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^_PIA^_ Request 6/14/19

From Mister Flunker (dflunker@gmail.com)
To 1129jg@gmail.com
Cc normanrmorse@gmail.com; brownsandniners@aol.com; dbertinojr@me.com; u2torche@yahoo.com;
mgershon@lglawfirm.com; hging@lglawfirm.com; tbrewer@lglawfirm.com
Date Friday, June 14, 2019, 10:20 PM CDT

Mr Gimenez,

I am respectfully requesting per the TPIA, the draft minutes (as soon as they are available) for the 6/12/19 WOWSC meeting.

Please simply honor my request per the TPIA. The Texas legislature has made this process simple and easy for all, there is no need for you to make lemonade.

Regards,

Mr. Flunker

--

As the Texas Constitution states, "All political power is inherent in the people," and that means a free government should work for the people, not the other way around.

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^_PIA^_ 6/20/19

From: Mister Flunker (dflunker@gmail.com)
To: 1129jgg@gmail.com
Cc: mgershon@lglawfirm.com, brownsandniners@aol.com, dbertinojr@me.com, normanrmorse@gmail.com, u2torche@yahoo.com
Date: Thursday, June 20, 2019, 07:11 PM CDT

Mr Gimenez,

Per the TPIA, I am respectfully requesting any follow up response letter from the insurance carrier to Jose De le Fuentes letter dated 5/31/19 and any other correspondence regarding cause # 48292 since the date of 5/31/19.

Regards,

Mr Flunker

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As the Texas Constitution states, "All political power is inherent in the people," and that means a free government should work for the people, not the other way around.

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^_PIA^_ 6/21/19

From: Mister Flunker (dflunker@gmail.com)
To: 1129jg@gmail.com
Cc: brownsandniners@aol.com, normanrmorse@gmail.com, dbertinojr@me.com, u2torche@yahoo.com, mgershon@lglawfirm.com, hging@lglawfirm.com
Date: Friday, June 21, 2019, 11:05 PM CDT

Mr Gimenez,

As follow up to my 6/14/19 TPIA request, I am respectfully requesting per the TPIA, the draft minutes for the 6/12/19 WOWSC meeting. I do understand that the Texas Public Information Act and opinions of the Attorney General only applies to information already in existence and does not require the water supply corporation to inform me or make information available when it comes into existence after the date of my request, however in the interest of full transparency, I would hope that you would simply make that information available to the community as soon as it is available. If this information is not available, please let me know when this information may be available.

Your cooperation is much appreciated and thank you for your service.

Regards,

Mr. Flunker

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As the Texas Constitution states, "All political power is inherent in the people," and that means a free government should work for the people, not the other way around.

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^_PIA^_6/24/2019

From: Mister Flunker (dflunker@gmail.com)
To: 1129jjg@gmail.com
Cc: dbertinojr@me.com, brownsandniners@aol.com, normanrmorse@gmail.com, u2torche@yahoo.com, mgershon@lglawfirm.com
Date: Monday, June 24, 2019, 04:48 PM CDT

Mr. Gimenez,

Per the TPIA I am respectfully requesting the email that was omitted in my previous PIA request (see snip). The reference for this omitted email is as follows and is below in the snip, Ms Martin sent an email to WOWSC Directors Dorothy Taylor, Bob Mebane and Jeff Hagar on July 27, 2017 at 9:18 pm. Please furnish me a copy of this email. Do you understand this request?

Regards,

Mr Flunker

"Truth is treason in an empire of lies." - George Orwell

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Re: FW: ^_PIA^_ Request 6/5/19

From: Mister Flunker (dfunker@gmail.com)
To: 1129jig@gmail.com
Cc: normanrmorse@gmail.com, brownsandniners@aol.com, dbertinojr@me.com, mgershon@lglawfirm.com, u2torche@yahoo.com
Date: Wednesday, June 26, 2019, 05:35 PM CDT

Mr Gimenez,

Thanks for all the information thus far, it is greatly appreciated. You said that you consider this request closed, however there is a missing document. In my request I asked for any and all correspondence with **(both to and from WOWSC or its agents to Insurer)** the D&O insurance provider regarding the petition to remove Dana Martin. The letter dated March 23, 2017 was a response letter sent to Dana Martin so clearly there had to be a letter sent by Dana Martin to APR Claims/Insurance provider to elicit the March 23, 2017 letter. If you would be so kind as to send me a copy of that correspondence it would be much appreciated.

Regards,

Mr Flunker

On Wed, Jun 26, 2019 at 10:57 AM Joe Gimenez <1129jig@gmail.com> wrote:

Mr. Flunker,

The responsive document, dated March 23, 2017 from the insurance company, is attached. There is no letter dated March 22, 2017 as was indicated in the January 2018 letter from the insurance company. We believe this one-day date discrepancy to have been an error on their part.

Other information requests related to this PIA inquiry were provided yesterday. We consider this request closed.

Regards,
Joe

----- Forwarded message -----

From: **Joe Gimenez** <1129jig@gmail.com>
Date: Wed, Jun 19, 2019 at 8:57 PM
Subject: Fwd: FW: PIA Request 6/5/19
To: Mister Flunker <dfunker@gmail.com>

Mr. Flunker,

This email follows up on your email request below dated Wednesday, June 5th at 10:38 AM. Please see the seven attachments to this email that are responsive to your request.

I certify that Windermere Oaks Water Supply Corporation needs additional time to finish reviewing its files to ensure you are being provided everything responsive to your request. I will follow up with you no later than Wednesday, June 26th at 5:00 pm with any additional responsive documents that are located.

Warm regards,

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Joe Gimenez

713.478.8034

From: Mister Flunker <dflunker@gmail.com>

Sent: Wednesday, June 5, 2019 10:38 AM

To: joe gimenez <1129jgg@gmail.com>

Cc: Brownsandniners <brownsandniners@aol.com>; David A Bertino Jr <dbertinojr@me.com>; Norman Morse <normanmorse@gmail.com>; Bill Earnest <u2torche@yahoo.com>; Mike Gershon <mgershon@lglawfirm.com>; Hannah Ging <hging@lglawfirm.com>

Subject: PIA Request 6/5/19

Mr. Gimenez,

Pursuant to the **Public** Information Act, I am respectfully requesting any and all correspondence with (both to and from WOWSC or its agents to Insurer) the D&O insurance provider regarding the petition to remove Dana Martin, TOMA Integrity suit, etc. I am listing points of reference from the letter dated January 30th 2018, given to me per PIA Request dated 5/17/19, so as to better help target time frames of correspondence with the insurance carriers.

