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# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

**June 6, 2022**

**TO: Stephen Journey, Commission Counsel  
Commission Advising and Docket Management  
William B. Travis State Office Building  
1701 N. Congress, 7th Floor  
Austin, Texas 78701**

**VIA EFILE TEXAS**

**RE: SOAH Docket No. 473-20-4071.WS  
PUC Docket No. 50788**

***Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates***

On May 17, 2022, Staff at the Public Utility Commission of Texas and the Ratepayers filed exceptions to the proposal for decision (PFD) issued in this matter on March 31, 2022. Windermere Oaks Water Supply Corporation filed a correction letter. On May 25, 2022, Staff, Ratepayers, and Windermere filed replies.

The exceptions raise policy issues relating to rate appeals under Texas Water Code section 13.043(b) that the Administrative Law Judges (ALJs) leave for the Commission.

Both Staff and Ratepayers offer novel and divergent theories for how the rates are preferential, discriminatory, or prejudicial. These arguments were not made in post hearing briefing and are therefore untimely.<sup>1</sup> However, the ALJs make one observation to avoid confusion.

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<sup>1</sup> Tex. Gov't Code § 2001.051(2) (“In a contested case, each party is entitled to an opportunity . . . to respond and to present evidence and argument on each issue involved in the case.”).

Staff argues that the rates are unreasonably preferential, discriminatory, or prejudicial, because the allocation of the revenue requirement between the fixed (base) and variable (volumetric) rates.<sup>2</sup> However, as noted on page 9 of the PFD, only base rates were appealed.<sup>3</sup> Accordingly, volumetric rates were not considered.

Both Staff and the Ratepayers except to the assignment of the burden of proof with respect to the threshold issue, discussed on pages 4-5 of the PFD. The ALJs recognize that this may have surprised the parties; however, there was no prejudice because it did not affect the outcome. Windermere presented evidence that the rates were not unreasonably preferential, discriminatory, or prejudicial, as discussed on pages 8-9 of the PFD, and neither Staff nor Ratepayers presented any evidence to rebut that. Thus, even if the burden of proof were assigned to Windermere, the outcome would have been the same. Rather, the burden of proof analysis and assignment was a matter of form to better clarify this evolving area of jurisprudence.

Ratepayers draw attention to a statement in a 2015 proposal for decision that “Woodloch bears the burden to prove that the New Rates are ‘not unreasonably preferential, prejudicial, or discriminatory,’ but are ‘sufficient, equitable, and consistent in application to each class of customers.’”<sup>4</sup> In support, the proposal for decision in that case cites Texas Water Code section 13.043(j), without further discussion, but did not include a corresponding conclusion of law. Although a reasonable conclusion at the time, the jurisprudence has since evolved to require a threshold finding on those factors before fixing just and reasonable rates, as noted on pages 3-4 of the PFD. Therefore, the ALJs do not adopt this conclusion.

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<sup>2</sup> Tr. at 422 (Rabon Cross).


<sup>3</sup> Tr. at 556 (Mendoza Cross) (“[O]nly fixed costs are being appealed here, not the volumetric rates.”).


<sup>4</sup> *Appeal of Water and Sewer Rates Charged by the Town of Woodloch CCN Nos. 12312 and 20141*, Docket No. 42862, Proposal for Decision at 37 (Oct. 29, 2015).

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The ALJs recommend adopting the correction proposed by Windermere, but do not recommend any changes in response to the exceptions.

Sincerely,

  
Christiaan Siano  
Administrative Law Judge

  
Daniel Wiseman  
Administrative Law Judge

Enclosure

xc: All Parties of Record