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**Received - 2022-11-10 01:16:45 PM**  
**Control Number - 50788**  
**ItemNumber - 226**

**SOAH DOCKET NO. 473-20-4071.WS**  
**PUC DOCKET NO. 50788**

<b>RATEPAYERS APPEAL OF THE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DECISION BY WINDERMERE OAKS</b>	<b>§</b>	<b>OF</b>
<b>WATER SUPPLY CORPORATION TO</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>CHANGE WATER AND SEWER RATES</b>	<b>§</b>	

**WINDERMERE OAKS WATER SUPPLY CORPORATION’S  
RESPONSE TO RATEPAYER’S AND STAFF’S AMENDED AGREED MOTION TO  
RECONSIDER EVIDENTIARY RULINGS**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Windermere Oaks Water Supply Corporation (WOWSC) files this Response to Ratepayer’s [sic] and Staff’s Amended Agreed Motion to Reconsider Evidentiary Rulings (Response).

**I. PROCEDURAL HISTORY**

On April 27, 2020, Josephine Fuller, as the Representative for the Ratepayers of the WOWSC (Ratepayers), filed a petition under Texas Water Code (TWC) § 13.043(b) appealing WOWSC’s February 1, 2020, approval of water and sewer rate increases.<sup>1</sup> The Public Utility Commission of Texas (Commission) referred the docket to the State Office of Administrative Hearings (SOAH) and, on July 9, 2020, issued its Preliminary Order providing the administrative law judges (ALJs) a list of issues to be addressed.<sup>2</sup> Accordingly, on December 1-3, 2021, SOAH held a Hearing on the Merits (Hearing) to address these issues.<sup>3</sup> At the Hearing, the ALJs issued several evidentiary rulings that are now at issue in Ratepayer’s and Staff’s Amended Agreed Motion to Reconsider Evidentiary Rulings (Motion) and this Response.<sup>4</sup>

After SOAH issued its Proposal for Decision, the Commission remanded the docket back to SOAH to evaluate “whether allowing recovery of all expenses included in the proposed revenue requirement, including the \$171,337 in legal expenses, will result in just and reasonable rates.”<sup>5</sup>

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<sup>1</sup> Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates at 1 (Apr. 27, 2020) (Ratepayers Appeal).

<sup>2</sup> Order of Referral at 1 (Jun. 23, 2020); Draft Preliminary Order at 3 (Jul. 9, 2020).

<sup>3</sup> Proposal for Decision at 2 (Mar. 31, 2022); Hearing on the Merits – Wednesday, Dec. 1, 2021 (Via Zoom Videoconference) (Pages 1-242, 243-468, 469-561) (Dec. 20, 2021).

<sup>4</sup> *Id.*; Ratepayers and Staff’s Amended Agreed Motion to Reconsider Evidentiary Rulings at 2-9 (Oct. 26, 2022) (Ratepayers and Staff’s Amended Agreed Motion).

<sup>5</sup> Order Remanding Proceeding at 7 (Jun. 30, 2022).

Subsequently, on September 26, 2022, SOAH filed Order No. 23 allowing Ratepayers and Staff to submit a motion to reconsider evidentiary rulings and establishing a procedural schedule.<sup>6</sup> Finally, on October 26, 2022, Ratepayers and Staff filed their Motion.<sup>7</sup> Pursuant to Order No. 23, the deadline for responses to requests for reconsideration of evidentiary rulings is November 10, 2022.<sup>8</sup> Therefore, this Response is timely filed.

## **II. INTRODUCTION**

The exhibit and testimonies at issue in Ratepayers' and Staff's Motion are irrelevant to the issues in this proceeding, unduly repetitious, and impermissibly speculative. As such, the Commission must deny Ratepayers' and Staff's Motion.

