



Filing Receipt

Received - 2022-10-17 02:43:47 PM

Control Number - 50788

ItemNumber - 219

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

AGREED MOTION TO RECONSIDER EVIDENTIARY RULINGS

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 September 26, 2022, the State Office of Administrative Hearings (SOAH) administrative law judges filed SOAH Order No. 23, establishing a deadline of October 17, 2022, for parties to file requests for reconsideration of evidentiary rulings. Ratepayers now file, on behalf of themselves and the Staff (Staff) of the Public Utility Commission of Texas (Commission), this motion for reconsideration of evidentiary rulings. Therefore, this pleading is timely filed.

I. MOTION TO RECONSIDER EVIDENTIARY RULINGS

Over the course of this docket, numerous evidentiary objections made by Windermere were sustained on the basis that the subject of those objections was not relevant to evaluating the reasonableness of Windermere’s rates. The tables below indicate the documentary and testimonial evidence that was improperly excluded, which the Ratepayers now request be admitted into the record of this proceeding.

A. Documentary Evidence

Document	Where it was excluded	Objection/Withdrawn	Date Available to Board	Why Ruling Was Incorrect
Ratepayers' Hearing Exhibits 1 and 11-17	At hearing	The record is unclear as to why each of these exhibits was excluded, but Ratepayers can only surmise that it was on the basis of relevance	Prior to February 2020 when the rates were approved by the Windermere Board.	This information is relevant to determining whether it was reasonable and proper for the Board to pursue its litigation strategy and adopt the appealed rates.
Offer of Proof 1	At Hearing, Wednesday, Dec. 1, 2022	The objection was to relevance	Prior to February 2020 when the rates were approved by the Windermere Board.	This information is relevant to determining the access to funds the board had at the time they decided to raise the rates
Offer of Proof 2	At Hearing, Wednesday, Dec. 1, 2022	The objection was to relevance	Prior to February 2020 when the rates were approved by the Windermere Board.	This information is relevant to determining the just and reasonable legal expenses.

Document	Objection/Withdrawn	Argument why it was wrong to exclude	Date available to board	Why it is necessary to have in the record
Staff RFI 1-3	Withdrawn in hearing	Relevant to Rate Design and Methodology used to determine rates	Prior to February 2020 when the rates were approved by the Windermere Board.	The rate design includes anticipated future legal spending based on \$20,000 payments to law firms
Staff RFI 2-5	Withdrawn in hearing	The record is unclear as to why each of these exhibits was excluded, but Ratepayers can only surmise that it was on the basis of relevance	Prior to February 2020 when the rates were approved by the Windermere Board.	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable rates - PIA legal
Ratepayers RFI 2-1	Withdrawn in hearing	The record is unclear as to why each of these exhibits was excluded, but Ratepayers can only surmise that it was on the basis of relevance	Prior to February 2020 when the rates were approved by the Windermere Board.	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable rates

Testimonial Evidence

Testimony from	Location	Category	Ratepayer Question	Windermere	Why Ruling Was Incorrect
Joe Gimenez	Thursday Transcript, Page 381 Lines 15-22	Assets of Windermere	When the Company when the board found itself at the end of 2019 in the position where it had basically, spent all the money there was, all the cash there was, on legal fees, why was it that there were no steps taken to market the 6.19 acres in the airport?	Objected	<p>The information is relevant to determining why at the end of 2019 when the Windermere board spent all their money on legal fees and needed to raise rates due in part to legal expenditures why were there no steps taken to market their 6.19 acres to pay for legal expenses? Did Windermere have other sources of income to pay down debt, specifically legal expenses? This determines just and reasonable rates when the board is sitting on valuable assets no longer needed to operate the water and sewer system.</p> <p>If the question is allowed would be able to further identify the just and reasonable legal fees expended in 2019.</p>
Joe Gimenez	Thursday Transcript, Page 288, Lines 2-18	Purpose of Legal Expenses in 2019 – Just and Reasonable	Confirm that the TOMA Integrity Plaintiffs never asked the Court to require the company to sue Dana Martin, or her company Friendship Homes and	Objected	<p>The information is relevant because the board's stated rationale for the enormous legal expenditures was to prevent the plaintiff members from requiring the company to sue Martin and/or Friendship, as the company could not afford to do so and might be exposed to liability if it did. That is nonsense. No one ever sought to require the company to sue anyone.. If the question had been allowed, the Commission would be able to further pay for legal expenses? Did Windermere have other sources of income to pay down debt, specifically legal expenses? This determines just and reasonable rates when the board is sitting on valuable assets no longer needed to operate the water and sewer system.</p> <p>If the question is allowed would be able to further identify the just and reasonable legal fees, if any, expended in 2019.</p>

