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

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

COMMISSION STAFF'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

On April 27, 2020, Josephine Fuller, individually and on behalf of the ratepayers of Windermere Oaks Water Supply Corporation (Petitioners or Ratepayers), filed a petition under Texas Water Code (TWC) § 13.043(b) appealing the decision by Windermere Oaks Water Supply Corporation (Windermere) to change its water and sewer rates. On April 30, 2020, Petitioners filed an amended petition. On May 27, 2020, Windermere filed its response to the petition.

On December 6, 2021, the State Office of Administrative Hearings (SOAH) administrative law judge filed SOAH Order No. 15, establishing a deadline of January 25, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file proposed findings of fact and conclusions of law. Therefore, this pleading is timely filed.

I. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The attachment to this pleading contains proposed findings of facts and conclusions of law. Staff respectfully request the entry of a proposal for decision consistent with the attached findings of fact and conclusions of law.

II. CONCLUSION

Staff respectfully requests the entry of a proposal for decision consistent with the attached findings of fact and conclusions of law.

Dated: January 25, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on January 25, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander
Merritt Lander

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Findings of Fact

The Commission adopts the following findings of fact.

General and Procedural Findings

1. Windermere Oaks Water Supply Corporation is a non-profit water supply corporation operating under Chapter 67 of the Texas Water Code (TWC).
2. Windermere’s public water system identification number is 0270035.
3. Windermere’s provides water and wastewater service under certificate of convenience and necessity numbers 12011 and 20662, respectively.
4. Windermere is managed by a member-elected Board of Directors, where each director must be a resident of the State of Texas, a member of Windermere, and a customer of Windermere.
5. Windermere has five board members, and the Board of Directors elects its officers.
6. The approved rates from the February 1, 2020 Board meeting were effective as of March 23, 2020.
7. On April 27, 2020, the Ratepayers of Windermere (Ratepayers) filed a petition under TWC § 13.043(b) to appeal the decision by allowing Windermere to change rates.
8. Greater than 10% of Windermere’s total active connections at the time of filing signed a petition to contest the rate increase.
9. The appealed rates became effective on March 23, 2020.

10. The petition for review was filed within 90 days after the effective date of the rate change.
11. On June 23, 2020 in Order No. 3, the Commission administrative law judge (ALJ) found the petition administratively complete.
12. On June 23, 2020, the Office of Policy and Docket Management referred the case to the State Office of Administrative Hearings (SOAH), requesting the assignment of an SOAH ALJ to conduct a hearing and issue a proposal for a decision, if necessary.
13. In its referral order, the ALJ required the Ratepayers and Windermere to file a list of issues by July 1, 2020 and allowed Commission Staff to file its list of issues by that date if desired.
14. On July 16, 2020, the ALJ entered a preliminary order including eleven issues to be addressed in the SOAH proceeding.
15. On August 17, 2020 in SOAH Order No. 2, the SOAH ALJs adopted a procedural schedule, setting a hearing on the merits and a prehearing conference.
16. On August 28, 2020, a prehearing conference was held, during which the parties expressed interest in mediation.
17. On October 8, 2020, SOAH Order No. 5 was issued, referring parties to mediation.
18. On October 19, 2020, a mediation letter was filed, and on November 20, 2021, the parties participated in mediation.
19. On January 19, 2021, a mediator's report was filed, indicating that parties did not reach agreement during mediation.
20. On January 26, 2021, Staff filed an agreed proposed procedural schedule.
21. On February 2, 2021 in SOAH Order No. 7, the SOAH ALJs adopted the procedural schedule.
22. No party moved to establish interim rates.
23. On March 10, 2021, Windermere filed the direct testimonies of George Burriss, Joe Gimenez III, Mike Nelson, and Jamie L. Mauldin.