In its Preliminary Order, the Commission identified two issues for consideration that are relevant to SOAH's evidentiary rulings currently at issue: (1) "[d]o the retail water and sewer rates being charged to petitioners by Windermere Oaks fulfill the requirements of TWC § 13.043(j) and 16 TAC § 24.101(i)" or, more specifically, "[a]re the rates just and reasonable?"; and (2) "[w]ere Windermere Oaks's outside legal expenses related to defending civil suits included in the rates appealed? If so, what amount of outside legal expenses was included in the rates appealed?"<sup>9</sup> On remand, the Commission instructed SOAH to evaluate whether "including the \$171,337 in legal expenses... will result in just and reasonable rates."<sup>10</sup>

The \$171,337 relate primarily to legal expenses from previous litigation and Public Information Act requests initiated by Ratepayers against the WOWSC Board of Directors (Board) regarding the sale of WOWSC property in 2016 (2016 Land Transaction).<sup>11</sup> In their motion, Ratepayers and Staff continue to insist that evidence regarding WOWSC's legal decisions related to the 2016 Land Transaction lawsuits are relevant to the current rate appeal.<sup>12</sup> Specifically at

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<sup>6</sup> SOAH Order No. 23 – Memorializing Prehearing Conference; Adopting Procedural Schedule at 2 (Sept. 26, 2022) (SOAH Order No. 23).

<sup>7</sup> Ratepayers and Staff's Amended Agreed Motion (Oct. 26, 2022).

<sup>8</sup> SOAH Order No. 23 at 3 (Sept. 26, 2022).

<sup>9</sup> Preliminary Order at 4-5 (Jul. 16, 2020).

<sup>10</sup> Order Remanding Proceeding at 7 (Jun. 30, 2022).

<sup>11</sup> Windermere Oaks Water Supply Corporation's (WOWSC) Initial Brief at 3 (Dec. 30, 2021); Direct Testimony of Joe Gimenez III, WOWSC Ex. 2 at 13-21.

<sup>12</sup> Ratepayers and Staff's Amended Agreed Motion at 10 (Oct. 26, 2022).

issue are an exhibit and testimonies regarding the 2016 Land Transaction that Ratepayers, in an apparent attempt to characterize WOWSC's legal strategies as imprudent, attempted to introduce and solicit from WOWSC witnesses at Hearing.<sup>13</sup>

The record is clear: WOWSC's legal expenses paid in 2019 were just and reasonable. WOWSC, through written testimony and Requests for Information (RFI) responses, has provided Ratepayers and Staff an extensive description of the 2016 Land Transaction litigation, the Board's related legal responsibilities, and resulting legal expenses.<sup>14</sup> To accommodate Ratepayers' and Staff's requests, WOWSC even went so far to disclose the relevant legal invoices related to the 2016 Land Transaction.<sup>15</sup> Further, WOWSC has already established that Texas law authorized the Board to advance defense costs to directors of WOWSC.<sup>16</sup>

Moreover, under Texas law, the Board must discharge its duty "in good faith, with ordinary care, and in a manner the [Board] reasonably believes to be in the best interest of the corporation."<sup>17</sup> The record clearly shows that without the legal expenses at issue, WOWSC would have incurred insurmountable legal penalties jeopardizing its ability to provide adequate water and wastewater services.<sup>18</sup> Recently, on May 3, 2021, the Honorable Judge Margaret G. Mirabal granted WOWSC summary judgment in the Double F lawsuit, one of the legal proceedings regarding the 2016 Land Transaction, and dismissed all WOWSC Directors other than Dana Martin, further validating WOWSC's legal expenses.<sup>19</sup> Accordingly, Staff's suggestion that it was irresponsible for WOWSC "to contract for legal services...at all" was not only dangerous rhetoric that chills responsible corporate judgment, but completely without basis.<sup>20</sup>

WOWSC has established that the Board had a fiduciary duty to incur \$171,337 in legal and accounting fees and, more importantly, that it was just and reasonable to do so. The record is full of evidence that supports this. Ratepayers' and Staff's attempt to rehash this issue and impose

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<sup>13</sup> *Id.* at 2-9.

<sup>14</sup> WOWSC Ex. 2 at 13-21; Direct Testimony of Mike Nelson, WOWSC Ex. 7.

<sup>15</sup> WOWSC Ex. 7 at WP MN-2.

<sup>16</sup> WOWSC Reply Brief at 4 (Jan. 25, 2022); *see* Tex. Bus. Org. Code Ann. § 8.051.

<sup>17</sup> Tex. Bus. Orgs. Code § 22.221 (2006).

<sup>18</sup> WOWSC Ex. 2 at 15.

<sup>19</sup> Rebuttal Testimony of Joe Gimenez III, WOWSC Ex. 3 at Attachment JG-20.

