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

COMMISSION STAFF’S REPLY BRIEF WITH COVER LETTER

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 its post-hearing reply brief and proposed findings of fact and conclusions of law. Staff inadvertently re-submitted its initial post-hearing brief on January 25, 2022. Staff now submits its post-hearing reply brief, along with, for efficiency, its proposed findings of fact and conclusions of law, which were timely filed on January 25, 2022.

Dated: January 26, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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Allowing Windermere’s challenged rates to stand flies in the face of the law and public policy. Imagine a hypothetical in which the board member of a small water supply corporation is accused of assault that occurred during a board meeting. Imagine that the victim sues the board member for damages incurred as a result of the assault. A sprawling legal battle unfolds, and expenses mount to over half a million dollars in the space of a year. Because the assault occurred in the course of “provision of service,” applying the incredibly broad definition of the term that Windermere advocates here, the board of the water supply corporation chooses to pay those expenses. The board then passes the expenses on to the ratepayers. Suddenly, because of a board member’s misconduct, the water supply corporation’s 100 customers are required to pay an additional \$5,000 per year. Such a result is as laughable as it is inappropriate. The rate would be inarguably preferential to the accused board member and prejudicial against all other ratepayers at the rate of \$5,000 a year.3

If the Commission chooses to uphold Windermere’s rates, sanctioning Windermere’s rate-making methodology and ignoring the facts underlying the ever-increasing legal expenses, then a water supply corporation could, theoretically, engage counsel for any matter, no matter how tangentially related to the provision of service, and pass those expenses on to ratepayers. Windermere’s rates are as inappropriate as those in the hypothetical above, and Staff requests that the Commission set rates that recover the water supply corporation’s true cost of service, \$404,855.3

If the Commission does find that Windermere’s existing revenue requirement is appropriate, then Staff recommends that the legal expenses be recovered through the assessment mechanism prescribed by Windemere’s tariff, as legal expenses are non-recurring and therefore cannot be included in Windermere’s revenue requirement. In the alternative, if the Commission finds that the expenses are eligible for inclusion in the revenue requirement, Staff recommends that Windermere’s rates are still improperly designed, and should be recalculated to allocate legal expenses, a variable cost, to gallonage rates, as is standard industry practice.3

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As with the hypothetical above, Windermere’s rates preference some board members, who are themselves rate payers, over others. Under Texas Water Code (TWC) § 13.043(j), rates cannot be “unreasonably preferential, prejudicial, or discriminatory” with regard to each class of customer. Under Texas Water Commission v. City of Fort Worth, a finding that rates were preferential, prejudicial, or discriminatory is a threshold requirement that must be satisfied before the Commission can turn to an evaluation of whether rates are just and reasonable.4

A finding that Windermere’s rates are unreasonably preferential requires the examination of board members’ and average ratepayers’ bottom lines. Windermere relies on the fact there is ostensibly only one customer class as dispositive evidence that the rates cannot be prejudicial or preferential. However, if all ratepayers, including board members, pay the same base and volumetric rates, but board members are excused from the responsibility of paying their own legal fees related to their own alleged misconduct, then board members receive a benefit that the average ratepayer does not. If the average ratepayer were to be accused of personal misconduct, it would be absurd to expect Windermere to pay that customer’s legal fees. However, that is precisely what Windermere board members have done here. Thus, the extension of coverage of legal fees creates a separate customer class, one that, all told, pays a much lower rate. Therefore, the threshold requirement established in Texas Water Commission v. City of Fort Worth is satisfied, and the Commission can look to Windermere’s unjust and unreasonable rates.4

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I. INTRODUCTION

Allowing Windermere's challenged rates to stand flies in the face of the law and public policy. Imagine a hypothetical in which the board member of a small water supply corporation is accused of assault that occurred during a board meeting. Imagine that the victim sues the board member for damages incurred as a result of the assault. A sprawling legal battle unfolds, and expenses mount to over half a million dollars in the space of a year. Because the assault occurred in the course of "provision of service," applying the incredibly broad definition of the term that Windermere advocates here, the board of the water supply corporation chooses to pay those expenses. The board then passes the expenses on to the ratepayers. Suddenly, because of a board member's misconduct, the water supply corporation's 100 customers are required to pay an additional \$5,000 per year. Such a result is as laughable as it is inappropriate. The rate would be inarguably preferential to the accused board member and prejudicial against all other ratepayers at the rate of \$5,000 a year.