"This matter was originally submitted to us on January 24, 2017."

"The matter was disclaimed under both coverage parts in a letter to you dated March 22, 2017."

Do you understand this request?

Thank you for your prompt attention to this matter.

Regards,

Mr. Flunker

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As the Texas Constitution states, "All political power is inherent in the people," and that means a free government should work for the people, not the other way around.

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As the Texas Constitution states, "All political power is inherent in the people," and that means a free government should work for the people, not the other way around.

"Truth is treason in an empire of lies." - George Orwell

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Re: ^_PIA^_ 6/20/19

From: Mister Flunker (dflunker@gmail.com)
To: 1129jgg@gmail.com
Cc: mgershon@lglawfirm.com, brownsandniners@aol.com, dbertinojr@me.com; normanrmorse@gmail.com; u2torche@yahoo.com; hging@lglawfirm.com
Date: Monday, July 8, 2019, 03:37 PM CDT

Mr Gimenez,

With all due respect, my request was exceedingly simple and its clear that you are doing this intentionally to slow down my request or keep the information from me. I expect this to be honored today.

I want any communication, correspondence, either way, to or from, WOWSC and the insurance carrier since 5/31/19.

Regards,

Mr Flunker

On Mon, Jul 8, 2019 at 3:21 PM Joe Gimenez <1129jgg@gmail.com> wrote:

Mr. Flunker,

The purpose of this email is to ask you to clarify your request submitted to Windermere Oaks WSC under the Texas Public Information Act which was submitted after office hours on June 20, 2019 and processed by WOWSC the following day on June 21, 2019. Pursuant to Section 552.222(b) of the Texas Government Code, WOWSC hereby asks that you provide clarification regarding the information you are requesting.

Specifically, you requested "any follow up response letter from the insurance carrier to Jose De le Fuentes [sic] letter dated 5/31/19 and any other correspondence regarding cause # 48292 since the date of 5/31/19."

WOWSC is unclear on the scope of your request. Would you please clarify whether "any other correspondence regarding cause # 48292" means (1) any other such correspondence between WOWSC's insurance carrier and Mr. de la Fuente, (2) any such correspondence between the insurance carrier and WOWSC, or (3) any other such correspondence among/between *any* party regarding Cause No. 48929 within the timeframe you've specified?

In accordance with the Texas Public Information Act, we must receive a written response within 61 days from the date of this email or your request will be considered withdrawn.

Warm regards,

Joe Gimenez

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On Sun, Jul 7, 2019 at 4:21 PM Mister Flunker <dfunker@gmail.com> wrote:
Mr. Gimenez,

FYI, this was due to me Friday 7/5/19.

I am looking forward to my request being honored tomorrow.

Regards,

Mr. Flunker

On Thu, Jun 20, 2019 at 7:10 PM Mister Flunker <dfunker@gmail.com> wrote.
Mr Gimenez,

Per the TPIA, I am respectfully requesting any follow up response letter from the insurance carrier to Jose De le Fuentas letter dated 5/31/19 and any other correspondence regarding cause # 48292 since the date of 5/31/19.

Regards,

Mr Flunker

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As the Texas Constitution states, "All political power is inherent in the people," and that means a free government should work for the people, not the other way around.

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As the Texas Constitution states, "All political power is inherent in the people," and that means a free government should work for the people, not the other way around.

"Truth is treason in an empire of lies." - George Orwell

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As the Texas Constitution states, "All political power is inherent in the people," and that means a free government should work for the people, not the other way around.

"Truth is treason in an empire of lies." - George Orwell

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^_PIA^_ Request 7/15/19

From: Mister Flunker (dflunker@gmail.com)
To: 1129jg@gmail.com
Cc: brownsandniners@aol.com, dbertinojr@me.com, normanrmorse@gmail.com, u2torche@yahoo.com, mgershon@lglawfirm.com
Date: Monday, July 15, 2019, 08:59 AM CDT

Mr Gimenez,

I am respectfully requesting per the TPIA copies of all TPIA request that the WOWSC has received from 3/9/19 to current. You can simply scan them and send them to me via email.

Do you understand this request?

Regards,

Mr Flunker

--

"Truth is treason in an empire of lies." - George Orwell

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Conflict of Interest Policy

From patti flunker (patriciaflunker@yahoo.com)

To jgimeneziii@yahoo.com

Date Tuesday, July 16, 2019, 06:18 PM CDT

Mr. Gimenez,

This is an open records request as a **WSC Member** for the current copy of the board adopted conflict of interest policy (required by our bylaws) along with each current board members signature page and date signed affirming they will abide by this policy.

Please let me know when I can expect these documents and how much this request will cost and I will gladly drop a check in the drop box. Additionally, I prefer to receive a copy of this request via email.

Also, for clarity I would like to know what your title is for receiving open records request, is it public information officer? Thank you

Sincerely,

Patti Flunker

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joe.gimenez <1129jjg@gmail.com>

Fw: New Website Contact - Minutes from last board meeting

George Burriss <watermgmt@yahoo.com>
To: Joe Gimenez <1129jjg@gmail.com>

Thu, Jul 18, 2019 at 11:05 AM

Joe, Lori sent this to me. This lady lives on Bedford just northeast of the pavilion. I have not called her back, but would be happy to, if that would be the best approach. George.

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

From: WOWSC billing <windermerewater@gmail.com>
To: GEORGE BURRISS <watermgmt@yahoo.com>
Sent: Thursday, July 18, 2019, 08:00:09 AM CDT
Subject: Re: New Website Contact - Minutes from last board meeting

On Wed, Jul 17, 2019 at 11:16 AM Anita Dismuke <no-reply@ruralwaterimpact.com> wrote:

You have received the following Customer Contact Submission Form from your website.

Date: Jul 17, 2019 11:16:53AM

Contact Name Anita Dismuke

Email anita.hillcountryliving@gmail.com

Phone 830-637-9129

Account Number.

Department. Customer Support, New Service or Billing

Subject: Minutes from last board meeting

Comments:

I live at 412 Bedford Dr. I am requesting a copy of the board members approval that the board elected to pay Joe Menendez. (Don't know if I have the correct spelling). There is a petition going around and I would like to state that this was all illegal and get over it. I am not taking a stand, just would like to have correct answers so I talk the talk that is the truth. Thank you, Anita Dismuke 412 Bedford Dr. Spicewood, TX 78669

Sent from wowsc.org

Sender's IP address 70.112.135.160

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Have a wonderful day!

Sincerely,
Lori Cantrell
WOWSC billing Department
(830)598-7511x1

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joe.gimenez <1129jjg@gmail.com>

Request to Inspect and Copy Corporate Books and Records

Rene Ffrench <lrffrench@gmail.com>

Fri, Jul 19, 2019 at 12:09 AM

To: joe.gimenez <1129jjg@gmail.com>, David A Bertino Jr <dbertinojr@me.com>, Brownsandniners <brownsandniners@aol.com>, Norman Morse <normanmorse@gmail.com>, Bill Earnest <u2torche@yahoo.com>

Mr. Gimenez, et.al.,

Based upon receiving the WOWSC Customer newsletter dated July 10, 2019, under the provisions of Article 12 Section 3 of the WOWSC By-Laws, I am requesting to inspect and make copies of only the following corporate books and records with my agent(s). The listed documents are a subset of "All books and records of the corporation" as is written in your recorded by-laws. I will bring equipment to make the copies so the WOWSC will not have to bear this expense. If electronic copies are more convenient than providing paper originals of the requested documents for copying, I will bring electronic media to record those documents. This inspection should occur at the principal office of WOWSC within the next 15 days during normal office hours.

Documents of interest are:

From 2017:

2017 Closing Reports and Documents (P & L, Balance Sheet, Asset Lists, etc.), 2017 original budget and performance to that budget at year end and all Tax documents filed for 2017.

From 2018:

The 2018 Closing Reports and Documents (P & L, Balance Sheet, Asset Lists, etc.), 2018 Bank Statements, 2018 Chart of Accounts, 2018 original budget and performance to that budget at year end, 2018 Expense Summary by each WOWSC Supplier, a list of bad debts and write-offs for 2018, and all tax documents filed for 2018.

From 2019:

The 2019 Monthly Reports and Documents, 2019 Bank Statements, 2019 Chart of Accounts, 2019 original budget and performance to that budget Year to Date (YTD), 2019 YTD Expense Summary by each WOWSC Supplier, a list of all bad debts and write-offs for 2019 YTD.

Sincerely,
L. R. Ffrench

lrffrench@gmail.com
+1-512-547-7164

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joe gimenez <1129jjg@gmail.com>

Re: Conflict of Interest Policy

patti flunker <patriciaflunker@yahoo.com> Mon, Jul 22, 2019 at 5:23 PM
 To: Joe Gimenez <jgimeneziii@yahoo.com>, "1129jjg@gmail.com" <1129jjg@gmail.com>
 Cc: Norman Morse <normanrmorse@gmail.com>, "David A. Bertino Jr" <dbertinojr@me.com>, "VicePresident@wowsc.org" <VicePresident@wowsc.org>, "SecretaryTreasurer@wowsc.org" <SecretaryTreasurer@wowsc.org>

Mr. Gimenez,

On July 16, 2019, I submitted a Texas Pubic Information Request for the Windermere Oaks Water Supply Corporation Conflict of Interest Policy which is required by our bylaws in **Article 8 – Directors, #18 Conflict of Interest** which states that the “board of directors shall adopt and maintain a conflict of interest policy designed to promote the business of the Corporation and serve the interest of the membership”.

Currently, I have not received any communication from you on my request.

Furthermore, I understand you have decided to respond at your discretion to answer certain public information request and not answer others, so to speak picking and choosing who you would like to respond to and who you are ignoring. I find this interesting, especially now that the ratepayers are paying you a salary of \$5,000 a year to be in charge of all public information request for the water supply corporation.

I understand you have received a handful of financial records request from various ratepayers, please let me direct you to the language in the Windermere Oaks Water Supply Corporation bylaws, **Article 12 – Miscellaneous, Item #3, Books and Records** which implies that the “Corporation shall keep correct and complete books and records at the corporation’s office and which may be inspected by any member or his agent or attorney for any purpose at any reasonable time when so requested in writing.” I understand that you are asserting that financial request will take several hours even upwards to 15 hours plus to fulfill as this information is not readily available. Once again, please let me refer you to the bylaws **Article 12, Miscellaneous, Item #3** on your requirements to keep updated financial documents at the WSC office for inspection. This should be a simple request to fulfill and not require the many hours you claim it will take.

And while we are on the subject of bylaws, please let me point you to **Article 7 – Members, item #2 Annual Meeting** which states “the annual meeting of the members for the election of directors and for the transaction of all other business which may come before the meeting shall be held on the first Saturday in February each year....”

The WSC has not been in compliance with our bylaws when holding our annual

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meeting on this prescribed date for several years now. I have mentioned this noncompliance bylaw issue to George Burris and the previous President David Bertino, however it simply fell on deaf ears. As you know you have signed an affirmation prior to running for the WSC board that you have read and will comply with our bylaws and governing documents. So, moving forward I expect you will be complying with our bylaws when it comes to holding the annual meeting in February.

Furthermore, while we're talking about non-compliance issues with the bylaws, on page 19, under **Article 10 – Certificates of Memberships, Etc., item 6, Membership Fees** specifies a membership fee of \$350.000. However, the WSC is currently charging a board approved membership fee of \$402.50. Once again, you have signed an affirmation that you will comply with our bylaws and governing documents and on April 15, 2019 you signed a resolution to approve the new tariff and all the new rates without changing the bylaws to reflect this new membership fee. So, we are currently charging a membership fee in inconsistent with our bylaws. Also, please keep in mind that anything in the bylaws affecting the membership such as membership fees cannot be changed without a vote of the membership.

