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**TEXAS 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

**WINDERMERE OAKS WATER SUPPLY CORPORATION’S
MOTION TO STRIKE RATEPAYERS REPLY BRIEF**

Windermere Oaks Water Supply Corporation (WOWSC) moves to strike portions of Ratepayers Reply Brief. In support thereof, WOWSC shows the following:

I. INTRODUCTION

On January 25, 2022, Ratepayers filed its Reply Brief.¹ Responsive pleadings shall be filed within five working days after receipt of the pleading to which the response is made.² Therefore, this motion is timely filed. While this filing is not contemplated in the procedural schedule, the statements made in Ratepayers’ reply brief requires a short response. For the reasons explained below, WOWSC moves to strike the portions of Ratepayers’ reply brief as outlined in Attachment A.

II. ARGUMENT

A. Ratepayers’ Reply Brief Improperly Alleges Serious Misconduct and Harasses WOWSC and its Counsel

WOWSC moves to strike the portions of Ratepayers reply brief aimed at harassing WOWSC and its counsel. Ratepayers make numerous inflammatory statements, none of them based in fact or evidence—about both WOWSC and its legal counsel. The egregious nature of the accusations warrants a response. Ratepayers’ counsel goes so far as to accuse the undersigned of breaching her duties to the tribunal and violating her professional duties as an attorney. Ms. Allen also accuses Lloyd Gosselink of committing fraud and purposefully misdirecting discovery efforts. She also willfully ignores record evidence in her assertions that Mr. Rabon is not a credible witness. Most importantly, Ms. Allen fails to support *any* of these very serious allegations with

¹ Ratepayers Reply Brief (Jan. 25, 2022).

² 16 Tex. Admin. Code § 22.78 (TAC).

evidentiary support. Each of the allegations are unsupported in the record and made solely for the purpose of harassment. These type of baseless statements and allegations violate the rules of Texas Disciplinary Rules of Professional Conduct³ and should be stricken in their entirety.

Counsel for WOWSC is keenly aware of the rate case expenses in this proceeding and thus will not file a motion for sanctions due to a desire to keep those costs down. However, Ratepayers' reply brief is cause for imposition of sanctions under the Commission's rule 16 Texas Administrative Code § 22.161(b)(1) (TAC). Under that rule, a party may file a motion for sanctions for filing a motion or pleading that was brought in bad faith, for the purpose of harassment, or for any other improper purpose.⁴ However, the administrative law judge (ALJ) may only impose appropriate sanctions after notice and hearing. In the interest of keeping rate case expenses related to this abusive pleading to a minimum, WOWSC will not seek sanctions against Ratepayers even though a motion would be justified. Ratepayers have repeatedly used these dilatory and harassing tactics throughout this rate appeal, and such behavior has ultimately increased rate case expenses. Enough is enough.

B. Ratepayers' Reply Brief Fails to Comply with SOAH Order No. 15

Additionally, Ratepayers' reply brief fails to comply with SOAH Order No. 15, as it repeatedly fails to provide any cite to the record evidence or law, respond to initial briefs, or use accurate cites. SOAH Order No. 15 states that "the ALJ may consider waived any statement or argument set forth in a brief to the extent that it (1) lacks accurate citations to the evidence and law, or (2) is in a party's reply brief but should have been in its initial brief."⁵ In most instances, Ratepayers do not cite to any evidence to support its arguments and, in some cases, criminal allegations. Further, SOAH Order No. 15 also requires that "all factual assertions in briefs shall be supported by evidence admitted at the hearing for which a specific citation is provided in footnotes."⁶ Ratepayers' reply brief does not use the correct exhibit numbers or, in many instances, accurate citations. WOWSC moves to strike any portion of Ratepayers reply brief that fails to comply with any provision of SOAH Order No. 15.

³ TX ST RPC Rules 3.02 and 3.03.

⁴ 16 Tex. Admin. Code § 22.161(b)(1) (TAC).

⁵ SOAH Order No 15—Post Hearing Briefing; Guidelines at 2 (Dec. 6, 2021).

⁶ *Id.*

Therefore, WOWSC urges the Commission to strike the sections of Ratepayers' reply brief listed in Attachment A because they either do not comply with SOAH Order No. 15, are inflammatory and made for the purpose of harassment, are beyond the scope of WOWSC's Initial Brief and/or not part of the record in this proceeding.

