWSC's pumping barge was destroyed during this event and WOWSC needed to install temporary pumps to ensure its water customers had safe, adequate, and continuous service.<sup>41</sup> In the beginning months of 2019, the Board approved funding to restore and repair barges, and shortly after, all four barge pumps were back in service.<sup>42</sup> The cost of this was upwards of \$60,000, whereby \$59,000 was recovered through insurance.<sup>43</sup> Subsequently,

---

<sup>37</sup> WOWSC Ex. 9 at 10:13-23 and 11:1-9.

<sup>38</sup> *Id.*

<sup>39</sup> WOWSC Ex. 2 at 17:7-18:21.

<sup>40</sup> *Id.* at 8:10-12.

<sup>41</sup> *Id.* at 8:13-15.

<sup>42</sup> *Id.* at 8:15-20.

<sup>43</sup> *Id.* at 8:20-22.

WOWSC approved a purchase of a propane generator for \$63,000, and in 2019, WOWSC paid approximately \$40,000 for it.<sup>44</sup>

WOWSC also had other obligations in 2019 and 2020 which impacted the decision to increase rates. The WOWSC Board was aware of a \$40,000 commitment to pay for the installation of a TCEQ-required generator.<sup>45</sup> Additionally, WOWSC committed \$34,000 to conservation projects in order to receive \$14,000 in matching LCRA grant money.<sup>46</sup> As of January 2020, the Board knew of \$136,079 in binding expenses with only close to \$150,000 of liquid assets in the bank at the time.<sup>47</sup> In fact, these expenses did not even include the December 2019 legal invoices and expected legal counsel needs from the continuous PIA Requests resulting from the litigation matters filed against WOWSC.<sup>48</sup>

Mid-year in 2019, WOWSC made the decision to hire consultants in order to analyze its financial metrics.<sup>49</sup> WOWSC adopted several of these financial metrics into its monthly financial reports.<sup>50</sup> The results of this financial analysis of WOWSC indicated that while the financial health of WOWSC was positive, the non-profit corporation would benefit from seeking financing for a balloon note due in 2021.<sup>51</sup> While CoBank initially offered a loan and the Board subsequently approved it, WOWSC delayed signing the loan because cost estimates for a much needed clarifier tank increased by approximately \$300,000.<sup>52</sup>

When faced with the decision on how to address the increasing legal fees and obligations to maintain its water and sewer system, WOWSC had only one choice: to raise the rates.<sup>53</sup> There was no option to utilize the CoBank loan, and this is still not an option to this day. Both the initial CoBank loan and the subsequent loan from CoBank include covenants which disallow the

---

<sup>44</sup> *Id.* at 8:22-24 and 9:1-2.

<sup>45</sup> WOWSC Ex. 3 at 8:11-12.

<sup>46</sup> *Id.* at 8:13-14.

<sup>47</sup> *Id.* at 8:14-16.

<sup>48</sup> *Id.* at 8:16-18.

<sup>49</sup> WOWSC Ex. 2 at 9:14-19.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 10:1-10.

<sup>52</sup> *Id.*

<sup>53</sup> Tr. at 531:18-25 and 532:1-2.

use of these funds for legal expenses.<sup>54</sup> The option to seek other commercial loans would have placed WOWSC in an even less desirable situation, due to higher interest rates and shorter durations.<sup>55</sup> WOWSC continued to face an increasing number of legal matters in the time period leading up to the rate increase, and the nonprofit corporation had no choice but to incorporate these into its revenue requirement, as these legal battles were continuous with no end in sight. In fact, the triggering legal battle WOWSC faced was not initiated by WOWSC, yet snowballed into a mountain of subsequent litigation matters. WOWSC had no choice but to defend itself and preserve the integrity of the nonprofit corporation. As a result, WOWSC accumulated hundreds of thousands of dollars in debt to several law firms.

In September and October of 2019, discovery requests for the *TOMA Integrity v. WOWSC*<sup>56</sup> (*TOMA Lawsuit*) skyrocketed, as did deposition dates.<sup>57</sup> It became clear that the plaintiffs in that lawsuit planned on a long and drawn-out legal battle, costing WOWSC an increasing amount of legal expenses. WOWSC realized the impact of these legal fees when it received its initial invoices from Lloyd Gosselink Rochelle & Townsend, P.C. for \$30,012 for services rendered in the *TOMA Lawsuit* and \$17,579 for General Counsel services from November 2019.<sup>58</sup> Shortly after, WOWSC received a separate invoice from the Enoch Kever law firm for \$14,488.33 for its services in November 2019.<sup>59</sup> After working closely with a Certified Public Accountant and reviewing financials, on January 11, 2020, the total available account balance was \$150,994.44, but the outstanding loan balance was \$224,546.24.<sup>60</sup> It was at this point when WOWSC consulted James Smith from TRWA regarding the possibility of increasing rates to help maintain the financial integrity of the nonprofit corporation.<sup>61</sup>

---

<sup>54</sup> WOWSC Ex. 3 at 5:18-20 and 6:1-9.

<sup>55</sup> *Id.*

<sup>56</sup> *TOMA Integrity v. Windermere Oaks Water Supply Corporation*, No. 47531 (33<sup>rd</sup> Dist. Ct., Burnet County, Tex., Dec. 12, 2017) (*TOMA Lawsuit*).

<sup>57</sup> WOWSC Ex. 3 at 7:3-7.

<sup>58</sup> *Id.* at 7:7-11.

<sup>59</sup> *Id.* at 7:11-12.

<sup>60</sup> *Id.* at 7:17-19.

<sup>61</sup> *Id.* at 7:18-20.

It was not feasible for WOWSC to pay the entirety of its legal bills in the beginning of 2020, as it would have depleted nearly all of the operating cash from WOWSC.<sup>62</sup> In fact, the rate increase does not allow the utility to pay its legal bills in full. Further, when the insurance company denied coverage, WOWSC recognized that it would require increased rates to ensure system integrity.<sup>63</sup> In February 2020, the Board hired another law firm, the Shidlofsky Law Firm, to review this claim and assist with challenging the December 19, 2019 denial of coverage in federal court.<sup>64</sup> This resulted in additional legal fees that WOWSC would incur, but WOWSC pursued this appeal ultimately for the benefit of its customers.<sup>65</sup> At this time, WOWSC has an agreement with each law firm to pay \$10,000 per month toward the total amount owed, effectively making the utility indebted to the law firms providing legal defense against ratepayers.<sup>66</sup>

Despite the several lawsuits and legal battles which WOWSC faced, it attempted every possibility to minimize legal fees. From demand letters and mediations to community meetings, WOWSC continued to seek a resolution that would be in the best interest of its customers.<sup>67</sup> Unfortunately, due to the litigious nature of the plaintiffs, resolution was unsuccessful.

It was with this information that the board approved the rate increase which is the subject of this appeal. If the board had not approved the rate increase, the utility would not have been able to provide safe and adequate service while maintaining its financial obligations.

### **C. Revenue Requirement (Issue 7)**

In an appeal under TWC § 13.043(b), the Commission may consider the information that was available to the governing body at the time the governing body made its decision, and ensure that the appealed rates are just and reasonable.<sup>68</sup> Considering the information known to WOWSC at the time it made its decision in 2020, as described in detail in the preceding section, the rates that WOWSC established are just and reasonable.

---

<sup>62</sup> *Id.* at 7:21-22 and 8:1-2.

<sup>63</sup> *Id.* at 17:14-19.

<sup>64</sup> *Id.* at 18:1-4.

<sup>65</sup> Tr. at 300:13-20; 363:2-14.

<sup>66</sup> Tr. at 198:9-21.

<sup>67</sup> WOWSC Ex. 2 at 18:5-19:16.

<sup>68</sup> TWC §§ 13.043(e) and (j).