Finally, please review the Windermere Oaks Water Supply Corporation Articles of Incorporation which can be found on the Windermere Oaks Water Supply Corporation website at https://www.wowsc.org/documents/778/WOWSC_Articles_of_Incorporation.pdf. **Article 6 – Restrictions and Requirements** regarding directors and officers being paid states that, "no income of the Corporation may be distributed to the members, directors or officers in these roles" So, please inform me where is the \$5,000 coming from to pay you for the public information duties as a volunteer of our WSC?

Also, there have been many Texas Open Meetings Act and Public Information Act amendments from the 86th Legislative Session including the general public addressing the board prior to any action item listed on an agenda, I recommend you make yourself aware of all these new changes which are effective September 1, 2019.

When can I expect a copy of my earlier public information request?

Sincerely,

Patti Flunker

On Tuesday, July 16, 2019, 06:18:15 PM CDT, patti flunker <patriciaflunker@yahoo.com> wrote

Mr. Gimenez,

This is an open records request as a **WSC Member** for the current copy of the board adopted conflict of interest policy (required by our bylaws) along with each current board members signature page and date signed affirming they will abide by this policy.

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Please let me know when I can expect these documents and how much this request will cost and I will gladly drop a check in the drop box. Additionally, I prefer to receive a copy of this request via email.

Also, for clarity I would like to know what your title is for receiving open records request, is it public information officer? Thank you

Sincerely,

Patti Flunker

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joe.gimenez <1129jjg@gmail.com>

PIA Request 7/24/19

Mister Flunker <dflunker@gmail.com>

Wed, Jul 24, 2019 at 9:48 AM

To: joe.gimenez <1129jjg@gmail.com>

Cc: Brownsandniners <brownsandniners@aol.com>, David A Bertino Jr <dbertinojr@me.com>, Norman Morse <normanmorse@gmail.com>, Bill Earnest <u2torche@yahoo.com>, Mike Gershon <mgershon@lglawfirm.com>

I am respectfully requesting an emailed copy of the current managers contract.

Do you understand this request?

Regards,

Mr Flunker

--

"Truth is treason in an empire of lies." - George Orwell

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joe gimenez <1129jjg@gmail.com>

PIA Request 7/24/19 #2

Mister Flunker <dflunker@gmail.com>

Wed, Jul 24, 2019 at 4:58 PM

To: joe gimenez <1129jjg@gmail.com>

Cc: Brownsandniners <brownsandniners@aol.com>, Norman Morse
<normanrmorse@gmail.com>, Bill Earnest <u2torche@yahoo.com>, David A Bertino Jr
<dbertinojr@me.com>, Mike Gershon <mgershon@lglawfirm.com>

I am respectfully requesting an emailed copy of the current Corix contract.

Do you understand this request?

Regards,

Mr Flunker

--

"Truth is treason in an empire of lies." - George Orwell

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joe gimenez <1129jjg@gmail.com>

PIA 7/25/19

Mister Flunker <dflunker@gmail.com>

Thu, Jul 25, 2019 at 2:50 PM

To: joe gimenez <1129jjg@gmail.com>

Cc: Brownsandniners <brownsandniners@aol.com>, David A Bertino Jr
<dbertinojr@me.com>, Norman Morse <normanrmorse@gmail.com>, Bill Earnest
<u2torche@yahoo.com>, Mike Gershon <mgershon@lglawfirm.com>

I am respectfully requesting the draft minutes for the 7/10/19 WOWSC meeting.

Regards,

Mr. Flunker

--

"Truth is treason in an empire of lies." - George Orwell

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joe gimenez <1129jjg@gmail.com>

PIA Request 8/1/19

Mister Flunker <dfunker@gmail.com>

Thu, Aug 1, 2019 at 8:00 AM

To: joe gimenez <1129jjg@gmail.com>

Cc: George Burriss <watermgmt@yahoo.com>, Brownsandniners <brownsandniners@aol.com>, David A Bertino Jr <dbertinojr@me.com>, Norman Morse <normanrmorse@gmail.com>, Bill Earnest <u2torche@yahoo.com>, Mike Gershon <mgershon@lglawfirm.com>

I am respectfully requesting a copy of the current contract between Water Management Inc and Corix. The WOWSC board unanimously approved of the entering into this contract (see attached minutes).


Discussion was held by Board on entering into a contract with Corix Utilities for repair and maintenance of WOWSC Water and Sewer System. George Burriss reviewed with the board the proposal from Corix. Pat Mulligan made a motion that WOWSC BOD approve that George Burriss (Water Management Inc.) enter into a contract with Corix to provide Operation and repair and maintenance to WOWSC contingent upon our attorney approving the contract. Seconded by Mike Madden Unanimous approval by board members present.

Regards,

Mr Flunker

--

"Truth is treason in an empire of lies." - George Orwell

 2015-12-19_WOWSC_Minutes_Ap_.pdf
170K

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joe gimenez <1129jjg@gmail.com>

Re: Conflict of Interest Policy

patti flunker <patriciaflunker@yahoo.com> Fri, Aug 2, 2019 at 4:33 PM
To: Joseph Gimenez III <JGimenezIII@yahoo.com>, "president@wowsc.org"
<president@wowsc.org>, "vicepresident@wowsc.org" <vicepresident@wowsc.org>, "David
A. Bertino Jr" <dbertinojr@me.com>, Norman Morse <normanrmorse@gmail.com>, Bill
Earnest <u2torche@yahoo.com>, "secretarytreasurer@wowsc.org"
<secretarytreasurer@wowsc.org>

WOWSC President,

Thank you so much for taking the time to respond to my open records request to obtain a copy of the Windermere Oaks Water Supply Corporation Conflict of Interest Policy along with each current board members signed page stating all their potential conflicts with regard to their director position on the Windermere Oaks Water Supply Corporation board.

Your reply "there are no responsive documents" to my email request to obtain a copy of the current Windermere Oaks Conflict of Interest Policy suggest based on the Texas Civil Rules of Procedure that "no items have been identified after a diligent search" and that the materials are non-existent, is this correct?