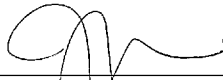
III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, WOWSC respectfully requests that the ALJ grant this motion striking specified portions of Ratepayers Reply Brief. WOWSC also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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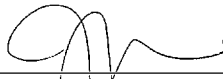


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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on February 1, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN

WOWSC's Objections to Portions of Ratepayers' Reply Brief		
Page No.	Text	Objection
4	WOWSC FAILED TO PROVIDE REQUIRED NOTICE TO CUSTOMERS	Raised only in Reply Brief
7	<p>The TRWA rate analysis generated a "minimum charge" for water service of \$174.59 per meter per month to meet a calculated systemwide revenue requirement of \$576,192. The TRWA revenue requirement was not forward looking. It did not include either the balance of unpaid charges that had been carried forward into 2019 or the amounts invoiced in early 2020. It did not include debt service over and above the principal and interest payments. It did not include any additions to the maintenance reserve or the capital reserve. Accordingly, the "water rate" generated by the TRWA model was not designed to recoup those costs.</p> <p>Burris testified that Smith told him as early as January 2019 that the WOWSC needed to raise its monthly water availability charge to at least \$170 in order to keep operating. The Board did not raise rates until more than a year later, in March 2020, and even then did not implement the TRWA-recommended rate.</p>	No cite
7	No steps were taken in the interim to contain or avoid additional expenses for outside legal costs; FN7.	Misrepresents cite
9	FN18	Misrepresents cite
10	There was never a "TRWA rate analysis" that concluded to the 2020 rates. The new "minimum water rate" of \$174.59 that the TRWA model did generate was completely disregarded.	No cite
10	FN20	No cite; Not true
11	These time entries reflect, among other things, that the Lloyd Gosselink lawyers interfaced directly with TRWA personnel on the rate analysis, researched Water Code Chapter 67 and other statutes and regulations applicable to the rate increase, reviewed the Tariff provisions and prepared PUC filings.	No cite
11	These time entries reflect, among other things, that the Lloyd Gosselink lawyers interfaced directly with TRWA personnel on the rate analysis, researched Water Code Chapter 67 and other statutes and regulations applicable to the rate increase, reviewed the Tariff provisions and prepared PUC filings.	No Cite

11	These communications portrayed that the rate increase would enable the WOWSC to pay the outside legal costs when due and would prevent the company from experiencing a loss in 2020.	No cite
11	There was no mention that the WOWSC would accrue an unlimited and completely unknown amount of law firm debt indefinitely or that this debt would burden current and future customers for years to come.	No cite
11-12	The time entries for General Counsel work also reflect that when the 2020 rate increase was appealed by the members, the Lloyd Gosselink lawyers, including Ms. Mauldin, promptly began strategizing about how to preserve the 2020 rates and what the Board should communicate to the membership.	No cite
12	Further, the WOWSC's ever-increasing law firm debt is completely "off the books." The Board never voted at any open meeting to authorize the WOWSC to incur law firm debt.	Inflammatory; harassment; alleges serious wrongdoing
12-13	The Board never voted at any open meeting to authorize the WOWSC to enter into a "minimum portion" payment plan with the law firms.	No cite
13	The law firm debt is not taken into account for purposes of any of the WOWSC's internal "metrics" or its loan covenants (if it actually has any).	No cite
13	Even Grant Rabon, the WOWSC's expert hired to defend the 2020 rate increase, agrees; FN29	Misstates and mischaracterizes cite
14	FN35 and FN36	Misstates and mischaracterizes cite
15	The provision of hundreds of thousands of dollars in outside legal services to a handful of customers sued in their capacities as current or former directors for unauthorized, illegal or fraudulent dispositions of surplus company property is, at best, a service outside the normal scope of utility operations.	Inflammatory; harassment; alleges serious wrongdoing; no cite
16	The law firms (including WOWSC general counsel Lloyd Gosselink) actively participated in and approved of that plan.	Inflammatory; harassment; alleges serious wrongdoing; no cite
16	These misrepresentations were presented in the form of filings, sworn testimony and discovery responses.	Inflammatory; harassment; alleges serious wrongdoing; no cite
16	They side-stepped requests for a TRWA rate study that concluded to the rates approved by the Board, because they knew there was not one.	Inflammatory; harassment; alleges serious wrongdoing; no cite

