



## Filing Receipt

**Received - 2022-12-08 02:29:31 PM**  
**Control Number - 50788**  
**ItemNumber - 238**

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

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

**RATEPAYERS' RESPONSE TO WINDERMERE OAKS WATER SUPPLY  
CORPORATIONS' OBJECTION TO RATEPAYERS  
MOTION FOR EXTENSION OF TIME**

**TO: THE HONORABLE CHRISTIAAN SIANO AND DANIEL WISEMAN,  
ADMINISTRATIVE LAW JUDGES:**

COMES NOW, The Representatives for the Ratepayers of Windermere Oaks Water Supply Corporation ("Ratepayer Representatives") and files this Response to Windermere Oaks Water Supply Corporations Objection to Ratepayers Motion for Extension of Time.

**I.     BACKGROUND**

1. On September 26, 2022, SOAH issued Order No. 23, Memorializing Prehearing Conference; Adopting Procedural Schedule requiring Ratepayers' Representatives to file Supplemental Direct Testimony by December 1, 2022.
2. On December 1, 2022, Ratepayers' Representatives filed Supplemental Direct Testimony of Robert Gaines and Kathryn E. Allen and provided service to all parties.
3. On December 2, 2022, Ratepayers' Representatives filed a Motion for Extension of Time citing internet connectivity issues which could not have been anticipated which caused uploading issues with the filings to the Public Utility Commission (PUC) Interchange.
4. On December 3, 2022, Windemere Oaks Water Supply Corporation (Windermere) filed their Objection to Ratepayers' Representatives Motion for Extension of Time

(Objection) citing that Ratepayers' Representatives Supplemental Testimony was not "timely filed".

5. In response thereto, Ratepayers' Representatives files this timely Response to Windermere's Objection to Ratepayers' Motion for Extension of Time.

## **II. RATEPAYERS' REPRESENTATIVES SUPPLEMENTAL TESTIMONY IS TIMELY FILED AND SHOULD BE ALLOWED**

In their Response to Ratepayers' Representatives Motion for Extension of Time, Windermere maintains that Expert Testimony from Robert Gaines and Kathryn E. Allen were not timely filed and should be denied on that basis. Windermere alleges that Ratepayers "*made six untimely filings in this case*"<sup>1</sup> which predates representation by Kathryn E. Allen. Without hesitation, Windermere accuses the Ratepayers' Representatives of having "*a pattern of late filings*" which is "*troubling in a rate appeal-such as this proceeding – that focuses solely on the necessity and reasonableness of legal fees.*"<sup>2</sup> Furthermore, Windermere accuses the Ratepayers' Representatives as the sole reason for additional legal expenses incurred by Windermere, alleging late filings have caused the "*WOWSC to draft and file additional pleadings and incur additional attorney fees.*"<sup>3</sup> While the Ratepayers' Representatives admit there have been a few late filings, clearly there has not been six late filings as cited in Windermere's Objection.<sup>4</sup> In the five filings referenced in their footnote 6, Windermere claims there were five Ratepayers' Representative filings after the 3:00 PM deadline. Two which they cite to include Ratepayers' Representatives Motion to Compel filed on September 15, 2020, and Ratepayers' Representatives Objections and Motions

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<sup>1</sup> WINDERMERE OAKS WATER SUPPLY CORPORATION'S OBJECTION TO RATEPAYERS' MOTION FOR EXTENSION OF TIME, Footnote 6.