Rates were developed and designed with the assistance of TRWA, a statewide educational and trade association that represents the full spectrum of the rural water community.<sup>69</sup> WOWSC previously enlisted the assistance of TRWA to determine the 2018 rate increase, and requested assistance again regarding the rates appealed.<sup>70</sup> Since 1969, TRWA has had a lengthy and experienced history working with retail public utilities to provide clean, safe drinking water to their customers.<sup>71</sup>

Upon this request, TRWA performed a rate analysis, upon which WOWSC based its rates.<sup>72</sup> The analysis used WOWSC's 2019 year-end financials and determined a total revenue requirement of \$576,192, resulting in a base water rate of \$174.59 per month using 253 customers.<sup>73</sup> The number of customers in the analysis should have been 271, but TRWA used 253 because this number remained in the rate sheet from the previous 2018 rate analysis.<sup>74</sup> The rate analysis used the cash-needs basis methodology.<sup>75</sup> Specifically, WOWSC established its rates using a structure where only a small portion of WOWSC's overall rate revenue is generated by the volumetric charges.<sup>76</sup> In fact, while Staff assumes that costs identified as variable in the TRWA rate analysis would be recovered through the volumetric rates, this is inconsistent with WOWSC's rate structure.<sup>77</sup> In the TRWA rate analysis, there exists a variable component of almost all expenses, even when the nature of the cost is not truly variable.<sup>78</sup> The term "variable costs" was used to identify the portion of the overall revenue requirement that WOWSC could consider recovering through volumetric charges.<sup>79</sup> However, setting fixed and variable rates is a policy judgment, which may fluctuate depending on the policy objectives.<sup>80</sup>

---

<sup>69</sup> WOWSC Ex. 7 at 7:2-5.

<sup>70</sup> *Id.* at 7:2.

<sup>71</sup> *Id.* at 7:5-7.

<sup>72</sup> *Id.* at 6:18-20.

<sup>73</sup> *Id.* at Attachment MN-2; WOWSC Ex. 10, Errata to the Direct Testimony of Mike Nelson at 7:23.

<sup>74</sup> *Id.* at 8:1-3.

<sup>75</sup> *Id.* at 8:4.

<sup>76</sup> WOWSC Ex. 9 at 5:8-13.

<sup>77</sup> *Id.* at 5:16-23.

<sup>78</sup> *Id.* at 5:16-23.

<sup>79</sup> *Id.* at 5:16-23.

<sup>80</sup> *Id.* at 5:16-23.

The TRWA analysis includes a single revenue requirement for both water and wastewater, and WOWSC followed suit, where the total Board-approved base rate is \$156.80.<sup>81</sup> This is allocated as \$90.39 for water and \$66.41 for wastewater. There is not a separate revenue requirement for water and wastewater, but as Staff points out, and as WOWSC has affirmatively done, the costs are allocated to water and wastewater services by a 60/40% split.<sup>82</sup> The rate methodology is transparent, clear, sufficient, equitable, and certainly not unreasonably preferential, prejudicial, nor discriminatory.

Commission Staff testified that the cash-needs method is an appropriate method for a non-profit water supply corporation to determine just and reasonable rates and it aligns with the financial objectives of a water supply corporation that include adequate debt service, reasonable interest rates, ability to maintain facilities, and ability to obtain funding for future infrastructure.<sup>83</sup> Commission Staff also supports the amount included in WOWSC's Capital Expenditure Reserve.<sup>84</sup>

Commission Staff further agrees with WOWSC's debt-service coverage ratio (DSCR) included in the appealed rates of 1.1x.<sup>85</sup> Staff witness English testified that this DSCR aligns with what WOWSC incorporated into its rates, takes into consideration the amount of WOWSC's Capital Expenditure Reserve Fund, and recognizes the ability of the utility to change its rates at any time via a vote of the Board.<sup>86</sup>

Lastly, Commission Staff agrees with the amounts WOWSC included in its revenue requirement for the operations contract with Water Management, Inc. and the insurance included in the 2019 budget.<sup>87</sup> The only issue Commission Staff has identified for adjustment is WOWSC's inclusion of outside legal expenses in developing its revenue requirement.

---

<sup>81</sup> WOWSC Ex. 10 at 11:9-10.

<sup>82</sup> Staff Ex. 2, Direct Testimony of Stephen Mendoza at 7:19-20; WOWSC Ex. 3 at 35:2-12.

<sup>83</sup> Staff Ex. 4, Direct Testimony of Maxine Gilford at 8:15-20.

<sup>84</sup> Staff Ex. 1, First Errata to the Direct Testimony of Spencer English (adopted by Mark Filarowicz) at 3:9-11. Originally classified as depreciation expense.