24. On April 7, 2021, Ratepayers filed the direct testimonies of Danny Flunker, Patti Flunker, Kathryn E. Allen, and Bill Stein.
25. On April 8, 2021, Ratepayers filed a supplemental exhibit to the testimony of Kathryn E. Allen.
26. On May 5, 2021 Commission Staff filed the direct testimonies of Maxine Gilford, Spencer English, Heidi Graham, and Stephen Mendoza.
27. On June 7, 2021, Windermere filed the rebuttal testimonies of Mike Nelson, Joe Gimenez III, and Grant Rabon.
28. On June 7, 2021, Windermere filed the first supplemental direct testimony of Jamie L. Mauldin.
29. On June 10, 2021, Staff filed an agreed request to amend the procedural schedule.
30. On June 14, 2021 in SOAH Order No. 11, the ALJ granted the agreed request to amend the procedural schedule
31. On June 17, 2021, Ratepayers filed their errata testimony of Danny Flunker, Patricia Flunker, and Bill Stein.
32. On July 7, 2021 in SOAH Order No. 14, the ALJ reset the hearing on the merits for December 1-3, 2021.
33. On November 18, 2021, Ratepayers filed notice of authorized representative.
34. On November 19, 2021, Windermere filed its second supplemental direct testimony of Jamie L. Mauldin.
35. On November 23, 2021, Staff filed the supplemental direct testimony of Maxine Gilford and its first errata to the direct testimony of Spencer English.
36. On November 29, 2021, Windermere filed its errata to the direct testimony of Mike Nelson.
37. On December 1, 2021 a three-day hearing on the merits was held via Zoom before ALJs Siano and Wiseman and was attended by Windermere, Ratepayers' counsel, and Commission Staff.

38. On December 6, 2021 in SOAH Order No. 15, the SOAH ALJs set a post-hearing briefing schedule.
39. Under SOAH Order No. 15, the parties' initial post-hearing briefs were due on December 30, 2021 and response briefs were due January 25, 2022.
40. In SOAH Order No. 15, the ALJs directed Windermere to file an exhibit supporting rate case expenses in its brief and a motion to reopen the record and admit the exhibit into evidence.
41. On December 11, 2021, Ratepayers filed their Request for Interim Relief.
42. On December 14, 2021, Windermere filed its response to Ratepayers' Request for Interim Relief.
43. On December 20, 2021 in SOAH Order No. 16, the SOAH ALJs denied Ratepayers' Request for Interim Relief.
44. On December 30, 2021, Windermere filed a motion to reopen the record and admit evidence supporting rate cases expenses.

Evidentiary Record

45. At the hearing on the merits, the SOAH ALJs admitted the following items into the evidentiary record:
 - Ratepayers Exhibits: 2-33, 35-38, 40-44, 46-48, 50-53;
 - Staff Exhibits: 1-5; and
 - Windermere Exhibits: 1-19.

Background

46. Windermere's initial Articles of Incorporation were signed on November 9, 1995.
47. Windermere has one class of "members," as defined by TWC § 13.002(11), and the purpose of Windermere is to furnish water and sewer service to these members.
48. Windermere has contracted services for water management with Water Management, Inc., owned by George Burris.

49. Windermere does not employ in-house legal counsel but does utilize outside counsel for legal matters affecting the corporation.
50. At the Windermere Board meeting on February 1, 2020, the Board of Directors approved the challenged rate increase.
51. As of the date of the Board of Directors' decision to increase rates in 2020, Windermere had 271 water connections and 245 wastewater connections.
52. Windermere considered the mounting legal invoices, required maintenance and operations costs, and necessary repairs to the system in its decision to raise rates.
53. Prior to the rate increase, Windermere had a minimum water service availability charge of \$50.95 and a minimum sewer service availability charge of \$40.12.
54. The rate increase was made only to the water service base charge to \$90.39 per month, the sewer service base charge to \$66.41 per month, and provided a debt service coverage ratio of 1.1.

Revenue Requirement and Rate Design

55. The use of the cash needs method was appropriate in this case.
56. The TRWA rate sheet used the cash needs method in its analysis.
57. Windermere's net revenue requirement is \$404,855.
58. The net revenue requirement of \$404,855 is reasonable.
59. A debt service coverage ratio of 1.1 is supported by Staff and is reasonable.
60. The amount paid to Water Management, Inc. for operations is reasonable.
61. The amount paid to Water Management, Inc. that is then paid to Corix for subcontracting operations is reasonable.
62. The inclusion of the outside legal expenses at issue in this proceeding in Windermere's revenue requirement is contrary to public policy.
63. Excluding these outside legal expenses from Windermere's revenue requirement will require Windermere to curb unnecessary financial expenditures.

64. It is appropriate for the Commission to fix rates designed using a revenue requirement of \$404,855.

Rate Design

65. The rate design of the appealed rates improperly included \$171,337 in outside legal expenses.
66. The revenue requirement of \$404,855 is allocated 61% to water and 39% to wastewater, totaling a water base rate of \$45.92 and a wastewater base rate of \$33.87.
67. While all customers pay the same rates, only the board members whose legal expenses are indemnified benefit from the appealed rates, effectively creating a separate class of customer.
68. The appealed rates are not just and reasonable.
69. The appealed rates are unreasonably preferential, prejudicial, prejudicial, or discriminatory.
70. The appealed rates are not sufficient, equitable, and consistent in application to each class of customers.
71. It is appropriate for the Commission to fix a water base rate of \$45.92 and a wastewater base rate of \$33.87

Rate Case Expenses

72. The rate case expenses of \$281,575.65, incurred from April 27, 2020 through October 31, 2021 are reasonable.
73. Additional rate case expenses from November 1, 2021, through the remainder of this proceeding are not supported as reasonable and necessary.
74. Staff supports the recovery of \$281,575.65 rate case expenses in this proceeding.
75. A five-year recovery period for rate case expenses is reasonable.
76. It is appropriate for Windermere to collect \$281,575.65 in cost of appeal through a surcharge over a 60-month period. The surcharge should continue until the earlier of 60 months after the rider takes effect or \$281,575.65 is fully recovered.

II. Conclusions of Law

The Commission makes the following conclusions of law:

1. The Commission has authority over this proceeding under TWC § 13.043 and 16 Texas Administrative Code (TAC) § 24.101.
2. Windermere is a nonprofit water supply corporation as defined by TWC § 13.002(24).
3. Windermere is a retail public utility as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
4. SOAH, upon referral, has jurisdiction over this proceeding under Texas Government Code § 2003.049.
5. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act,¹ Texas Government Code Chapter 2001, and Commission rules.
6. The Commission must first find that the retail public utility established rates that were preferential, prejudicial, and discriminatory, before setting just and reasonable rates.²
7. If the Commission finds that the established rates are unreasonably preferential, prejudicial, or discriminatory, it evaluates the rates further and fixes rates that are just and reasonable.
8. The utility bears the burden of proof to establish that the contested rates are not unreasonably preferential, prejudicial, nor discriminatory.³
9. The utility bears the burden of proof to establish that the contested rates are just and reasonable.⁴

¹ Tex. Gov't Code §§ 2001.001-.903.

² 16 Tex. Admin. Code § 13.043(j) (TAC); *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).

³ 16 TAC § 24.12.

⁴ *Id.*

10. The Ratepayers' petition was timely filed under TWC § 13.043 and 16 TAC § 24.101(b) and meets the 10% ratepayer-signature threshold established under TWC § 13.043(c) and 16 TAC §§ 24.101(d) and 24.103(b).
11. Under TWC § 13.043(e), the Commission may in an appeal brought under TWC § 13.043(b) consider the information that was available to the governing body of the retail public utility at the time the governing body set the rates appealed; any information that shows, or tends to show, the information that was available to the governing body at the time it set the rates appealed; and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings.
12. The appeal is governed by TWC § 13.043. Such section provides for a *de novo* proceeding in which the Commission fixes rates at the level that those rates should have been.
13. In an appeal under TWC § 13.043, the Commission must use a methodology that preserves the financial integrity of the retail public utility.
14. The rates appealed are unreasonably preferential, prejudicial, and discriminatory.
15. The rates appealed are not just and reasonable.
16. Under TWC § 13.043(e), the Commission shall fix the rates that Windermere should have fixed at the time it made its decision.
17. The rates fixed by this Order are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory in compliance with TWC § 13.043(j).
18. The rates fixed by this Order are sufficient, equitable, and consistent in application to each class of customers under TWC § 13.043(j).
19. Under TWC § 13.043(e), the rates fixed by this Order are effective as of the original effective date of the rates appealed.
20. The revenue requirement for a utility that uses the cash needs method can include operations and maintenance expenses, debt service requirements, and capital expenditures that are not debt-financed. *Black v. City of Killeen*, 78 S.W.3d 686, 694 (Tex. App.—Austin 2002, pet. denied).

21. Under TWC § 13.043(e), the Commission may allow Windermere to impose surcharges to recover costs of appeal.
22. The Commission may order Windermere to provide refunds under TWC § 13.043(e).