As you know from signing your Application for Board of Directors Position of the Windermere Oaks Water Supply Corporation back on January 18, 2019, (which is attached) you declared that you had reviewed the corporation's bylaws and certificate of formation. Additionally, you agreed if elected, to comply with all governing documents and board policies. Since you declared that you have reviewed the Windermere Oaks Water Supply Corporation governing documents in your board application, surely you comprehend that the Windermere Oaks Water Supply Corporation bylaws on page 12, item 18 has a provision which states "the board of directors **shall adopt and maintain** a conflict of interest policy."

Let me make my third request for this policy more comprehensible to you and your team, I am requesting the current Windermere Oaks Water Supply Corporation Conflict of Interest Policy or possibly called the Windermere Oaks Water Supply Corporations Ethical Standards and Conflict of Interest Policy along with the certified page containing each current board members signature. I have attached the 2016 Windermere Oaks Water Supply Corporation Ethical Standards and Conflict of Interest Policy copy in case you are perplexed as to what this document may look like.

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As stated above, your reply "there are no responsive documents" to my email request leads the average person to conclude that the Windermere Oaks Water Supply Corporation is not maintaining a conflict of interest policy as required in Windermere Oaks Water Supply Corporation bylaws. If so, then when I request a copy of the 2019 IRS 990 Form, I anticipate that I will see in Section B Policies, item 12a a "no" answer for the organization does not have a written conflict of interest policy.

If my reply to this third request is once again "there are no responsive documents" I will consider this answer as a declaration by you that Windermere Oaks Water Supply Corporation is not maintaining a conflict of interest policy.

Sincerely,

Patti Flunker/WOWSC Member

On Tuesday, July 30, 2019, 01:53:47 PM CDT, Joseph Gimenez III <JGimenezIII@yahoo.com> wrote:

Ms. Flunker,

Thank you for your interest in WOWSC.


Please use email address "president@wowsc.org" for future communications about WOWSC matters, including public information act requests. My title is public information officer as well as president.

There are no responsive documents to your request.

Regards,
Joe Gimenez

[Quoted text hidden]

2 attachments

 **2019_01_28_10_20_31 - 2019 Director applications - 5.pdf**
446K

 **2016 WOWSC Board Conflict of Interest signed.pdf**
5121K

Attachment MG-9
Voluminous
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joe gimenez <1129jjg@gmail.com>

PIA 8/5/19

Mister Flunker <dflunker@gmail.com>

Mon, Aug 5, 2019 at 4:18 PM

To: joe gimenez <1129jjg@gmail.com>

Cc: David A Bertino Jr <dbertinojr@me.com>, Brownsandniners
<brownsandniners@aol.com>, Norman Morse <normanrmorse@gmail.com>, Bill Earnest
<u2torche@yahoo.com>, Mike Gershon <mgershon@lglawfirm.com>

I am respectfully requesting emailed copies of any communication/correspondence,
between WOWSC (or its agents) and the insurance carrier since 6/19/19 to today's
date..

Do you understand this request?

Regards,

Mr Flunker

--

"No man in the wrong can stand up against a fellow that's in the right and keeps on a-
comin'."

– Bill McDonald

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Agenda Items from 8/21/19

From markmc@nctv.com

To u2torche@yahoo.com, brownsandniners@aol.com, dbertinojr@me.com, JGimenezIII@yahoo.com,
normanmorse@gmail.com

Date Thursday, August 22, 2019 05:18 PM CDT

I still did not get an answer last night on the resolution from Joe(per the attorney) as to whether it is a "required" document from the WOWSC to secure a note from CoBank? As a result, I am asking again please for a truthful answer? I also feel strongly that you should NEVER ask your Board to vote on such long winded, complex matters without them having read it. I am also requesting a copy so that I may read it as well. Surely I do not have to trouble you with a public information request?

Additionally, I remain confused by your erroneous assertion that we do not have a conflict of interest policy. Clearly it is in our bylaws under Article 8, section 18. In fact, it was signed by the entire Board in 2016. Are you telling me that none of you on the current Board have signed a conflict of interest statement?

Article 7, section 2 clearly states that the annual meeting is to be the first Saturday in February of each year, and a random move of this is clearly in conflict with the bylaws. Is there some extenuating circumstance for the desire to move the date?

Lastly, I do understand the huge commitment of time, energy and resources it takes to serve on any Board. Unfortunately, due to the alleged frauds of a prior Board, you are being held accountable to a higher level of transparency. Producing an expensive, 3000 word resolution on how you are going to manage our finances may not have been in your best interest. I heard things in the fast reading of the resolution that seemed to go way beyond the scope of your authority to act in a fiduciary capacity on behalf of our membership. Our trust factor is very low, and the fact remains that until Dana did us wrong, we never had such issues on the Board. I truly find it alarming that two of you continue to defend her actions, and to consult with her in any way about what is right, correct and truthful. In light of this, I will continue to hold you accountable for all of your actions. I have much better things to do, but will make it a point to be at every meeting from now on. I truly hoped that you would do better by us, but simply cannot trust that.

Respectfully submitted,

Mark McDonald - Agent/Broker

McDonald Agency Insurance

1008 Avenue J

Marble Falls, TX 78654

Office 830-693-4613

Fax 830-693-7312

Attachment MG-9
Voluminous
Page 49 of 113

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RE: Agenda Items from 8/21/19

From markmc@nctv.com (markmc@nctv.com)
To u2torche@yahoo.com, brownsandniners@aol.com, dbertinojr@me.com, JGimenezIII@yahoo.com, normanmorse@gmail.com
Date Friday, August 23, 2019 08:11 AM CDT

I would also like to see the appraisal that Bill referenced from six months ago please. Thank you

Mark McDonald - Agent/Broker
McDonald Agency Insurance
1008 Avenue J
Marble Falls, TX 78654
Office 830-693-4613
Fax 830-693-7312

From: markmc@nctv.com <markmc@nctv.com>
Sent: Thursday, August 22, 2019 5:18 PM
To: Bill Earnest (u2torche@yahoo.com) <u2torche@yahoo.com>, 'brownsandniners@aol.com' <brownsandniners@aol.com>, David Bertino (dbertinojr@me.com) <dbertinojr@me.com>, JGimenezIII@yahoo.com, Norm Morse (normanmorse@gmail.com) <normanmorse@gmail.com>
Subject: Agenda Items from 8/21/19

I still did not get an answer last night on the resolution from Joe(per the attorney) as to whether it is a "required" document from the WOWSC to secure a note from CoBank? As a result, I am asking again please for a truthful answer? I also feel strongly that you should NEVER ask your Board to vote on such long winded, complex matters without them having read it. I am also requesting a copy so that I may read it as well. Surely I do not have to trouble you with a public information request?