<sup>20</sup> Commission Staff's Initial Brief at 3 (Dec. 30, 2021).

post-hoc judgment calls regarding the Board’s decisions related to prior litigation outside this rate appeal is misguided, reckless, and a blatant waste of time and resources. Accordingly, SOAH must deny Ratepayers’ and Staff’s Motion.

### **III. DISCUSSION**

Pursuant to 16 TAC § 22.221, in a contested case hearing SOAH must apply “the Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas” and exclude “irrelevant, immaterial, or unduly repetitious evidence.”<sup>21</sup> Rule 401 of the Texas Rules of Evidence provides that “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”<sup>22</sup> Importantly, however, a witness may only testify to a topic if “the witness has personal knowledge of the matter.”<sup>23</sup>

As detailed below, Ratepayers and Staff request the ALJs to reconsider evidentiary rulings that excluded one exhibit and fourteen testimonies.<sup>24</sup> This evidence is either needlessly cumulative, far too attenuated to be relevant to the current rate appeal, or impermissibly speculative. The only relevant legal costs to this proceeding are the \$171,337 in rates—those that were paid in 2019. To the extent Ratepayers and Staff seek to include evidence dating back to 2016, those legal costs and lines of questioning aiming to uncover legal strategy are irrelevant and improper in this rate appeal. Moreover, Ratepayers and Staff apparently disregarded the ALJs instructions and failed to “identify the date the information at issue was available to the board.”<sup>25</sup>

In sum, WOWSC objects to Ratepayers’ and Staff’s request to admit all evidence cited in their Motion other than Order of Proof No. 1. Each evidentiary objection in Ratepayers’ and Staff’s Motion is addressed below.

#### **A. WOWSC objects to Ratepayers’ and Staff’s Motion to reconsider the evidentiary ruling regarding Ratepayers’ Ex. 19.**

Ratepayers and Staff state that WOWSC objected to Exhibit 19 on page 139, line 2 and

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<sup>21</sup> 16 TAC § 22.221 (2022).

<sup>22</sup> Tex. R. Evid. Rule 401

<sup>23</sup> Tex. R. Evid. Rule 602.

<sup>24</sup> Ratepayers and Staff’s Amended Agreed Motion at 2-9 (Oct. 26, 2022).

<sup>25</sup> SOAH Order No. 23 at 2 (Sept. 26, 2022); Ratepayers and Staff’s Amended Agreed Motion (Oct. 26, 2022).

page 141, line 1 of the December 1, 2021, Hearing Transcript.<sup>26</sup> However, WOWSC did not object here; rather, Ms. Allen was describing Exhibit 19 at this transcript cite.<sup>27</sup> WOWSC assumes that Ratepayers is requesting the ALJs to reconsider their evidentiary rulings regarding Exhibit 19 at page 140, line 1 and page 141, lines 7-8.<sup>28</sup>

Ratepayers never formally filed Exhibit 19.<sup>29</sup> As such, it was unclear at Hearing, and is still unclear now, what document Ms. Allen is attempting to introduce.<sup>30</sup> However, Ms. Allen stated she intended to admit “the petition and intervention that joined WOWSC into the Double F lawsuit” as Exhibit 19.<sup>31</sup> As discussed above, Judge Mirabal recently granted WOWSC summary judgment in the Double F lawsuit and dismissed all WOWSC Directors other than Dana Martin.<sup>32</sup> Thus, the record conclusively establishes that the Double F legal fees were necessary and prudent. However, WOWSC would not object to Ratepayers’ and Staff’s Motion to reconsider the evidentiary ruling regarding Exhibit 19 so long as the exhibit is limited to the Double F petition. WOWSC requests that Ratepayers and Staff clearly identify what it intended as Exhibit 19 before it can object or not to this Exhibit.

**B. WOWSC does not object to Ratepayers’ and Staff’s Motion to reconsider the evidentiary ruling regarding Offer of Proof No. 1 From Ratepayers.**

Ratepayers and Staff assert that, because Offer of Proof No. 1 would help the Commission “determin[e] the access to funds the board had at the time they decided to raise the rates,” it is relevant to the current rate appeal.<sup>33</sup> Specifically, Offer of Proof No. 1 is a line of questioning at Hearing regarding 6.19 acres of WOWSC property.<sup>34</sup> At this time in Hearing, Ms. Allen was apparently attempting to solicit a response from WOWSC witness Mr. Burriss, that WOWSC could have sold the 6.19 acres to satisfy its legal obligations and, therefore, WOWSC’s decision

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<sup>26</sup> Ratepayers and Staff’s Amended Agreed Motion at 2 (Oct. 26, 2022).

<sup>27</sup> Tr. 139:2, 141:1 (Nelson Cross) (Dec. 1, 2021).

<sup>28</sup> *Id.* at 140:1, 141:7-8.

<sup>29</sup> *Id.* at 139:14-19.

<sup>30</sup> *Id.* at 139:23-24 (WOWSC stated “I don’t know if this was previously provided to us”).

<sup>31</sup> *Id.* at 140:4-6.

<sup>32</sup> WOWSC Ex. 3 at Attachment JG-20.

<sup>33</sup> Ratepayers and Staff’s Amended Agreed Motion at 3 (Oct. 26, 2022).

<sup>34</sup> Tr. 87-92 (Burriss Cross) (Dec. 1, 2021).

to raise rates instead was imprudent.<sup>35</sup> As Mr. Burriss explained at Hearing, a pending lawsuit precluded WOWSC from selling the 6.19 acres; thus, this testimony is immaterial to the current rate appeal.<sup>36</sup> Further, the Commission does not possess authority to order a water supply corporation to sell its assets. However, WOWSC does not object to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Offer of Proof No. 1 From Ratepayers.

**C. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Offer of Proof No. 2 From Ratepayers.**

Offer of Proof No. 2 From Ratepayers again relates to the Double F lawsuit and, more specifically, the Board's legal strategy regarding mediation and settlement efforts.<sup>37</sup> As determined at Hearing, these minute details are highly attenuated and outside the scope of this rate appeal.<sup>38</sup> Further, as discussed above, WOWSC already established that the legal expenses related to the Double F litigation were necessary and reasonable.<sup>39</sup> As such, the testimony is unduly repetitious and, therefore, must be excluded under 16 TAC § 22.221.<sup>40</sup>

Moreover, Offer of Proof No. 2 is highly speculative and equates to attorney testimony.<sup>41</sup> Ms. Allen alleges that, "had Mr. Nelson been allowed to answer my series of questions, he would have testified that nothing occurred in the Double F litigation between May of 2019 and November of 2019 other than the board's efforts to mediate...."<sup>42</sup> As Mr. Nelson explained at trial, however, he was unaware of whether WOWSC paid any legal fees between July 9, 2018, and May 14, 2019, when Ratepayers filed the Double F lawsuit, or why WOWSC was even named in the Double F lawsuit.<sup>43</sup> Further, he was unaware of whether the intervention filed in the Double F lawsuit sought monetary relief against WOWSC.<sup>44</sup> Therefore, in contrast to Ms. Allen's assertion, Mr. Nelson did not have "personal knowledge" to answer questions regarding extraneous details related to

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 88:18-21.

<sup>37</sup> *Id.* at 237-38.

<sup>38</sup> *Id.* at 133:11-16.

<sup>39</sup> WOWSC Ex. 3 at Attachment JG-20; WOWSC Ex. 7.

<sup>40</sup> 16 TAC § 22.221; *see* Rule 401.

<sup>41</sup> Tr. 236-38 (Offer of Proof No. 2 on Behalf of Ratepayers) (Dec. 1, 2021).

<sup>42</sup> *Id.* at 237.

<sup>43</sup> *Id.* at 129:18-23, 130:7-9, 133:21-25, 134:1-5.

<sup>44</sup> *Id.* at 136:7-9, 137:6-13.

WOWSC's mediation efforts.<sup>45</sup> Ms. Allen goes on at length as to what she speculates Mr. Nelson's testimony would have proven, all of which is highly inappropriate and should be kept out of the record. Accordingly, Offer of Proof No. 2 is speculative and, therefore, must be denied under Rule 602.

**D. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Gimenez Testimony, 12/2/21 Hearing Transcript at page 381, lines 15-22.**

Ratepayers and Staff again seek to admit testimony regarding WOWSC's decision to retain 6.19 acres rather than sell it to satisfy legal fees.<sup>46</sup> Ratepayers and Staff allege that, because "this determines just and reasonable rates when the board is sitting on valuable assets no longer needed to operate the water and sewer system," this testimony is relevant.<sup>47</sup> As discussed above, for purposes of this rate appeal, WOWSC's decision to retain this property is far too attenuated. Moreover, at Hearing, WOWSC objected to this question because it was outside the scope of WOWSC's redirect, and therefore properly excluded.<sup>48</sup> Accordingly, for purposes of this evidentiary ruling, the relevance of the testimony is immaterial. As such, the ALJs must deny Ratepayers' and Staff's motion to reconsider this evidentiary ruling.