			<p>Hangars or anybody else?</p> <p>Ms. Allen moved to strike the testimony of Mr. Gimenez concerning these lawsuits as he testified to this in his rebuttal testimony. If he has no personal knowledge, he should not be able to include this in rebuttal testimony.</p>		
Nelson	Wednesday Transcript, Page 164, Lines 20-21	Purpose of Legal Expenses in 2019 – Just and Reasonable	Attorneys were busy during that time making a deal with Ms. Martin, isn't that, right?	Objected – relevance	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable legal fees expending in 2019.
Nelson	Wednesday Transcript, Page 132, Lines 18-23	Purpose of Legal Expenses in 2019 – Just and Reasonable	At the time the board decided to approve the payment of legal expenses to oppose relief in the TOMA Integrity	Objected – relevance	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable legal fees, if any, expended in 2019. Among other things, it bears directly on the reasonableness and prudence of the decision to expend enormous company resources to prevent the company from recovering for the damage it sustained as a result of such wrongful conduct.

			lawsuit, its lawyers had written a demand letter to Dana Martin and to Mr. Hinton that outlined all manner of wrongful conduct. Isn't that right?		
Nelson	Wednesday Transcript, Page 163, Lines 5-7	Purpose of Legal Expenses in 2019 – Just and Reasonable	Mr. Nelson, isn't it true that in October of 2019 the Company made a deal with Ms. Martin as a result of a mediation in the lawsuit?	Objected – relevance	The information is relevant because, if the question had been allowed, the Commission would be able to further identify actions taken by the board and further identify the just and reasonable legal fees expending in 2019.
Numerous references to the sale of land to Dana Martin		Legal Expenses incurred in an effort to make sure that the land sale was not rescinded		Objected Relevance	This information is relevant to determining whether it was reasonable and proper for the Board to pursue its litigation strategy and adopt the appealed rates.

Ratepayers respectfully request that the ALJs reconsider the exclusion of any and all testimonial and documentary evidence that was excluded related to the external litigation costs included in the appealed rates. Because these exclusions were numerous and wide-ranging, Ratepayers recognize that the lists above may not be comprehensive. Moreover, simply admitting the evidence that was excluded is not an adequate remedy. The ALJs insisted at a point that Ratepayers cease their questioning concerning the outside legal costs. Concerned for what the consequences of noncompliance might be, Ratepayers did as they were instructed and stopped their efforts to fully develop the evidentiary record concerning the reasonableness and prudence of the outside legal costs allegedly included within the appealed rates.

II. CONCLUSION

For the reasons detailed above, Ratepayers move, on behalf of themselves and Staff, that the rulings excluding the listed documents and testimony be reversed and that the information be admitted into the record of this proceeding.

Date October 17, 2022

Respectfully submitted,

/s/ Kathryn E. Allen

THE LAW OFFICE OF KATHRYN E. ALLEN, PLLC

114 W. 7th St., Suite 1100

Austin, Texas 78701

(512) 495-1400 telephone

(512) 499-0094 fax

/s/ Kathryn E. Allen

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 October 17, 2022 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Kathryn E. Allen

Kathryn E. Allen

State Bar ID No. 01043100

kallen@keallenlaw.com

Attorneys for Ratepayers