<sup>85</sup> *Id.* at 3:16-19.

<sup>86</sup> *Id.* at 3:20-4:2. Staff Witness, Mark Filarowicz, adopted the Direct Testimony of Spencer English on June 18, 2021.

<sup>87</sup> Staff Ex. 3, Direct Testimony of Heidi Graham at 9:9-12.

## 1. Outside Legal Expenses (Issue 8)

WOWSC included outside legal expenses in its revenue requirement and was justified in doing so. WOWSC continued to face an increasing number of legal matters in the time period leading up to the rate increase, and the nonprofit corporation had no choice but to incorporate these into its revenue requirement, as these legal battles were continuous with no end in sight. In fact, the triggering legal battle WOWSC faced was not initiated by WOWSC, yet snowballed into a mountain of subsequent litigation matters. WOWSC had no choice but to defend itself and preserve the integrity of the nonprofit corporation. As a result, WOWSC accumulated hundreds of thousands of dollars in debt to several law firms.

In addition to the mountain of PIA Requests filed by the same requestors, ad nauseum, WOWSC was involved in a number of lawsuits: *TOMA Lawsuit*, *Rene Ffrench, et al. v. Friendship Homes & Hangers, LLC, et al.*<sup>88</sup> (*Double F Hanger Lawsuit*) and *Windermere Oaks Water Supply Corporation v. The Honorable Ken Paxton, Attorney General of Texas*<sup>89</sup> (*Paxton Lawsuit*). Each of these lawsuits accumulated legal expenses from several law firms, but only those *paid* in 2019 were actually included in the rate design methodology.<sup>90</sup>

Commission Staff supports the inclusion of outside legal expenses so long as WOWSC provides sufficient evidence demonstrating that recovery of these outside legal expenses are necessary to preserve its financial integrity.<sup>91</sup> WOWSC provided sufficient evidence that, but for the rate increase, the nonprofit water corporation would not have been able to provide safe, continuous, and adequate water service to its customers. As discussed earlier, if WOWSC had not included the extraordinary and *recurring* legal expenses in its rates, WOWSC would be unable to provide safe and adequate water and sewer service and meet its obligations to its loan provider.

---

<sup>88</sup> *Rene Ffrench, John Richard Dial, Stuart Bruce Sorgen, and as Representatives for Windermere Oaks Water Supply Corporation v. Friendship Homes & Hangers, LLC, WOWSC, and its Directors William Earnest; Thomas Michael Madden; Dana Martin; Robert Mebane; and Patrick Mulligan (originally styled Double F Hanger Operations, LLC, Lawrence R. Ffrench, Jr., Patricia Flunker, and Mark A. McDonald v. Friendship Homes & Hangers, LLC, and Burnet County Commissioners Court)*, No. 48292 (33rd Dist. Ct., Burnet County, Tex. Jul. 9, 2018) (*Double F Hanger Lawsuit*).

<sup>89</sup> *Windermere Oaks Water Supply Corporation v. The Honorable Ken Paxton, Attorney General of Texas*, No. D-1-GN-19-006219 (201st Dist. Ct., Travis County, Tex. Sept. 16, 2019) (*Paxton Lawsuit*).

<sup>90</sup> WOWSC Ex. 3 at 16:21-22 and 17:1-3.

<sup>91</sup> Staff Ex. 4 at 16:3-7.



The Commission shall use a methodology that preserves the financial integrity of WOWSC.<sup>92</sup> The appropriate methodology is the TRWA design which WOWSC used to design its rate structure. If the Commission adopts a methodology reducing the revenue requirement, this would severely impact WOWSC's ability to: a) maintain binding loan covenants; b) make required repairs and improvements to aging equipment, such as the clarifier and water tank; c) react to and mitigate environmental challenges, such as zebra mussels; and d) retain current legal counsel or find subsequent counsel, putting the organization at risk from additional litigation from the same small group of members challenging these rates.<sup>93</sup>