Additionally, I remain confused by your erroneous assertion that we do not have a conflict of interest policy. Clearly it is in our bylaws under Article 8, section 18. In fact, it was signed by the entire Board in 2016. Are you telling me that none of you on the current Board have signed a conflict of interest statement?

Article 7, section 2 clearly states that the annual meeting is to be the first Saturday in February of each year, and a random move of this is clearly in conflict with the bylaws. Is there some extenuating circumstance for the desire to move the date?

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Lastly, I do understand the huge commitment of time, energy and resources it takes to serve on any Board. Unfortunately, due to the alleged frauds of a prior Board, you are being held accountable to a higher level of transparency. Producing an expensive, 3000 word resolution on how you are going to manage our finances may not have been in your best interest. I heard things in the fast reading of the resolution that seemed to go way beyond the scope of your authority to act in a fiduciary capacity on behalf of our membership. Our trust factor is very low, and the fact remains that until Dana did us wrong, we never had such issues on the Board. I truly find it alarming that two of you continue to defend her actions, and to consult with her in any way about what is right, correct and truthful. In light of this, I will continue to hold you accountable for all of your actions. I have much better things to do, but will make it a point to be at every meeting from now on. I truly hoped that you would do better by us, but simply cannot trust that.

Respectfully submitted,

Mark McDonald - Agent/Broker

McDonald Agency Insurance

1008 Avenue J

Marble Falls, TX 78654

Office 830-693-4613

Fax 830-693-7312

Attachment MG-9

Voluminous

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joe gimenez <1129jjg@gmail.com>

Request

Mister Flunker <dflunker@gmail.com>

Mon, Aug 26, 2019 at 12:24 PM

To: joe gimenez <1129jjg@gmail.com>

Cc: David A Bertino Jr <dbertinojr@me.com>, Brownsandniners
<brownsandniners@aol.com>, Norman Morse <normanrmorse@gmail.com>, Bill Earnest
<u2torche@yahoo.com>, Mike Gershon <mgershon@lglawfirm.com>

May I have a copy of this packet (front page attached) that you handed out at a recent meeting. I am missing a few pages.

Regards,

Mr Flunker

--

"Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

-James Madison

 FinancialManagement.pdf
180K

Attachment MG-9
Voluminous
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Attachment Staff 2-5
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joe gimenez <1129jjg@gmail.com>

PIA Records Request - Dated: August 28th 2019

stuart <ssorgen@msn.com>

Wed, Aug 28, 2019 at 12:12 PM

To: Joe Gimenez <1129jjg@gmail.com>, "313kendall@gmail.com" <313kendall@gmail.com>, "u2torche@yahoo.com" <u2torche@yahoo.com>, David A Bertino Jr <dbertinojr@me.com>, Norman Morse <normanrmorse@gmail.com>, "brownsandniners@aol.com" <brownsandniners@aol.com>

All,

Per the Public Information Act, I am respectfully requesting copies of the following items;

- 1) Copies of checks made payable to Joe Gimenez or any entity related to Mr. Gimenez by WOWSC
- 2) Copies of all invoices submitted to WOWSC by Water Management Inc or Corix for repair work done between July 1, 2019 through August 28th, 2019.
- 3) Emailed copies of any and all communication between WOWSC or its agents and the insurance carrier since August 5th 2019 to August 28th, 2019
- 4) A copy of the resolution read by Joe Gimenez at the August 21st, 2019 meeting relating to agenda item 12, loan offer from Cobank.

Please consider each of these requests as separate requests.

Bruce Sorgen

Attachment MG-9
Voluminous
Page 53 of 113

Attachment Staff 2-5
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joe gimenez <1129jjg@gmail.com>

Draft Minutes 8/21/19

Mister Flunker <dflunker@gmail.com>

Mon, Sep 2, 2019 at 5:46 PM

To: joe gimenez <1129jjg@gmail.com>

Cc: David A Bertino Jr <dbertinojr@me.com>, Brownsandniners
<brownsandniners@aol.com>, Norman Morse <normanrmorse@gmail.com>, Bill Earnest
<u2torche@yahoo.com>, Mike Gershon <mgershon@lglawfirm.com>

I am requesting a copy of the draft minutes for the 8/21/19 Open Board Meeting.

Regards

--

*"Knowledge will forever govern ignorance; and a people who
mean to be their own governors must arm themselves with
the power which knowledge gives."*

-James Madison

Attachment MG-9
Voluminous
Page 54 of 113

Attachment Staff 2-5
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joe gimenez <1129jjg@gmail.com>

PIA Request 9/26/19

Mister Flunker <dflunker@gmail.com>

Thu, Sep 26, 2019 at 10:11 AM

To: joe gimenez <1129jjg@gmail.com>

Cc: David A Bertino Jr <dbertinojr@me.com>, Brownsandniners
<brownsandniners@aol.com>, Bill Earnest <u2torche@yahoo.com>, Mike Gershon
<mgershon@lglawfirm.com>

I am requesting a copy of the draft minutes from the 9/18/19 meetings.

I am also requesting copies of all communication/correspondence between WOWSC
and Roger Jay Grissom.

Regards,

Mr Flunker

--

*"Knowledge will forever govern ignorance; and a people who
mean to be their own governors must arm themselves with
the power which knowledge gives."*

-James Madison

Attachment MG-9
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joe gimenez <1129jjg@gmail.com>

PIA Request 9/26/19

Mister Flunker <dflunker@gmail.com>

Thu, Sep 26, 2019 at 10:17 AM

To: joe gimenez <1129jjg@gmail.com>

Cc: David A Bertino Jr <dbertinojr@me.com>, Brownsandniners
<brownsandniners@aol.com>, Bill Earnest <u2torche@yahoo.com>, Mike Gershon
<mgershon@lglawfirm.com>

I would also like a copy of the code of conduct policy the board voted on at its last meeting.