<sup>2</sup> Id, See II Argument pg. 1 & 2

<sup>3</sup> Id

<sup>4</sup> See Footnote 1

to Strike the Rebuttal Testimony of Joe Gimenez and Grant Rabon filed on June 14, 2021. As shown on Attachment A, the September 15, 2020, Motion to Compel submission time was 2:57 PM<sup>5</sup> and as shown on Attachment B the June 14, 2021, Objections and Motions to Strike the Rebuttal Testimony of Joe Gimenez and Grant Rabon submission time was 2:57 PM,<sup>6</sup> thus these two filings were filed in accordance with TAC § 22.71(h). Although Ratepayers' Representatives were aware these two documents had been filed within the prescribed times when Windermere objected to these filings<sup>7</sup>, the Ratepayers' Representatives chose not to engage in additional filings to challenge Windermere's Objections which surely would include additional pleadings by Windermere that adds to the insurmountable legal expenses incurred since 2019 and which are mostly for legal services provided by the Lloyd Gosselink Law Firm. Recognizing that Windermere's legal attorneys have a rich history of representing various utilities at the PUC, one would surmise that they have experienced occasional lag time issues with submitting documents to the PUC Docket Interchange. If Windermere were truly concerned with keeping legal cost down in this Rate Appeal a prudent choice to avoid additional legal expenses could include reaching out to the Ratepayers' Representatives prior to filing Objections. Instead Windermere continues to saddle the Ratepayers of Windermere with

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<sup>5</sup> See Attachment A, Ratepayers' Motion to Compel, submission date 9/15/2020, time 2:59 PM, PUC Interchange time stamp – missing.

<sup>6</sup> See Attachment B, Ratepayers Objections and Motion to Strike Grant Rabon Rebuttal Testimony and Objections and Motion to Strike Joe Gimenez's Rebuttal Testimony, submission date 6/14/2021, time 2:57 PM, PUC Interchange time stamp PM 3:06.

<sup>7</sup> See WINDERMERE OAKS WATER SUPPLY CORPORATION'S OBJECTION TO RATEPAYERS' MOTION FOR EXTENSION OF TIME, Footnote 6 - WOWSC's Response to Ratepayers' Motion to Compel at 1 (Sept. 22, 2020); WOWSC's Response to Ratepayer Representatives' Objections and Motion to Strike Rebuttal Testimony of Joe Gimenez III at 1 (Jun. 21, 2021). Footnote 7, TAC § 22.71(h).

wasteful legal expenses which are contradictory to Windermere's previous statements of wanting to limit legal expenses in this Rate Appeal.<sup>8</sup>

While yes there is a pattern, the pattern seems to be associated with lags times from when the Ratepayers' Representatives filing is submitted to when a filing is posted in the Interchange (See attachments A-C).<sup>9</sup> Ratepayers' Representative have always endeavored to submit filings within the prescribed deadline of 3:00 PM as shown with their timely filing of Robert Gaines's Supplemental Testimony<sup>10</sup>. While there have been unavoidable rural connectivity issues there has also been lag time issues which do not always represent an accurate filing time that Windermere has argued are untimely filed, but which clearly show they are not as proven in Attachments A – D.

### III. CONCLUSION

WHEREFORE, Ratepayers respectfully request that Windermere's Objection to Ratepayers Motion for Late Filing be dismissed and the ALJ's consider the evidence provided by the Ratepayer's and their Motion be considered and granted and that such Supplemental Testimony be deemed timely filed.

Respectfully Submitted,

/s/ Kathryn E. Allen

Kathryn E. Allen

State Bar ID No. 01043100

*kallen@keallenlaw.com*

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<sup>8</sup> See Windermere's RESPONSE TO SOAH ORDER NO. 19, pg. 1, I. Recommendation Regarding How to Proceed.

<sup>9</sup> See Attachment C, Ratepayers' Representatives June 7, 2020, filing- Ratepayers Answer to Windermere Oaks Water Supply Corporation Third Request for Information, submission date, 06/07/2021, time 2:49 PM, PUC Interchange date stamp PM 3:19 and Attachment A and B.

<sup>10</sup> See Attachment D, Robert Gaines Supplemental Direct Testimony email, Filing Submitted on 12/21/2022, 3:00:44 PM.

THE LAW OFFICE OF KATHRYN E. ALLEN,  
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114 W. 7th St., Suite 1100  
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(512) 495-1400 telephone  
(512) 499-0094 fax

Attorneys for Ratepayers

**Certificate of Service**

I hereby certify that, unless otherwise ordered by the Presiding Officer, notice of this filing was provided to all parties of record via electronic mail on December 8, 2022.

/s/ Kathryn E. Allen  
Kathryn E. Allen  
State Bar ID No. 01043100  
*kallen@keallenlaw.com*

Attorneys for Ratepayers

Ratepayers' Representatives  
Attachments A-D

**WARNING: EXTERNAL SENDER. Always be cautious when clicking links or opening attachments. NEVER provide your user ID or password.**

Please find attached our motion to compel.