If the Commission chooses to uphold Windermere's rates, sanctioning Windermere's rate-making methodology and ignoring the facts underlying the ever-increasing legal expenses, then a water supply corporation could, theoretically, engage counsel for any matter, no matter how tangentially related to the provision of service, and pass those expenses on to ratepayers. Windermere's rates are as inappropriate as those in the hypothetical above, and Staff requests that the Commission set rates that recover the water supply corporation's true cost of service, \$404,855.¹

If the Commission does find that Windermere's existing revenue requirement is appropriate, then Staff recommends that the legal expenses be recovered through the assessment mechanism prescribed by Windemere's tariff, as legal expenses are non-recurring and therefore cannot be included in Windermere's revenue requirement. In the alternative, if the Commission finds that the expenses are eligible for inclusion in the revenue requirement, Staff recommends that Windermere's rates are still improperly designed, and should be recalculated to allocate legal expenses, a variable cost, to gallonage rates, as is standard industry practice.

II. ISSUE 1: VALIDITY OF THE PETITION (UNCONTESTED)

¹ Windermere's current revenue requirement is 576,192, which includes legal fees totaling \$171,337. Subtracting \$171,337 from \$576,192 results in Staff's proposed revenue requirement of \$404,855.

III. ISSUE 2: NOTICE BY WINDERMERE (UNCONTESTED)**IV. ISSUE 3: INTERIM RATES (UNCONTESTED)****V. ISSUE 4: EVALUATING WINDERMERE'S RATES UNDER TWC § 13.043(j) AND 16 TAC § 24.101(i)****A. Unreasonably Preferential, Prejudicial, or Discriminatory; Sufficient, Equitable, and Consistent Rates for Each Class of Customers**

As with the hypothetical above, Windermere's rates preference some board members, who are themselves rate payers, over others. Under Texas Water Code (TWC) § 13.043(j), rates cannot be "unreasonably preferential, prejudicial, or discriminatory" with regard to each class of customer. Under *Texas Water Commission v. City of Fort Worth*,² a finding that rates were preferential, prejudicial, or discriminatory is a threshold requirement that must be satisfied before the Commission can turn to an evaluation of whether rates are just and reasonable.

A finding that Windermere's rates are unreasonably preferential requires the examination of board members' and average ratepayers' bottom lines. Windermere relies on the fact there is ostensibly only one customer class as dispositive evidence that the rates cannot be prejudicial or preferential.³ However, if all ratepayers, including board members, pay the same base and volumetric rates, but board members are excused from the responsibility of paying their own legal fees related to their own alleged misconduct, then board members receive a benefit that the average ratepayer does not. If the average ratepayer were to be accused of personal misconduct, it would be absurd to expect Windermere to pay that customer's legal fees. However, that is precisely what Windermere board members have done here. Thus, the extension of coverage of legal fees creates a separate customer class, one that, all told, pays a much lower rate. Therefore, the threshold requirement established in *Texas Water Commission v. City of Fort Worth* is satisfied, and the Commission can look to Windermere's unjust and unreasonable rates.

B. Just and Reasonable Rates

Because Windermere's rates include legal expenses that were incurred to the detriment of the water supply corporation, the Commission should not allow recovery of those legal expenses. Where a utility argues against its own financial interest, the Commission has the authority to

² 875 S.W.2d 332, 336 (Tex.App.—Austin 1994, writ denied).

³ Windermere Oaks Water Supply Corporation's Initial Brief at 19 (Dec. 30, 2021).

disallow recoupment of legal expenses incurred in pursuit of non-recovery.⁴ In *Industrial Utilities*, the court held that the Natural Resource Conservation Commission had appropriately disallowed recovery of legal expenses incurred by a utility arguing *against* a surcharge that would have allowed recovery of the cost of building a water treatment plant.