	They manufactured rate calculations and claimed they were attributable to TRWA.	
16	They carefully skirted the details about how the "cash needs" methodology was supposedly applied.	Inflammatory; harassment; alleges serious wrongdoing; no cite
16	FN44 and FN45	Mischaracterization of cite
17	As explained above, the 2020 rates were not generated by TRWA or by any accepted rate design methodology. The Board's representatives and the WOWSC's appeal lawyers were wellaware of that. There were irregularities with the Board's version of events that raised a few eyebrows among PUC Staff. However, PUC Staff was not expecting that a regulated utility and its sophisticated rate lawyers might try to portray a rate increase as something it was not. Accordingly, PUC Staff accepted these representations and performed their analyses based on the model and cost data the WOWSC provided.	Inflammatory; harassment; alleges serious wrongdoing; no cite
17	Before the 2020 rate increase, the Board used that TRWA analysis to portray to the other members that base rates could be lowered, rather than raised, if the members bringing suit would just stop their efforts to hold the directors accountable.	No cite
18	Moreover, the Board and its lawyers were less than candid in sworn testimony and discovery responses about the budget for professional fees including the outside legal costs.	Inflammatory; harassment; alleges serious wrongdoing; no cite
18	Had the Board and its lawyers been transparent at the appropriate time in this proceeding, it would have been readily apparent that the 2020 rates were not "cash needs" based.	Inflammatory; harassment; alleges serious wrongdoing; no cite
19	The effort to portray the 2020 rates as something they are not is not just unethical. It has resulted in an enormous waste of resources and has unduly confused and complicated this proceeding. There is no telling how much time and effort PUC Staff spent to perform a careful and thorough review of the voluminous invoices, pleadings, PIA requests and other materials pertaining to the \$171,337 in "Accounting and Legal" costs and to evaluate whether those costs (or any of them) should be allowed in the rates, when the truth is that none of those costs was included in the 2020 rates.	Inflammatory; harassment; alleges serious wrongdoing; no cite
20	Ratepayers now understand that the obfuscation was intentional, and the confusion it created ramped up the complexity of the appeal proceeding	Inflammatory; harassment; alleges serious wrongdoing; no cite

	exponentially. In the course of this appeal, the Board's representatives and its lawyers have been less than candid in other respects that transcend the bounds of zealous advocacy. The Board represented in filings and discovery that the 2020 rates included additional debt service coverage required by CoBank and/or that the WOWSC was obligated by a loan covenant to maintain a specified debt service coverage ratio. The WOWSC's lawyers filed sworn testimony from Nelson and Gimenez to the effect that such loan covenants existed and that a rate reduction or refund might jeopardize the company's ability to remain in compliance with them. Both the representations and the sworn testimony were false.	
20	FN55	Not true; misstates record
21	The Board and its lawyers also represented in filings, sworn testimony and discovery responses that the 2020 rates included additional reserves for anticipated capital expenditures and extraordinary maintenance items during 2020. For purposes of this appeal proceeding, the Board claimed these additional reserve amounts were required in connection with the purchase of a new generator and a new clarifier, repair expenses for a barge, and to fund the WOWSC's share of a water conservation project with LCRA. The Board and its lawyers claimed that the WOWSC's ability to fund the capital projects would be jeopardized if there were a rate reduction or refund. Those representations were false.	Inflammatory; harassment; alleges serious wrongdoing; no cite
21-22	Moreover, the truth is that more than % of the generator costs were paid before the rate increase, loan proceeds have been earmarked and are readily available for purchase of the clarifier, an insurance payment received in 2019 fully reimbursed the barge repairs with \$17,000 extra cash left over and the Board determined before the rate increase that the WOWSC had cash on hand sufficient to fund the conservation project.	No cite
22	No one knowledgeable has suggested that outside legal costs are properly considered "costs of service" - not even Grant Rabon, the WOWSC's hired expert.	Improper characterization of evidence
23	Lloyd Gosselink apparently did not even maintain "files" for the Double F litigation, for either of the lawsuits the WOWSC filed against the Attorney General or for the lawsuit the directors filed against Allied (the WOWSC's insurance carrier). If those costs are recorded, they are dispersed throughout the "files" for "General Counsel" or "TOMA Integrity litigation."	No cite