**E. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Gimenez Testimony, 12/2/21 Hearing Transcript at page 288, lines 2-18.**

Ratepayers and Staff urge the ALJs to reconsider an evidentiary ruling related to testimony regarding the 2016 Land Transaction litigation, although it is unclear exactly what testimony they refer to in their Motion.<sup>49</sup> Ratepayers and Staff cite to the December 2, 2021, Hearing page 288, lines 2-18; however, the judge never excluded this testimony and subsequently allowed Ms. Allen to ask the question.<sup>50</sup> Mr. Gimenez answered "I don't have an answer..."<sup>51</sup> Accordingly, because the witness answered the question, there is no evidentiary ruling to reconsider. Thus, the ALJs

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<sup>45</sup> See Tex. R. Evid. Rule 602.

<sup>46</sup> Ratepayers and Staff's Amended Agreed Motion at 3 (Oct. 26, 2022).

<sup>47</sup> *Id.*

<sup>48</sup> Tr. 381:15-21 (Gimenez Recross) (Dec. 2, 2021).

<sup>49</sup> Ratepayers and Staff's Amended Agreed Motion at 4 (Oct. 26, 2022).

<sup>50</sup> Tr. 288:19-22 (Gimenez Cross) (Dec. 2, 2021).

<sup>51</sup> *Id.* at 290:13.



should deny Ratepayers' and Staff's Motion to reconsider this evidentiary ruling.

**F. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Nelson Testimony, 12/1/21 Hearing Transcript at page 164, lines 20-21.**

Ratepayers and Staff allege that, because the excluded testimony would allow "the Commission...to further identify the just and reasonable legal fees expending in 2019," it is relevant to this proceeding.<sup>52</sup> However, WOWSC objected to this testimony as speculative.<sup>53</sup> Prior to the question at issue, Mr. Nelson had repeatedly stated that he did not know the answers to questions regarding extraneous details related to the 2016 Land Transaction litigation, such as whether there were depositions, motions, practices, or hearings during particular time periods.<sup>54</sup> Accordingly, he did not have the requisite personal knowledge to answer Ms. Allen's third question regarding WOWSC's legal counsel and their correspondence with a party in the Double F lawsuit.<sup>55</sup> Therefore, the ALJs correctly excluded this testimony under Rule 602 at Hearing. As such, Ratepayers' and Staff's motion to reconsider this evidentiary ruling must be denied.

**G. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Nelson Testimony, 12/1/21 Hearing Transcript at page 132, lines 18-23.**

Ratepayers and Staff again urge the ALJs to reconsider an evidentiary ruling regarding the 2016 Land Transaction litigation, alleging that this testimony would help the ALJS "further identify the just and reasonable legal fees."<sup>56</sup> Specifically, the excluded testimony related to the existence of demand letters WOWSC counsel wrote in relation to *TOMA Integrity v. WOWSC* (TOMA Lawsuit).<sup>57</sup> However, as WOWSC established in the record, the plaintiffs lost the TOMA Lawsuit and subsequent appeals, including a denial of review by the Texas Supreme Court.<sup>58</sup> Accordingly, the record clearly shows that legal fees associated with the TOMA Lawsuit were

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<sup>52</sup> Ratepayers and Staff's Amended Agreed Motion at 4 (Oct. 26, 2022).

<sup>53</sup> Tr. 164:20-21 (Nelson Cross) (Dec. 1, 2021).

<sup>54</sup> *Id.* at 164:13-19.

<sup>55</sup> *Id.* at 164:20-21.

<sup>56</sup> Ratepayers and Staff's Amended Agreed Motion at 5 (Oct. 26, 2022)

<sup>57</sup> Tr. 132:18-23 (Nelson Cross) (Dec. 1, 2021).

<sup>58</sup> WOWSC Ex. 2 at 18.

reasonable and necessary.<sup>59</sup> Moreover, for purposes of this proceeding, extraneous evidence regarding demand letters from outside litigation is highly attenuated. Thus, because this evidence is unduly repetitious, it must be excluded under 16 TAC § 22.221.<sup>60</sup> Accordingly, the ALJs must deny Ratepayers' and Staff's Motion to reconsider this evidentiary ruling.