Tracking Number: TMYGGNIF

Filing Submitted on

9/15/2020 2:59:01 PM

Control Number

50788 RATEPAYERS APPEAL OF THE DECISION BY WINDERMERE OAKS WATER SUPPLY CORPORATION TO CHANGE WATER AND SEWER RATES

Filing Party

WOWSC Ratepayers

Filing Type

PLEADINGS

Description

Motion to Compel

Documents

Ratepayers' Motion to Compel.pdf

Addendum Included

No

Submitted By

Patti Flunker  
307 Coventry Road  
Spicewood, TX 78669  
(512) 699-1082  
patriciaflunker@yahoo.com



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



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

**WOWSC RATEPAYERS REPRESENTATIVES MOTION TO COMPEL WINDERMERE  
OAKS WATER SUPPLY CORPORATION TO RATEPAYERS  
FIRST REQUEST FOR INFORMATION**

TO THE HONORABLE JUDGE WISEMAN

COMES NOW, the Ratepayers Representatives of the Windermere Oaks Water Supply Corporation ("Ratepayers") and files this Motion to Compel in response to the Windermere Oaks Water Supply Corporation Objections to Ratepayers' First Set of Request of Information and, in support thereof, respectfully shows as follows:

**BACKGROUND**

On August 26, 2020, Ratepayers filed and served their first set of requests for information ("RFIs") on Windermere Oaks Water Supply Corporation ("WOWSC"). On September 8, 2020, WOWSC filed their Objections to the Ratepayers' First Request for Information. The specific objections to Ratepayers' RFI included 1-1, 1-2, 1-3, 1-7 and 1-12. Pursuant to 16 Tex. Admin. Code §22.144(e), the party seeking discovery must file a motion to compel no later than five working days after an objection is received. Five working days after Tuesday, September 8, 2020 is Tuesday, September 15, 2020; therefore, this motion has been filed timely by the Ratepayers.

## Flunker, Patricia

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**Subject:** FW: Filing for Docket 50788  
**Attachments:** Ratepayers Objections and Motion to Strike Grant Rabon Rebuttal Testimony.pdf; Ratepayers Objections and Motion to Strike Joe Gimenez's Rebuttal Testimony.pdf

**From:** Flunker, Patti  
**Sent:** Monday, June 14, 2021 2:59 PM  
**To:** 'Central Records' <[centralrecords@puc.texas.gov](mailto:centralrecords@puc.texas.gov)>  
**Subject:** Filing for Docket 50788

Please find attached our two filings for docket 50788.

### Tracking Number: FHNEGNSI

Filing Submitted on	( 6/14/2021 2:57:07 PM )
Control Number	50788 RATEPAYERS APPEAL OF THE DECISION BY WINDERMERE OAKS WATER SUPPLY CORPORATION TO CHANGE WATER AND SEWER RATES
Filing Party	Ratepayers
Filing Type	PLEADINGS
Description	Objections and Motions to Strike the Rebuttal Testimony of Joe Gimenez and Grant Rabon
Documents	Ratepayers Objections and Motion to Strike Grant Rabon Rebuttal Testimony.pdf Ratepayers Objections and Motion to Strike Joe Gimenez's Rebuttal Testimony.pdf

**Confidentiality Notice:** The information contained in this email message and any attachments may be privileged and may contain confidential information. If you have received this email in error, please immediately notify the sender and permanently delete the email and any attachments.

PUC DOCKET NO. 50788  
SOAH DOCKET NO. NO. 73-20-4071.WS

RECEIVED  
( 2021 JUN 14 PM 3:06 )  
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PUBLIC UTILITY COMMISSION  
FILING CLERK

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

**RATEPAYERS OF WINDERMERE OAKS WATER SUPPLY CORPORTION  
OBJECTIONS AND MOTION TO STRIKE TESTIMONY  
OF GRANT RABON**

**TO THE ADMINISTRATIVE LAW JUDGE:**

NOW COMES, Ratepayers of the Windermere Oaks Water Supply Corporation (Ratepayers) and files this objection to and motion to strike certain portions of Grant Rabon's rebuttal testimony. These objections are filed by the deadline established in SOAH Order No. 2 of June 14, 2021, and are therefore timely. In support, the Ratepayers would show the following:

**I. Standard of Review**

Under 16 TEX. ADMIN. CODE (TAC) § 22.221(a), the Texas Rules of Civil Evidence apply in contested case proceedings before the Public Utility Commission (Commission or PUC). The Ratepayers objects to provisions of Mr. Rabon's testimony based upon one or more of the following grounds:

**A. Expert Qualifications**

A court must exclude the opinion testimony of an expert witness who is not qualified to give an opinion by knowledge, skill, experience, training, or education. *See* Tex. R. Evid. 702; *Broders v. Heise*, 924 S.W.2d 148, 153--54 (Tex. 1996). An expert must have a higher degree of knowledge, skill, experience,

**Flunker, Patricia**

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**Subject:** FW: PUC Filing Submission Confirmation: UGUHPJSB

**Tracking Number: UGUHPJSB**

**Filing Submitted on** (6/7/2021 2:49:13 PM)

**Control Number** 50788 RATEPAYERS APPEAL OF THE DECISION BY WINDERMERE OAKS WATER SUPPLY CORPORATION TO CHANGE WATER AND SEWER RATES

**Filing Party** Ratepayers

**Filing Type** PLEADINGS

**Description** Ratepayers Answers to the Windermere Oaks Water Supply Corporation Third Request for Information

**Documents** Ratepayers Answers to the Windermere Oaks Water Supply Corporation Third Request for Information.pdf

**Addendum Included** No

**Submitted By** Ratepayers  
307 Coventry Road  
Spicewood, TX 78669  
5126991082  
[ratepayersrepjosiefuller@gmail.com](mailto:ratepayersrepjosiefuller@gmail.com)

**PUC DOCKET NO. 50788**  
**SOAH DOCKET NO. NO. 73-20-4071.WS**

FILED  
2021 JUN -7 (PM 3:19)  
PUC

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

**RATEPAYERS ANSWERS TO WINDERMERE OAKS WATER SUPPLY**  
**CORPORATION THIRD REQUEST FOR INFORMATION**

COMES NOW, the Ratepayers Representatives of the Windermere Oaks Water Supply Corporation ("Ratepayers") and files these answers to Windermere Oaks Water Supply Corporation (WOWSC) Third Request for Information which was received on May 19, 2021. Pursuant to 16 Tex. Admin. Code § 22.144(c), a "party upon whom a request is served shall serve a full written response within 20 days after receipt of the request." Twenty days after May 19, 2021 is Monday, June 7, 2021, therefore, the Ratepayers' responses the WOWSC Third Request for Information is timely filed.

Sincerely,

*Josie Fuller*

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Josie Fuller  
Ratepayer Representative  
328 Coventry Road  
Spicewood, Texas 78669  
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Ratepayers repjosiefuller@gmail.com

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----- Forwarded Message -----

From: "noreply@puc.texas.gov" <noreply@puc.texas.gov>  
To: "patriciaflunker@yahoo.com" <patriciaflunker@yahoo.com>  
Sent: Thursday, December 1, 2022 at 03:10:57 PM CST  
Subject: PUC E-Filing Received: WTCFYZWG

Hello,

We have received your E-Filing. You will receive an E-Filing Confirmation email shortly.

## Tracking Number: WTCFYZWG

Filing Submitted  
on 12/1/2022 3:00:44 PM

Control Number	50788	RATEPAYERS APPEAL OF THE DECISION BY WINDERMERE OAKS WATER SUPPLY CORPORATION TO CHANGE WATER AND SEWER RATES
Filing Party	Ratepayer Representatives	
Filing Type	TESTIMONY	
Description	Ratepayer Representatives Supplemental Direct Testimony of Robert Gaines	
Documents	Ratepayer Representatives Supplemental testimony of Robert Gaines.pdf	
Addendum Included	No	
Submitted By	Patti Flunker <a href="mailto:patriciaflunker@yahoo.com">patriciaflunker@yahoo.com</a>	

Please contact Central Records if you have any questions. Thanks!

Central Records  
Public Utility Commission of Texas  
[centralrecords@puc.texas.gov](mailto:centralrecords@puc.texas.gov) | 512-936-7180