In its initial recommendation, Commission Staff recommends a revenue requirement disallowing the \$171,337 of legal expenses from the revenue requirement<sup>94</sup> and additionally recommends using funds from its CoBank loan to offset legal expenses.<sup>95</sup> Neither of these recommendations are tenable for WOWSC. First and foremost, wholly disallowing the outside legal expenses from rates will risk financial ruin for the utility.<sup>96</sup> Second, WOWSC has three promissory notes with CoBank. Each of the three notes are predicated on use for explicit purposes: 1) finance various capital expenditures; 2) refinance indebtedness to First United Bank and Trust; and 3) purchase a new clarifier/pre-treatment tank and UV treatment equipment. WOWSC must use these funds as expressly provided in the covenants and may not pay for outside legal services with them.<sup>97</sup>

Staff Witness Gilford's testimony goes so far as to make a judgment regarding WOWSC's director's behavior in making its recommendation to disallow outside legal expenses.<sup>98</sup> Ms. Gilford is judging actions currently being adjudicated in district court, or actions that have been dismissed as to the WOWSC board. As such, her judgments are irrelevant, inappropriate and directly rely on the Direct Testimony of Katherine Allen—testimony the ALJs

---

<sup>92</sup> TWC § 13.043(j).

<sup>93</sup> WOWSC Ex. 8 at 5:17-20 and 6:1-2.

<sup>94</sup> Staff Ex. 4 at 15:8-20.

<sup>95</sup> *Id.* at 16:8-14.

<sup>96</sup> WOWSC Ex. 9 at 8:21-22; WOWSC Ex. 3 at 22:10-15.

<sup>97</sup> WOWSC Ex. 8 at 6:3-10.

<sup>98</sup> Staff Ex. 4 at 12:11-14; 14:14-16.

limited to the extent it bears on the issues listed in the preliminary order.<sup>99</sup> Additionally, Ms. Gilford testifies that the outcome of the *ultra vires* case is unknown.<sup>100</sup> In fact, that case against all directors except one has been dismissed in Burnet County District Court.<sup>101</sup> WOWSC won its summary judgment in that case. Ms. Gilford also testifies that WOWSC failed to identify the specific amounts of legal expenses in invoices.<sup>102</sup> This is incorrect. WOWSC has provided amounts and explanation for a breakdown and support of costs related to specific legal matters.<sup>103</sup> Lastly, Ms. Gilford states that because WOWSC did not provide information as to why it did not seek to resolve these litigation matters through mediation, the amounts should be disallowed. WOWSC has provided evidence that it has, on several occasions, attempted to settle the matters brought against it by ratepayers.<sup>104</sup>

As an alternate recommendation, Ms. Gilford does state that if the Commission allows the outside legal expenses, then they should be included in a surcharge.<sup>105</sup> During the hearing on the merits, Ms. Gilford testified that her objection to inclusion of the outside legal expenses was limited to their inclusion in base rates.<sup>106</sup>

ALJ Siano: It appears to me that at the Corporation felt that it was—had to make a decision of whether it would on the one hand essentially continue to exist at all or find a source of funds to pay these legal expenses. And it decided to recover them from its customers, and do I understand correctly that you do not oppose recovering them from the customers in the form of the assessment or a surcharge only in base rates?

Ms. Gilford: That's right.<sup>107</sup>

---

<sup>99</sup> SOAH Order No. 15—Post Hearing Briefing Schedule; Guidelines (Dec. 6, 2021).

<sup>100</sup> Staff Ex. 4 at 12:17-19.

<sup>101</sup> WOWSC Ex. 3 at 19:7-9, Attachment JG-20.

<sup>102</sup> Staff Ex. 4 at 13:14-17.

<sup>103</sup> WOWSC Ex. 3 at 21:3-18

<sup>104</sup> *Id.* at 18:5-19:16.

<sup>105</sup> Staff Ex. 4 at 18:1-11

<sup>106</sup> Tr. at 530:24–531:7.

<sup>107</sup> Tr. at 531:18–532:2.

While WOWSC's tariff does not currently authorize the use of a surcharge, Mr. Gimenez, WOWSC's president, has testified that the utility will revise its tariff to allow the use of a surcharge.<sup>108</sup> As such, WOWSC could include the \$171,337 as a surcharge until its legal debts are paid.

