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**SOAH DOCKET NO. 473-20-4071.WS
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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' PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Respectfully Submitted,

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Date: January 25, 2022

PROPOSED FINDINGS OF FACT

Procedural Matters – Ratepayers propose to include the following findings of fact:

The WOWSC did not give written notice to its customers of the hearing to be held on December 1 – 3, 2021, on a form prescribe by the Commission.

There is no evidence that the WOWSC gave any notice to its customers of the hearing to be held on December 1-3, 2021.

The WOWSC – Ratepayers propose to include the following findings of fact:

1. The WOWSC is a Texas corporation organized under Chapter 67, Tex. Water Code, and the Texas Non-Profit Business Corporation Act. Its sole purpose is to provide water supply, sewer service, or both to its members.
2. The WOWSC’s governing documents require it to operate consistently with I.R.C. Section 501(c)(12)(A) and related federal regulations, rulings and procedures.
3. The WOWSC’s governing documents prohibit it from engaging in activities or using assets in a manner that are not in furtherance of the legitimate business of a water supply cooperative or sewer service cooperative as recognized by Chapter 67 and I.R.C. 501(c)(12)(A).
4. The legitimate business of a water supply cooperative or sewer service cooperative as recognized by Chapter 67 and I.R.C. 501(c)(12)(A) is to operate and maintain member-owned assets to provide those members with water and wastewater service at or near cost.
5. The WOWSC is authorized to receive and use revenues only to the extent necessary (i) to pay the costs to provide water and wastewater services and (ii) to maintain a reasonable reserve fund for system maintenance, operation and replacements. The reserve fund may not exceed the reasonable needs of the WOWSC’s legitimate business.
6. The implementation of rates or other charges intended or expected to generate more revenue than the WOWSC is authorized to use is not in furtherance of the legitimate business of a water supply cooperative or sewer service cooperative.
7. Excess revenues (i.e., revenues in excess of costs and any needed additions to reasonable reserves), if any, are overpayments. They belong to the members-customers who overpaid. Accordingly, excess revenues must be annually returned to, or credited to the accounts of,

customers who have during the past year transacted business with the WOWSC, in direct proportion to the amount of business so transacted. The WOWSC has no authority to accumulate excess revenues or use them for any purpose.

8. The implementation of rates or other charges intended or expected to generate excess revenue is not in furtherance of the legitimate business of a water supply cooperative or sewer service cooperative.
9. To receive water or wastewater service within the WOWSC's service area requires, among other things, that the customer acquire and maintain a membership in the company.
10. Refusal or failure to pay rates and other charges demanded by the WOWSC is grounds for discontinuance of utility services and for cancellation of membership.
11. The WOWSC's governing documents provide that the affairs of the company are to be managed by the Board of Directors.
12. The WOWSC's governing documents do not limit the statutory or common law duties of the Directors.
13. The WOWSC's governing documents do not require or permit either indemnification or advancement of defense costs to current or former directors who are made parties to litigation.
14. The WOWSC's liability insurance policy contains exclusions for intentional misconduct and violations of the law.
15. The WOWSC's governing documents do not authorize the imposition of a surcharge, assessment or other "true up" charge of any kind.
17. The WOWSC's Tariff requires that all services the WOWSC provides that are outside the normal scope of utility operations shall be charged to the recipient based on the cost of providing such service.
19. The WOWSC's Tariff does not authorize the imposition of a surcharge of any kind.
21. The WOWSC's governing documents require that the Board conduct the activities of the company in compliance with the Texas Open Meetings Act and the Texas Public Information Act.
22. All applicants for Director agree to complete the required training courses within the time allowed. All Directors are required to complete training courses concerning compliance with TOMA and TPIA within the time allowed by statute.
23. The WOWSC's Bylaws have always required that the Board adopt and maintain a conflict-of-interest policy.

24. The Board adopted the WOWSC's first Conflict-of-Interest policy in 2019.

Legal Matters

25. On December 19, 2015, the Board approved a contract to sell a portion of the WOWSC's surplus airport property to Dana Martin, who was then a sitting director, for \$203,000.00.

26. The notice for the Board's December 19, 2015 meeting did not include any item concerning the sale of surplus property.

27. Martin presented her contract and participated in negotiations with her fellow Board members exclusively during executive session. The Board voted on Martin's contract without coming out of executive session.

28. Thereafter, the WOWSC's general counsel furnished the Board with a lengthy memorandum confirming the Board had violated the Texas Open Meetings Act by its actions in these and other respects.

29. In late 2017, WOWSC members formed an entity called TOMA Integrity, Inc., which filed suit ("TOMA Suit") in late 2017. The TOMA Suit alleged that the Board had approved the Martin sale in violation of the Texas Open Meetings Act.

31. The TOMA plaintiff sought to void the Board's approval of the land transaction in an effort to recover the WOWSC's land for the benefit of the company.

32. The WOWSC's insurer declined to defend or indemnify in the TOMA Suit based on exclusions pertaining to illegal acts and intentional misconduct.

33. By order dated July 28, 2018, the district court ruled that the Board had violated TOMA. The Board did not take exception to that ruling.

34. As a result of the WOWSC's "victory" in the TOMA Suit, the WOWSC did not get its land back and former director Martin retained the estimated \$500,000 in value for which she paid nothing.

35. No depositions or other discovery were undertaken in the TOMA Suit. No work was required to be done in the TOMA case after the entry of final judgment other than briefing on appeal.

36. In July 2018, members filed suit ("Double F Suit") against Martin's single-asset company Friendship Homes and Hangars and the Burnet County Commissioner's Court seeking injunctive relief to prevent Martin from replatting the property into a number of smaller hangar lots.

37. While both the TOMA Suit and the Double F Suit were pending, the WOWSC Board engaged an appraiser to prepare a forensic appraisal to ascertain whether and to what extent Martin received a benefit at the expense of the company.

38. The forensic appraisal concluded that the property Martin received for \$203,000 was worth \$700,000 at the time of the transaction.

39. The Board acknowledged during the January 2019 open meeting that this disparity was too large to ignore. They further acknowledged their fiduciary duty to act on the information at hand and move forward to recover the property.

40. The Board authorized its attorneys to prepare and send a letter to Martin outlining her breaches of duty and intentional misconduct, and that was done.

41. Thereafter, new directors were elected. These included Bill Earnest, who was involved in the 2016 transaction. After the new directors joined the Board, no further steps were taken to recover the property from Martin.

42. In May 2019, the plaintiffs in the Double F Suit joined the WOWSC and the former directors involved in the 2016 deal as parties. They sought no recovery against the company's resources, and never have. They sought to impose personal liability on the directors involved.

43. In October 2019, the Board entered into a settlement with Martin and transferred an additional 0.5 acres of land to her for no consideration. The plaintiffs were not included in the settlement discussions then or for some time thereafter.

Rate Increase

44. The 2020 rate increase was not developed by TRWA using a "cash needs" approach or any other accepted methodology.

45. The 2020 rate increase did not have a revenue requirement.

45. The 2020 rate increase was designed to generate additional monthly cash flow for the foreseeable future to pay the monthly "minimum portion" of the outside legal costs.