Regards

[Quoted text hidden]

Attachment MG-9
Voluminous
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joe gimenez <1129jjg@gmail.com>

Request - SAPA contract with WOWSC

2 messages

Joe Gimenez <1129jjg@gmail.com>

Tue, Oct 15, 2019 at 10:42 AM

To: robbve@gmail.com


Bcc: Troupe Brewer <tbrewer@lglawfirm.com>

Rob,

You had asked during Oct. 9 meeting for the SAPA contract with WOWSC. I've attached the responsive document.

Regards,

Joe

 SAPA Contract - Executed (1).pdf
1923K

Robb Van Eman <robbve@gmail.com>

Tue, Oct 15, 2019 at 11:06 AM

Reply-To: robbve@gmail.com

To: Joe Gimenez <1129jjg@gmail.com>

Thank you Joe. I appreciate the follow-up.

~Robb

Robb S. Van Eman
+1.512.484.3090 (m)

[Quoted text hidden]

Attachment MG-9
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Attachment Staff 2-5
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joe.gimenez <1129jjg@gmail.com>

Public Information Request

Bruce Sorgen <ssorgen@msn.com>

Fri, Oct 11, 2019 at 9:43 AM

To: Mike Gershon <mgershon@lglawfirm.com>, David A Bertino Jr <dbertinojr@me.com>, Mike Nelson <brownsandniners@aol.com>, "u2torche@yahoo.com" <u2torche@yahoo.com>, Joe Gimenez <1129jjg@gmail.com>, Dorothy Taylor <dtaylor27@me.com>

Please fulfill the Following Public Information Requests per the Texas Government Code, Chapter 552.

- 1) Provide copies of the petition signed by over 30% of the WOWSC members, requesting the resignation or removal of Joe Gimenez as Officer and Director that was presented to secretary Mike Nelson, and admitted into the record at the meeting on Oct. 9, 2019.
- 2.) Provide ALL communication/correspondence between WOWSC (and Directors) and CoBank.

Regards,
Bruce Sorgen

Attachment MG-9
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Attachment Staff 2-5
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joe gimenez <1129jjg@gmail.com>

PIA 10/14/19

Mister Flunker <dflunker@gmail.com>

Mon, Oct 14, 2019 at 8:17 AM

To: joe gimenez <1129jjg@gmail.com>

Cc: Brownsandniners <brownsandniners@aol.com>, Bill Earnest <u2torche@yahoo.com>, Mike Gershon <mgershon@lglawfirm.com>

Please provide copies of the 9/18/19 meeting minutes, both special and regular. If they haven't been approved yet please provide copies of the draft minutes.

Regards

Attachment MG-9
Voluminous
Page 59 of 113

Attachment Staff 2-5
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joe gimenez <1129jjg@gmail.com>

PIA 10/27/19

Mister Flunker <dflunker@gmail.com>

Sun, Oct 27, 2019 at 10:06 AM

To: joe gimenez <1129jjg@gmail.com>

Cc: Brownsandniners <brownsandniners@aol.com>, Bill Earnest <u2torche@yahoo.com>, Dorothy Taylor <dtaylor27@me.com>, Mike Gershon <mgershon@lglawfirm.com>

This is a PIA request

A copy of the emails and the email chains regarding such in their entirety that was read at the 10/26/19 meeting from Bob Mebane, Sandy Neilson and Nancy Lerner. Also any other correspondence between WOWSC and any members from 7/1/19 to 10/27/19.

Copies of Bank Statements and cancelled checks from March 2018 to current. If there is a cost for this portion of the request let me know.

Do you understand this request?

Regards

Attachment MG-9
Voluminous
Page 60 of 113

Attachment Staff 2-5
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joe.gimenez <1129jjg@gmail.com>

Special Member Meeting

Josie Fuller <josiefuller1@gmail.com>

Mon, Oct 21, 2019 at 9:40 PM

To: Joe Gimenez <1129jjg@gmail.com>, president@wowsc.org, "Cc: Dorothy Taylor" <dtaylor27@me.com>, Bill Earnest <u2torche@yahoo.com>, Brownsandniners <brownsandniners@aol.com>

I'm requesting a current list of all WOWSC members, names and billing addresses along with email addresses. This is a formal notice from the 30% of its members that signed the petition to remove Joe Gimenez from WOWSC board. This members notice is calling a special members meeting on Nov 16, 2019 under the Texas Non profit Code Sec 22-155 Special Meeting of Members. A special meeting of a corporation may be called by:

1. the president:
2. The board of directors:
3. members having not less than one tenth of the votes entitled to be cast at the meeting:

Should you have any questions or concerns feel free to email me along with the list of members I have requested.

Thank you
Josie Fuller

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joe.gimenez <1129jjg@gmail.com>

PIA Request

2 messages

patti flunker <patriciaflunker@yahoo.com> Sun, Oct 20, 2019 at 5:17 PM
To: Joe Gimenez <1129jjg@gmail.com>, "president@wowsc.org" <president@wowsc.org>
Cc: Dorothy Taylor <dtaylor27@me.com>, Bill Earnest <u2torche@yahoo.com>, Brownsandniners <brownsandniners@aol.com>, Mike Gershon <mgershon@lglawfirm.com>

Per the Public Information Act please accept this as my open records request for the following information listed below. If there is a cost for copies of these items please let me know.

List of all vacant lots in Windermere Oaks Property Owners Association Community which currently pay standby fees.

List of all vacant lots in Windermere Oaks Property Owners Association Community which have current notices or liens filed against them in Burnet County for past due standby fees.

List of all vacant lots in Windermere Oaks Property Owners Association Community which have been foreclosed on for past due standby fees in the past 20 years.

List of all vacant lots in Windermere Oaks Property Owners Association Community which had past due standby fees that Dana Martin made a motion to forgive while a director on the WOWSC Board.

List of all vacant lots with the exception of vacant lots in Windermere Oaks Property Owners Association Community but in the WOWSC CCN service area that pay standby fees.

Total amount of standby fees collected for each individual years beginning 2000, 2001 and thereafter up to 2019.

