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**SOAH DOCKET NO. 473-20-4071.WS
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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
REPLY TO RATEPAYERS’ RESPONSES AND MOTION TO STRIKE THE SECOND
SUPPLEMENTAL DIRECT TESTIMONY OF KATHRYN E. ALLEN**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, Windermere Oaks Water Supply Corporation (WOWSC) and files this Reply to Ratepayers’ Responses to Windermere’s Objections and Motion to Strike the Supplemental Direct Testimonies of Robert Gaines and Kathryn E. Allen, and Motion to Strike the Second Supplemental Direct Testimony of Kathryn E. Allen. In support thereof, WOWSC shows the following:

I. PROCEDURAL HISTORY AND MOTION TO STRIKE FOR UNTIMELINESS

On December 29, 2022, Ratepayers filed its Response to Windermere’s Objection and Motion to Strike the Supplemental Testimony of Robert Gaines and Response to Windermere’s Objection and Motion to Strike Supplemental Direct Testimony of Kathryn E. Allen & Supplemental Testimony.¹ Pursuant to 16 Tex. Admin. Code § 22.78, a responsive pleading must be filed within five working days after receipt of the pleading to which the response is made.² Therefore, this Reply is timely filed.

SOAH Order No. 23 established December 1, 2022, as the deadline for Ratepayers to file supplemental direct testimony.³ Nevertheless, on December 29, 2022, Ratepayers attempted to file Kathryn E. Allen’s “Second Supplemental Direct Testimony” as an attachment to Ratepayers’ Response to Windermere’s Objections and Motion to Strike Supplemental Direct Testimony of

¹ Ratepayers’ Response to Windermere’s Objection and Motion to Strike the Supplemental Testimony of Robert Gaines (Dec. 29, 2022) (Ratepayers’ Response to Gaines); Ratepayers’ Response to Windermere’s Objections and Motion to Strike Supplemental Direct Testimony of Kathryn E. Allen & Supplemental Testimony (Dec. 29, 2022) (Ratepayers’ Response to Allen).

² 16 Tex. Admin. Code (TAC) § 22.78.

³ SOAH Order No. 23 – Memorializing Prehearing Conference; Adopting Procedural Schedule at 3 (Sept. 26, 2022).

Kathryn E. Allen.⁴ Moreover, Ratepayers did not seek an extension or attempt to establish that the “need for extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.”⁵ Its attempt to file testimony as an attachment to a Response—nearly a month after the relevant filing deadline—is highly inappropriate. Accordingly, WOWSC objects and moves to strike the Second Supplemental Direct Testimony of Kathryn E. Allen based on untimeliness.

II. REPLY TO RATEPAYERS’ RESPONSE TO WINDERMERE’S OBJECTION AND MOTION TO STRIKE THE SUPPLEMENTAL DIRECT TESTIMONY OF ROBERT GAINES

WOWSC maintains its position that the Supplemental Direct Testimony of Robert Gaines is irrelevant, confuses the issue, and unreliable. Mr. Gaines composed his testimony of sporadic, incomplete notes that are subject to a number of interpretations. The testimony is impossible to understand and, as such, does not assist the ALJs determine whether WOWSC’s 2019 rates are reasonable. Accordingly, Ratepayers’ assertions that Mr. Gaines’ testimony is relevant are misplaced.⁶ And despite Ratepayers’ bald assertion that Mr. Gaines, as a CPA, may appropriately testify to WOWSC’s “nefarious acts,”⁷ testimony regarding “nefarious acts” is inherently conjectural and, therefore, inadmissible expert testimony. Thus, Ratepayers’ Response to Windermere’s Objections and Motion to Strike the Supplemental Direct Testimony of Robert Gaines is without merit and should be rejected.

III. REPLY TO RATEPAYERS’ RESPONSE TO WINDERMERE’S OBJECTIONS AND MOTION TO STRIKE SUPPLEMENTAL DIRECT TESTIMONY OF KATHRYN E. ALLEN

WOWSC also maintains its position that the Supplemental Direct Testimony of Kathryn Allen is irrelevant, speculative due to a lack of personal knowledge, and inadmissible hearsay. In the alternative, if SOAH determines that Ms. Allen’s Supplemental Direct Testimony is expert testimony, WOWSC maintains its position that the testimony is irrelevant and unreliable. Nothing in Ratepayers’ Response to Windermere’s Objections and Motion to Strike the Supplemental

⁴ Ratepayers’ Response to Allen at 15-21.

⁵ 16 TAC § 22.4(b).

⁶ Ratepayers’ Response to Gaines at 2-4.

⁷ *Id.* at 4-5.

Direct Testimony of Kathryn E. Allen suggests otherwise. Rather, it again focuses on extraneous details unrelated to the current rate appeal and alleges various procedural issues in Cause No. 48292.⁸ Moreover, without basis, it mischaracterizes WOWSC's Objections as "blanket" challenges to evidence on topic areas or to blocks of testimony."⁹ This assertion is false: as required by Texas law, WOWSC applied various evidentiary rules to specific lines of Ms. Allen's testimony.¹⁰ Accordingly, Ratepayers' Response to Windermere's Objections and Motion to Strike the Supplemental Direct Testimony of Kathryn E. Allen is without merit and should be rejected.

IV. CONCLUSION

For the foregoing reasons, WOWSC respectfully requests that the ALJs reject Ratepayers Responses to Windermere's Objections and Motions to Strike the Supplemental Direct Testimonies of Robert Gaines and Kathryn E. Allen and grant WOWSC's Objections and Motions to Strike the Supplemental Direct Testimonies of Robert Gaines and Kathryn E. Allen. Additionally, WOWSC respectfully requests that the ALJs grant WOWSC's Motion to Strike the Second Supplemental Direct Testimony of Kathryn E. Allen. WOWSC also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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⁸ Ratepayers' Response to Allen at 3-4, 7-8.

⁹ *Id.* at 12.

¹⁰ Windermere Oaks Water Supply Corporation's Objections and Motion to Strike the Supplemental Direct Testimony of Kathryn E. Allen at 3-4, 5, 6-8 (Dec. 15, 2022).

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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 January 4, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN