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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 CORPORATION TO	§	OF
CHANGE WATER AND SEWER	§	
RATES	§	ADMINISTRATIVE HEARINGS

**OFFICE OF PUBLIC UTILITY COUNSEL’S
AMICUS BRIEF**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this Amicus brief in response to SOAH Order No. 15,¹ requiring Reply (i.e., responsive) Briefs; Staff and Appellant Findings of Fact and Conclusions of Law; response to rate case expense update and motion to admit evidence be submitted by January 25, 2022. Accordingly, this Amicus Brief is timely filed and shows as follows:²

I. INTRODUCTION

An important issue being considered in this proceeding is to what extent and what amount of legal fees (approximately \$171,000.00) should be allowed in the rates charged by Windermere Oaks Water Supply Corporation (“Windermere”). In reviewing this question, the Commission must evaluate whether the rates charged are just and reasonable.³ Based on the facts presented and factors set forth in the relevant rules and statutes, OPUC does not believe the rates charged by

¹ SOAH Order No. 15 (Dec. 6, 2021).

² OPUC did not intervene in this proceeding as a matter of right, however, respectfully requests this Amicus Brief be considered by the Commission in order to protect the interests of residential and small commercial consumers. See for example, Docket Nos. 42826, *Appeal of Water and Sewer Rate Charged by the Town of Woodloch CCN Nos. 12312 and 20141* (Sept. 4, 2014) and 46404, *Remand of Docket No. 42862* (Sept. 27, 2016), wherein OPUC filed Amicus Briefs without intervention in the proceedings.

³ See Tex. Water Code (“TWC”) § 13.043(j) and 16 Tex. Admin. Code (“TAC”) § 24.101(i).

Windermere adequately protect “the financial integrity of the retail public utility” or are “just and reasonable”.⁴

II. DISCUSSION

In determining the reasonableness of the rate-case expenses, the criteria the Commission in part must consider are the factors listed in 16 TAC § 24.41(b) and any other factors shown to be relevant to the specific case.⁵ OPUC agrees with Public Utility Commission of Texas Staff (“Staff”) that the language found in 16 TAC § 24.41 serves as a useful guide in evaluation of the reasonableness of the rates charged by Windermere in this proceeding.⁶ This specific case represents an opportunity for the Commission to curtail what amounts to unfettered discretion by Windermere in setting rates. Although OPUC does not recommend a set percentage of what constitutes an *unreasonable amount* for the Commission, it cannot in good faith support the notion that roughly \$171,000, out of an annual revenue requirement of \$576,192, be found reasonable.⁷ Indeed, in OPUC’s view, the legal fees that were allowed by Windermere in this proceeding far exceed what amounts to being just and reasonable. OPUC supports and recommends the approval of recovery and the reasonable revenue requirement delineated by Staff in its initial post-hearing brief, emphasizing subtraction of the amount of legal fees of \$171,337 included in Windermere’s requested annual revenue requirement.⁸

⁴ 16 Tex. Admin. Code (“TAC”) § 24.101(i).

⁵ 16 TAC § 24.41(c). See also 16 TAC § 24.44(b).

⁶ Commission Staff’s Initial Brief (Dec. 30, 2021).

⁷ *Id.* at 4.

⁸ *Id.*

III. CONCLUSION

OPUC recommends the Administrative Law Judges disallow the requested recovery of legal fees in the amount of roughly \$171,000 and find them to be unjust and unreasonable.

Date: January 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 25th day of January 2022, by facsimile, electronic mail, and/or first class, U.S. Mail.



Tucker Furlow