## **2. Rate Methodology**

Commission Staff's recommended revenue requirement would be disastrous for WOWSC's financial integrity. In removing the outside legal expenses from WOWSC's revenue requirement, Commission Staff developed a rate design that will not allow WOWSC to generate sufficient revenue to recover Commission Staff's adjusted 2019 revenue requirement.<sup>109</sup> The recommended base rates recover approximately \$49,000 less than the amount including WOWSC's gallonage and fees and 2019 usage.<sup>110</sup>

Furthermore, Commission Staff's recommended base rates would reduce WOWSC's monthly base rates to amounts lower than the existing base rates prior to the 2020 rate increase.<sup>111</sup> Not only would Commission Staff's recommendation put WOWSC in a financial situation worse than when it decided it was necessary to implement a rate increase, it would also not even appear to allow WOWSC to recover Commission Staff's recommended total revenue requirement of \$404,855 with WOWSC's gallonage fees and 2019 usage.<sup>112</sup> In determining its methodology, the WOWSC Board used the TRWA analysis to understand the maximum increases that could be made to the base rates based on the 2019 financials.<sup>113</sup> The TRWA analysis determined WOWSC's 2019 expenses justified maximum base rates totaling much higher than what the Board actually approved.

Therefore, the Commission should approve WOWSC's rate analysis and methodology as necessary to retain the financial integrity of the utility.

---

<sup>108</sup> WOWSC Ex. 3 at 24:1-4.

<sup>109</sup> WOWSC Ex. 8 at 5:9-12.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 9:13-20.

<sup>112</sup> *Id.* at 10:2-5.

<sup>113</sup> *Id.* at 10:9-13.

### **3. Rate Design and Allocation**

WOWSC has only class of customers and its rate design is exactly in line with creating equitable rates for all of its members. There are approximately 75 active connections existing at airport hangars, where there is limited use of water, thus those members pay modest amounts for water consumed based on the volumetric charges.<sup>114</sup> These accounts pay the same base rates as every other active connection in WOWSC, illustrating an equitable distribution of rates among only one class.<sup>115</sup> No customer receives rates which are unreasonably preferential, prejudicial, or discriminatory. The appealed rates are not overly excessive and, in fact, are even less than what TRWA recommended as the maximum base rate of \$174.59.<sup>116</sup> As discussed above, Staff's recommended rate design will not allow WOWSC to recover Commission Staff's recommended revenue requirement. As such, the Commission must retain WOWSC's revenue requirement and the rate design in order to allow WOWSC to recover enough funds to operate the utility.

### **4. Appropriate Effective Date of Rates Fixed by Commission (Issue 10)**

The Commission should deny this appeal and retain the rates adopted by the WOWSC board on February 1, 2020 and effective March 23, 2020.

### **5. Refunds or Surcharges (Issue 11)**

While the Commission may order refunds under TWC § 13.043(b), the Commission should not establish rates different from the rates set by WOWSC, and the Commission should not order refunds.<sup>117</sup> WOWSC will not be able to operate if the Commission approves rates less than the current rates.<sup>118</sup> Any disallowance would result in the inability to provide water service.<sup>119</sup> WOWSC financials indicate the non-profit water corporation reported less than \$4,200 in net income in 2020.<sup>120</sup> If WOWSC did not increase rates, it would have lost

---

<sup>114</sup> WOWSC Ex. 9 at 6:1-11; WOWSC Ex. 2 at 20.

<sup>115</sup> *Id.*

<sup>116</sup> WOWSC Ex. 8 at 10:9-13; WOWSC 10 at 7:23.

<sup>117</sup> TWC § 13.043(b).