**H. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Nelson Testimony, 12/1/21 Hearing Transcript at page 163, lines 5-7.**

Ratepayers and Staff again request that the ALJs reconsider an evidentiary ruling regarding the Double F lawsuit.<sup>61</sup> They allege that, to further enable the Commission to identify the just and reasonable legal fees, testimony regarding correspondence between WOWSC's legal counsel and a party in the Double F lawsuit is relevant.<sup>62</sup> However, as discussed above, WOWSC has clearly shown that its legal expenses related to the Double F lawsuit were necessary. This evidence is found throughout the record.<sup>63</sup> As such, the testimony is unduly repetitious and, therefore, must be excluded.<sup>64</sup> Accordingly, the ALJs must deny Ratepayers' and Staff's Motion to reconsider this evidentiary ruling.

**I. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Burriss Testimony, 12/1/21 Hearing Transcript at page 62, lines 3-25 and page 63, lines 1-8.**

Ratepayers and Staff again attempt to establish a connection between WOWSC property value and WOWSC's legal strategy during the 2016 Land Transaction litigation and request that the ALJs admit testimony related to a WOWSC property appraisal report.<sup>65</sup> As discussed above, WOWSC's decision to retain property is outside the scope of this rate appeal. An appraisal report is particularly extraneous. Moreover, the transcript citations show Ms. Allen testifying as to what she thinks an appraisal would say.<sup>66</sup> The ALJ informed her that she could enter it into the record

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<sup>59</sup> *Id.*

<sup>60</sup> 16 TAC § 22.221.

<sup>61</sup> Ratepayers and Staff's Amended Agreed Motion at 5 (Oct. 26, 2022).

<sup>62</sup> Tr. 163:5-9 (Nelson Cross) (Dec. 1, 2021).

<sup>63</sup> *See, e.g.*, WOWSC Ex. 2 at Attachment JG-20; WOWSC Ex. 7 at WP MN-2.

<sup>64</sup> 16 TAC § 22.221.

<sup>65</sup> Ratepayers and Staff's Amended Agreed Motion at 6 (Oct. 26, 2022); Tr. 62:1-2 (Burriss Cross) (Dec. 1, 2021).

<sup>66</sup> Tr. 62:5-9 (Burriss Cross) (Dec. 1, 2021).

and rely upon it, but no such appraisal was ever offered.<sup>67</sup> As such, this testimony is impermissibly speculative and must be excluded under 16 TAC § 22.221.<sup>68</sup> Accordingly, the ALJs must deny Ratepayers' and Staff's Motion to reconsider this evidentiary ruling.

**J. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Burriss Testimony, 12/1/21 Hearing Transcript at page 47, line 12 and page 48, line 17.**

Ratepayers and Staff urge the ALJs to reconsider an evidentiary ruling related to testimony regarding WOWSC property, although it is unclear exactly what testimony they refer to in their Motion.<sup>69</sup> In their Motion, Ratepayers and Staff cite to page 47, line 12 where there is no objection; rather, it is Ms. Allen's attempt to describe WOWSC property.<sup>70</sup> However, they also cite to page 48, line 17 where the ALJ sustained WOWSC's objection to Ms. Allen's question regarding the 6.19 acre property referenced in Ratepayers Offer of Proof No. 1.<sup>71</sup>

As discussed above, Mr. Burriss explained that a pending lawsuit precluded WOWSC from selling the 6.19 acres.<sup>72</sup> Moreover, for purposes of the current rate appeal and WOWSC's ultimate decision to raise its rates, the value of WOWSC property and the Board's decision to retain the property or its ability to sell it is highly attenuated. As such, this testimony does not relate to a fact of consequence and, therefore, is irrelevant.<sup>73</sup> Accordingly, the ALJs must deny Ratepayers' and Staff's Motion to reconsider this evidentiary ruling.

**K. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Nelson Testimony, 12/1/22 [sic] Hearing Transcript at page 134, lines 6-14; page 134, lines 15-25; and page 135, lines 1-19.**

The excluded testimony again relates to the Double F lawsuit.<sup>74</sup> However, the ALJ allowed Ms. Allen to make an offer of proof regarding these questions, which she did as Ratepayers' Offer

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<sup>67</sup> *Id.* at 63:2-4.