	The Board representatives who testified made it abundantly clear that they did not have either the knowledge or the expertise to explain what (if anything) the lawyers did in connection with any given matter, whether any of the legal work was reasonable or appropriate in the circumstances or the cost for services claimed to be compliant. Mr. Gimenez changed his story on the day he testified at the hearing. The WOWSC offered no evidence from the lawyers who did the work or from anyone else qualified to speak to these matters.	
23	FN63	Misstates cite
23	FN64	Misstates cite; inflammatory; harassment; alleges serious wrongdoing
24	The WOWSC cannot take advantage of mayhem and confusion to avoid its burden of proof.	Inflammatory; harassment; alleges serious wrongdoing
24	The WOWSC acknowledges that the outside legal costs were expended to frustrate the efforts of member-customers, funded exclusively with their own personal resources, to make the company whole for the illegal, fraudulent and unauthorized acts of its directors by requiring those directors to be accountable for what they had done.	Inflammatory; harassment; alleges serious wrongdoing; no cite
25	The Board itself determined that the unfairness of the transaction and the circumstances under which it was approved were too egregious to be ignored.	Inflammatory; harassment; alleges serious wrongdoing; no cite
25	FN69	Improper cite
26	There were no efforts to settle with the member-plaintiffs in 2019 or for some time thereafter. There was a mediation, but the member-plaintiffs were not invited.	No cite
26	The outside legal services procured to manage these matters have been directed by fiduciaries who insist their personal interest in avoiding accountability trump their legal duties to the company or its member-customers.	Inflammatory; harassment; alleges serious wrongdoing; no cite
26	PUC Staff's recommended base rates are squarely in line with the results of a TRWA "cash needs" analysis, prepared at the Board's request in early 2020, that omitted all "Accounting & Legal" costs from the revenue requirement.	No cite
27	As Ratepayers understand it, reimbursed costs should be excluded.	No cite
29	The utility had also urged before the Commission that deferred accounting treatment could be allowed if the company's financial condition would be "measurably harmed" during the deferral period.	No cites

	The Texas Supreme Court specifically rejected the lower "measurable harm" standard and determined that for the Commission to authorize interim deferred accounting treatment on that basis would be an abuse of discretion.	
31	FN81	Misstates cite
32	Everyone who deals with the WOWSC is on notice of the limitations on the power of the company and the authority of its directors as set forth in its governing documents, particularly the WOWSC's general counsel. Further, it is hard to imagine that the law firms who participated in a rate fraud to get their invoices paid would be anxious to pursue debt collection efforts against the utility they defrauded.	Inflammatory; harassment; alleges serious wrongdoing; no cite
32	The 2020 rate increase was designed and implemented by fiduciaries - including directors and attorneys -- who sought to thwart efforts by their principals to hold them accountable at the expense of those very principals.	Inflammatory; harassment; alleges serious wrongdoing; no cite
32-33	These fiduciaries have not been honest or transparent with the customers or the Commission about what they did or what has happened as a result. The level of their deception transcends the bounds of zealous advocacy. PUC Staff did not expect that, but they were not taken in.	Inflammatory; harassment; alleges serious wrongdoing; no cite
34	The 2020 rate increase benefits the Board representatives (whose outside legal costs are borne by the other customers) and the WOWSC's lawyers (whose fees are being at least partially paid), and they have a vested personal interest in seeing that the rates remain in place. That does not benefit the WOWSC's customers. To that end, the Board representatives and their lawyers have been neither candid nor transparent in this proceeding. They have sponsored filings, sworn testimony and discovery responses that were, at best, misleading and in some instances false. They have misled witnesses and mischaracterized evidence.	Inflammatory; harassment; alleges serious wrongdoing; no cite
34	However, Rabon could not identify an instance in which any utility had included outside legal costs in rates.	No cite
35	Some of these activities are likely unethical and none of them benefit the ratepayers, the Commission or the integrity of the appeal process. These circumstances clearly do not warrant an exercise of discretion to tax appeal proceeding expenses against the WOWSC's customers.	Inflammatory; harassment; alleges serious wrongdoing; no cite