<sup>118</sup> WOWSC Ex. 9 at 13:17-23 and 14:1-22; 15:1-5.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

approximately \$150,000 in 2020.<sup>121</sup> WOWSC continues to pay its legal bills in an incremental fashion through a payment arrangement with each of the law firms to which it owes payments.<sup>122</sup> If not for this, WOWSC would have entered a deficit. Even with the current rate increase, the cash balance for WOWSC decreased by approximately \$30,000 in a 4-month period due to continuous legal battles it did not initiate.<sup>123</sup> Any disallowance of outside legal expenses would amount to a refund of over \$200,000, which is essentially the entire cash balance that WOWSC had as of April 30, 2021.<sup>124</sup> Under that scenario, WOWSC would not even have the balance to issue refunds. With a zero cash balance and a deficit, WOWSC would be unable to operate.<sup>125</sup>

If the Commission does not allow the base rate structure to continue, but agrees that legal expenses of \$171,337 are recoverable, the Commission should allow surcharges to recover lost revenues. The timing of the recovery should be aligned with the incurrence of the expenses, as Commission Staff testified.<sup>126</sup> Therefore the surcharge should be over a period allowing for recovery of the full amount of the debt if the Commission agrees that the legal expenses are recoverable.<sup>127</sup>

## **V. RATE CASE EXPENSES (ISSUE 9)**

Under TWC § 13.043(e), the Commission may allow recovery of reasonable expenses incurred by WOWSC in the appeal proceedings. Title 16 TAC § 24.44 provides guidelines for reviewing the rate case expenses in this proceeding.<sup>128</sup> Under this rule, WOWSC has the burden to prove the reasonableness of the expenses which show a number of requirements, including the nature and extent of the work done by the attorney, time and labor expended by the attorney, and fees paid to the attorney, among others.<sup>129</sup> Reimbursable expenses for this case began on

---

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 14:10-17.

<sup>125</sup> *Id.*; *see also* WOWSC Ex. 8 at 5:9-20 and 6:1-2.

<sup>126</sup> WOWSC Ex. 9 at 16:10-21 and 16:6-10; *see also* Staff Ex. 4 at 16:19.

<sup>127</sup> *Id.* at 16:3-4; *see also* WOWSC Ex. 8 at 6:13-22 and 7:1-3.

<sup>128</sup> WOWSC Ex. 4, Direct Testimony of Jamie Mauldin at 5:8-13; *see also* Staff Ex. 4 at 4:32-5:20.

<sup>129</sup> 16 TAC § 24.44.

May 1, 2020, and continued through the pendency of this proceeding.<sup>130</sup> This proceeding was not a simple task, but was a mountain of complex and novel legal issues which required counsel's time and attention, including the consultation of an expert.<sup>131</sup>

Commission Staff Witness Gilford recommends recovery of rate case expenses related to defending this rate appeal.<sup>132</sup> She further recommends that WOWSC be allowed to update its rate case expenses after the close of the record and request a recovery of trailing expenses in a compliance proceeding where its residual rate case expenses can be reviewed.<sup>133</sup> As such, the Third Supplemental Direct Testimony of Jamie L. Mauldin supporting rate case expenses incurred since the last update filed on November 19, 2021, will be filed concurrently with this Initial Brief. WOWSC will update its rate case expenses as directed by the Commission, in order to recover costs incurred past December 15, 2021, including the costs required to draft and finalize briefs.

The appropriate mechanism for recovery of rate case expenses is a surcharge over a two-year period.<sup>134</sup> Prolonging recovery over any greater amount of time would severely impact WOWSC's ability to retain current counsel, and without counsel, the nonprofit water corporation would be put at risk for additional litigation.<sup>135</sup>

## **VI. CONCLUSION**

For the foregoing reasons, WOWSC respectfully requests that the Commission deny Ratepayers' appeal, maintain the rates approved effective March 23, 2020, and grant WOWSC such other relief to which it may be entitled.

---

<sup>130</sup> WOWSC Ex. 4 at 7:21-24, 8:1-24 and 9:1-20.

<sup>131</sup> *Id.* at 10:1-14.

<sup>132</sup> Staff Ex. 4 at 18:1-3.

<sup>133</sup> *Id.* at 19:1-9.

<sup>134</sup> WOWSC Ex. 9 at 16:20-22 and 17:1-2.

<sup>135</sup> WOWSC Ex. 8 at 8:1-8.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &  
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)



---

JAMIE L. MAULDIN  
State Bar No. 24065694  
[jmauldin@lglawfirm.com](mailto:jmauldin@lglawfirm.com)

**ATTORNEY FOR WINDERMERE OAKS  
WATER SUPPLY CORPORATION**

**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 mail on December 30, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



---

JAMIE L. MAULDIN