<sup>68</sup> 16 TAC § 22.221 (2022).

<sup>69</sup> Ratepayers and Staff's Amended Agreed Motion at 6 (Oct. 26, 2022).

<sup>70</sup> *Id.*; TR. 47:12 (Burriss Cross) (Dec. 1, 2021).

<sup>71</sup> Tr. 48:2-17 (Burriss Cross) (Dec. 1, 2021).

<sup>72</sup> *Id.* at 88:18-21.

<sup>73</sup> Tex. R. Evid. Rule 401; 16 TAC § 22.221.

<sup>74</sup> Tr. 134:6-25, 135:1-19 (Nelson Cross) (Dec. 1, 2021).

of Proof No. 2.<sup>75</sup> As such, as discussed above, this testimony is highly speculative and inappropriately equates to attorney testimony.<sup>76</sup> Additionally, as established in the record, WOWSC was successful in this lawsuit and all WOWSC Directors other than Dana Martin have been dismissed.<sup>77</sup> Therefore, this testimony is unduly repetitious. Accordingly, the ALJs must deny Ratepayers' and Staff's Motion to reconsider this evidentiary ruling.

**L. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Nelson Testimony, 12/1/22 [sic] Hearing Transcript at page 136, lines 7-13 and page 137, lines 6-20.**

Although Ratepayers and Staff cite to two distinct excluded testimonies, they both again relate to the Double F lawsuit.<sup>78</sup> The testimony at page 136, lines 7-13, concerns a question that merely asks whether there was a petition and intervention filed in the Double F lawsuit.<sup>79</sup> Ratepayers and Staff have already attempted to admit a copy of the petition, but WOWSC objects to the extent that we have not seen the document referred to as Exhibit 19.<sup>80</sup> Accordingly, as discussed above, WOWSC objects to Ratepayers' and Staff's Motion to reconsider this evidentiary ruling.<sup>81</sup>

The testimony at page 137, lines 6-20 relates to WOWSC's requested relief in the Double F lawsuit, specifically whether "the intervention... sought no monetary relief against the Company whatsoever."<sup>82</sup> Although Mr. Nelson testified that he did not know the answer to the questions asked, Ms. Allen provided this evidence in Ratepayers' Offer of Proof No. 2.<sup>83</sup> As such, as discussed above, this testimony is highly speculative and amounts to attorney testimony.<sup>84</sup> Accordingly, the ALJs must deny Ratepayers' and Staff's Motion to reconsider this evidentiary

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<sup>75</sup> *Id.* at 135:18-19, 237-38.

<sup>76</sup> *See* III(C), *infra*.

<sup>77</sup> WOWSC Ex. 3 at Attachment JG-20.

<sup>78</sup> Tr. 136:7-13, 137:6-20 (Nelson Cross) (Dec. 1, 2021).

<sup>79</sup> *Id.* at 136:7-13.

<sup>80</sup> *See* III(A), *infra*.

<sup>81</sup> *Id.*

<sup>82</sup> Tr. 137:6-20 (Nelson Cross) (Dec. 1, 2021).

<sup>83</sup> Tr 137: 10-12, 237:25, 238:1-9 (providing that "[t]he lawsuit did not seek, then or ever, any recovery against the Company in the form of any sort of damages or compensation of any kind").

<sup>84</sup> *See* III(C), *infra*.

ruling.

**M. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Nelson Testimony, 12/1/22 [sic] Hearing Transcript at page 161, lines 11-25; page 162, lines 1-25; and page 163, lines 8-16.**

Ratepayers and Staff again urge that the ALJs reconsider an evidentiary ruling regarding the Double F lawsuit.<sup>85</sup> However, as discussed above, WOWSC has provided ample evidence and testimony regarding the Double F lawsuit.<sup>86</sup> As such, the testimony is unduly repetitious and irrelevant; therefore, the ALJs must exclude it.<sup>87</sup>

Testimony cited at page 163, lines 8-16, relates to a potential deal between WOWSC legal counsel and a party in the Double F lawsuit following mediation.<sup>88</sup> Ratepayers and Staff have already requested that the ALJs reconsider its evidentiary ruling regarding this testimony.<sup>89</sup> As discussed above, this testimony is unduly repetitious<sup>90</sup> Accordingly, the ALJs must deny Ratepayers' and Staff's Motion to reconsider this evidentiary ruling.

**N. WOWSC objects to Ratepayers' and Staff's Motion to reconsider the evidentiary ruling regarding Nelson Testimony, 12/1/21 Hearing Transcript at page 164, lines 13-25.**

Ratepayers and Staff again urge the ALJs to reconsider an evidentiary ruling related to testimony regarding the Double F lawsuit, although it is unclear exactly what testimony they refer to in their Motion.<sup>91</sup> As for testimony cited at page 164, lines 1-19, WOWSC did not object to Ms. Allen's questions and, accordingly, they were answered by Mr. Nelson.<sup>92</sup>

Moreover, Ratepayers and Staff assert that WOWSC objected to this testimony as irrelevant; however, WOWSC objected to the last question cited on page 164 as speculative.<sup>93</sup> Specifically, Ms. Allen asked Mr. Nelson whether "[his] lawyers were busy during that time

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<sup>85</sup> Ratepayers and Staff's Amended Agreed Motion at 8 (Oct. 26, 2022).

<sup>86</sup> See, e.g., WOWSC Ex. 3 at Attachment JG-20; WOWSC Ex. 7.

<sup>87</sup> 16 TAC § 22.221.

<sup>88</sup> Tr. 163:8-16 (Nelson Cross) (Dec. 1, 2021).

<sup>89</sup> Ratepayers and Staff's Amended Agreed Motion at 5 (Oct. 26, 2022); See III(H), *infra*.

<sup>90</sup> See III(H), *infra*.

<sup>91</sup> Ratepayers and Staff's Amended Agreed Motion at 8 (Oct. 26, 2022).

<sup>92</sup> Tr. 164:1-19 (Nelson Cross) (Dec. 1, 2021).

<sup>93</sup> Ratepayers and Staff's Amended Agreed Motion at 8 (Oct. 26, 2022); Tr. 164:20-23 (Nelson Cross) (Dec. 1, 2021).

making a deal with Ms. Martin.”<sup>94</sup> Prior to this question, however, Mr. Nelson had informed Ms. Allen that he was unaware of any details regarding the Double F litigation during this timeframe.<sup>95</sup> As such, Mr. Nelson did not have “personal knowledge” to answer this question and, therefore, this testimony be denied under Rule 602. Accordingly, the ALJs must deny Ratepayers’ and Staff’s Motion to reconsider this evidentiary ruling.

**O. WOWSC objects to Ratepayers’ and Staff’s Motion to reconsider the evidentiary ruling regarding Nelson Testimony, 12/1/21 Hearing Transcript at page 165, lines 1-25.**

Ratepayers and Staff again urge the ALJs to reconsider an evidentiary ruling related to testimony regarding the Double F lawsuit.<sup>96</sup> However, Mr. Nelson answered Ms. Allen’s questions at issue. Specifically, Ratepayers and Staff request that the ALJs admit evidence regarding WOWSC legal counsel’s mediation efforts and a deed to WOWSC property.<sup>97</sup> As discussed above, the testimony is unduly repetitious and, therefore, must be excluded.<sup>98</sup> Moreover, for purposes of this rate appeal, extraneous evidence regarding WOWSC property is extremely attenuated. Accordingly, the ALJs must deny Ratepayers’ and Staff’s Motion to reconsider this evidentiary ruling.

## **V. CONCLUSION**

For the foregoing reasons, WOWSC respectfully requests that its objections to Ratepayers’ and Staff’s Motion to Reconsider Evidentiary Rulings be granted. WOWSC further requests that it be granted all other relief to which it is entitled.

Respectfully submitted,

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<sup>94</sup> Tr. at 164:20-21 (Nelson Cross) (Dec. 1, 2021).

<sup>95</sup> *Id.* at 164:13-19.

<sup>96</sup> Ratepayers and Staff’s Amended Agreed Motion at 8 (Oct. 26, 2022); Tr. 164:20-23.

<sup>97</sup> Tr. 165:1-25.

<sup>98</sup> 16 TAC § 22.221.



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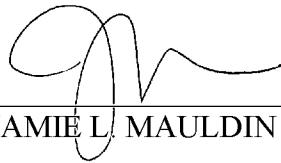
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**CERTIFICATE OF SERVICE**

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on November 10, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.



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JAMIE L. MAULDIN