Here, Windermere has incurred substantial legal fees in defending against a lawsuit that would have resulted in rescission of a contract that transferred a piece of property for allegedly less than market value. Otherwise stated, Windermere has spent hundreds of thousands of dollars so that it would not retain possession of an extremely valuable piece of property.⁵ If the Commission finds that those funds were expended contrary to Windermere's interests, the Commission would be well within its rights to disallow recovery of those improper legal expenses.⁶

In its initial brief, Windermere repeatedly emphasizes that the Commission must design rates that are just and reasonable and maintain the financial integrity of the system. Here, the Commission is faced with a difficult question—should the Commission approve rates that are unjust and unreasonable in order to preserve the financial integrity of the utility? Windermere seems to think that it possesses the very trump card that the Commission forswore in *Woodloch*, stating “[w]hen setting rates, the Commission must use a ‘methodology that preserves the financial integrity of the retail public utility.’ Considerations of financial integrity cannot, however, be treated as a trump card that overrides the utility's obligation to comply with the standard requirements for [providing] water and sewer rates.”⁷

VI. ISSUE 5: DISMISSAL IF THE APPEALED RATES SATISFY TWC § 13.043(j) AND 16 TAC § 24.101(i)

As discussed above, Windermere's rates are preferential to the board of directors whose legal expenses have been assumed by the water supply corporation, and the rates are unjust and unreasonable. Therefore, dismissal of this appeal is inappropriate.

⁴ See *Indus. Util. Service Inc. v. Tex. Nat. Res. Conservation Comm'n*, 947 S.W.2d 712 (Tex.App.—Austin 1997, writ den.).

⁵ Tr. Day 2 at 297-298, (Gimenez Cross) (Dec. 2, 2021).

⁶ 947 S.W.2d at 715 (stating that the “Commission's ratemaking power includes the discretion to disallow improper legal expenses, provided it does not do so arbitrarily”).

⁷ *Appeal of Water and Sewer Rates Charged by the Town of Woodloch CCN Nos. 12312 and 20141*, Docket No. 42862, Order at Conclusion of Law 13 (Mar. 7, 2016).

VII. ISSUES 6, 7, and 11: WINDERMERE’S JUST AND REASONABLE RATES

A. Revenue requirement

Staff affirms the revenue requirement of \$404,855 proposed in its initial post-hearing brief. Staff further affirms its recommendation that approximately 60% of Windermere’s service revenue be recovered through the provision of water services, with the remaining 40% being recovered through provision of wastewater services.⁸ Applying these percentages to Staff’s proposed revenue requirement, Windermere’s water and wastewater annual revenue requirements equate to \$242,913 and \$161,942, respectively.

B. Rate design and allocation

In its initial brief, Windermere hurries to point out that “Staff’s recommended rate design [would] not allow WOWSC to recover Commission Staff’s recommended revenue requirement.”⁹ However, Staff has repeatedly stated that its recommended rate design incorporates revisions to Windermere’s base rates, as a change to Windermere’s base rates prompted the instant appeal. Staff’s recommended water and wastewater base rates obviously do not recover the entirety of Windermere’s revenue requirement because a revenue requirement is recovered through base rates *and* gallonage rates. Staff’s recommended base rates recover approximately \$149,347 in revenue from water services and \$99,564 in revenue from wastewater services, recovering approximately 61% of Windermere’s revenue requirement through base rates, as proposed in the Texas Rural Water Association (TRWA) rate analysis provided by Windermere, with the remaining 39% to be recovered through variable rates.¹⁰ Thus, \$155,944 remains to be recovered through gallonage rates. If the Commission agrees with Staff’s suggested revenue requirement, Staff is happy to turn to the task of redesigning Windermere’s gallonage rates, at the Commission’s request.

Should the Commission find that Windermere should recover its external legal expenses, Staff reaffirms its recommendation that Windermere’s rates still require a complete overhaul. As described in Staff’s initial brief, Windermere’s current rates over-recover by some \$20,000,¹¹ and its rates are allocated to recover approximately 85% through fixed rates and 15% through

⁸ *Id.*, citing Windermere’s response to RFI Staff 1-16, included as Attachment MG-5.

⁹ Windermere Oaks Water Supply Corporation’s Initial Brief at 19 (Dec. 30, 2021).

¹⁰ Windermere Ex. 7 at Attachment MN-2 (Bates 24).

¹¹ Commission Staff’s Initial Brief at 6 (Dec. 30, 2021).

variable rates, an allocation that is highly irregular and which Windermere's own expert testified was not something he had seen anywhere else.¹²

Further, annual recovery of approximately \$171,000 to cover legal expenses is inappropriate. Under 16 TAC §24.41, [i]n computing a utility's allowable expenses, only the utility's test year expenses as adjusted for known and measurable changes will be considered." Windermere's incurrence of legal expenses was much like a being in a car crash—and simply because one was hit by a car in 2019 and could see another car barreling down the highway in 2020, one cannot assume infinite years of collision.¹³ It is therefore inappropriate to include legal expenses in the calculation of Windermere's cost of service. As Windermere earns a return on its cost of service, to do so would implicitly incent Windermere to continue to incur litigation expenses year after year. Staff recommends that the appropriate mechanism for recovery of any unknown, non-recurring expenses would be through either the sale of assets that are not being used in the provision of service, or, if the sale of assets is not feasible or proves inadequate, through the assessment required by Windermere's tariff.¹⁴

C. Depreciation Expense

Staff affirms its recommendation that the Commission should require Windermere to use the revenues it collects from depreciation expense to fund future plant investment and to record those revenues in its Capital Expenditure Reserve as customer-contributed capital.

D. Refunds and surcharges

Finally, Staff reaffirms its recommendation that, should the Commission find that Windermere's current rates are not just and reasonable and have therefore resulted in over-recovery, the amount over-recovered be refunded to customers over a five-year period.

VIII. ISSUE 8: INCLUSION OF EXTERNAL LEGAL EXPENSES (UNCONTESTED)

¹² See Tr. Day 2 at 422, 21-24 (Rabon Cross) (Dec. 2, 2021).

¹³ Tr. Day 3 at 534, 9-12; 546, 16-19 (Gilford Re-direct) (Dec. 3, 2021).

¹⁴ Windermere Ex. 2 at VOLUMINOUS Attachment JG-1 – Tariff at 44-45.

IX. ISSUE 9: RECOVERY OF WINDERMERE'S REASONABLE APPEAL EXPENSES

A. Commission approval of recovery

Staff continues to recommend that Windermere be permitted to recover \$281,575.65 in appeal expenses.

B. Appropriate mechanism for recovery

Staff affirms its recommendation that any costs of appeal that the Commission might find are recoverable should be recovered through a five-year surcharge or the assessment mechanism described in Windermere's tariff.¹⁵

X. ISSUE 10: APPROPRIATE EFFECTIVE DATE OF RATES DETERMINED BY THE COMMISSION (UNCONTESTED)

The rates established by the Commission should be considered effective March 23, 2020.

XI. CONCLUSION

Staff strongly urges the Commission to consider the practical implications of allowing a water supply corporation to incur unlimited debt for legal expenses and to recover those costs from its customers. As it stands, there is no existing limit; serving on the Windermere board is the equivalent of having a limitless line of credit for legal expenses, except the board member is not responsible for paying his or her balance. Rather, that responsibility is left to the ratepayers. Boiled down to its most simple, Windermere's position is this: the corporation can incur any amount of legal debt, which the ratepayers are then obligated to cover.

Staff respectfully asks the Commission to reject this untenable position. The legal fees at issue in this proceeding, expenses that stem from a questionable land transaction, for which Windermere's own insurance company has refused to provide coverage, cannot be included in Windermere's revenue requirement. The utility's rates should be recalculated to properly allocate recovery of its reduced revenue requirement between fixed and variable rates. Most importantly, the utility's rates should be recalculated so that those rates are just and reasonable.

¹⁵ Windermere Ex. 2 at VOLUMINOUS Attachment JG-1 – Tariff at 44-45.

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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,¹⁶ 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.¹⁷
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.¹⁸
9. The utility bears the burden of proof to establish that the contested rates are just and reasonable.¹⁹
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

¹⁶ Tex. Gov't Code §§ 2001.001-.903.

¹⁷ 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).

¹⁸ 16 TAC § 24.12.

¹⁹ *Id.*

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).