WOWSC IRS Form 990 submitted to IRS for years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018.

Regards

Patti Flunker

Attachment MG-9
Voluminous
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joe gimenez <1129jjg@gmail.com>

Public Information Act Request

Bruce Sorgen <ssorgen@msn.com>

Sun, Nov 10, 2019 at 11:09 PM

To: Dorothy Taylor <dtaylor27@me.com>, Joe Gimenez <1129jjg@gmail.com>, Mike Nelson <brownsandniners@aol.com>, "u2torche@yahoo.com" <u2torche@yahoo.com>
Cc: Bruce Sorgen <ssorgen@msn.com>

All,

Per the Public Information Act I would like copies of the following items;

All correspondence or communication between WOWSC and Willis Sherman and Associates from June 2017 to June 2018.

All invoices from Willis Sherman and Associates from June 2017 to June of 2018.

All cancelled checks paid to Willis Sherman and Associates from June 2017 to June 2018.

Do you understand what I am asking for? Let me know what if any costs are associated so I can get that to you asap.

Regards,
Bruce

Attachment MG-9

Voluminous

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Public Information Act Request

From Dana Martin (skybounddana@gmail.com)

To 1129jjg@gmail.com

Date Saturday, November 30, 2019, 04:08 PM CST

Hi Joe,

Since you are the official WOWSC PIR Officer, I have a request.

Can you provide me with a copy of all the public information requests made in 2018 and 2019? I am happy to pay for any copy fees for your trouble.

Thanking you in advance for all your hard work.

Sincerely,
Dana

Dana J. Martin
205 Coventry Rd
Spicewood, TX 78669

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Page 64 of 113



joe gimenez <1129jjg@gmail.com>

Public Information Request

Dana Martin <skybounddana@gmail.com>
To: Joe Gimenez <1129jjg@gmail.com>

Fri, Dec 6, 2019 at 11:26 AM

Hi Joe,

I would like to make a Public Information Request for the contact information on the Members of the WOWSC.

Thanking you in advance

Sincerely,
Dana

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Voluminous
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Attachment Staff 2-5
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joe.gimenez <1129jjg@gmail.com>

Public Information Request 2/5/2020

Mister Flunker <dflunker@gmail.com>

Wed, Feb 5, 2020 at 6:25 PM

To: joe.gimenez <1129jjg@gmail.com>, Patricia Gerino <pgerino@gmail.com>, Brownsandniners <brownsandniners@aol.com>, Dorothy Taylor <dtaylor27@me.com>, richard.t.schaefer@gmail.com
Cc: Mike Gershon <mgershon@lglawfirm.com>

All,

Per the Texas Public Information Act I am respectfully requesting the notes taken by Mike Nelson at the February 1st open board meeting and or draft minutes for the same meeting. So there is no mistake I am talking about the second WOWSC meeting that day not the members meeting.

I am also sharing a link with an Attorney General opinion so you don't have to spend more of the members money asking the "Joe Gimenez legal team" what OUR board is required to do. One would think that anyone that has taken the TPIA training and received the certificate would already know.

<https://www2.texasattorneygeneral.gov/opinions/openrecords/50abbott/orl/2011/htm/or201106192.htm>

However, we note the minutes of a public meeting of a governmental body are public records when entered, are public in whatever form they exist, and public access may not be delayed until formal approval is obtained. Open Records Decision No. 225 (1979).

Regards

Mr Flunker

Attachment MG-9
Voluminous
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joe.gimenez <1129jjg@gmail.com>

Public records request

2 messages

Rosas, Jessica <J.Rosas@quadiant.com>
To: "President@wowsc.org" <President@wowsc.org>

Fri, Feb 7, 2020 at 2:01 PM

Hello Joe,

I was directed by the secretary treasurer as you are the PIO.

I am writing to make a public records request. Specifically, I am requesting a copy of the lease, rental, or purchase agreement for the postage/ mailing equipment used at:

Windermere Oaks WSC

**424 Coventry Rd.
Spicewood, TX 78669**

If this department processes its mail through another department, please send a copy of their agreement for their postage/ mailing equipment.

If there is no equipment anywhere, and they make its mailings through the post office, if you could please reply with whether they use stamps or stamps.com.

I would like any documents pertaining to this request via email if possible.

Thank you in advance for helping me with this request.

Sincerely,
Jessica Rosas
j.rosas@quadiant.com
2033013951
Neopost
478 Wheelers Farms Road
Milford, CT 06461

Joe Gimenez <1129jjg@gmail.com>
To: "Rosas, Jessica" <J.Rosas@quadiant.com>

Fri, Feb 7, 2020 at 2:03 PM

Yes, I received it. We are processing your request.

best regards,

joe

[Quoted text hidden]

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Voluminous
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Page 67 of 113



joe.gimenez <1129jjg@gmail.com>

"directors class" now being argued. See the attached

3 messages

Joe Gimenez <1129jjg@gmail.com>
To: "Lara N. Zent" <Lara.zent@trwa.org>

Mon, Dec 13, 2021 at 7:43 PM

 **Ratepayers' Request for Interim Relief.pdf**
154K

Lara Zent <lara.zent@trwa.org>
To: Joe Gimenez <1129jjg@gmail.com>
Cc: Kristen Fancher <kf@fancherlegal.com>

Tue, Dec 14, 2021 at 6:08 AM

Joe,

Thanks for sharing this correspondence. I have seen ratepayers make this type of request for interim relief in other rate cases. I'm certain your attorneys will advise on the likelihood that they will receive it and will represent the WSC well in responding to the request.

We share your opinion that some of the PUC staff positions in this case that you shared with us previously are of concern for other utility members moving forward in these types of cases. We're currently working with outside counsel, Kristen Fancher, who I am copying on this email. Kristen has advised that TRWA engage by filing an amicus brief in support of the WSC when the matter comes before the commission. Our board authorized our doing so at our board meeting last week. Kristen will be monitoring all the filings in the case for us and will be reaching out to your attorneys at Lloyd Gosselink to discuss.

Best regards,

Lara Zent
Executive Director & General Counsel
Texas Rural Water Association

1616 Rio Grande
Austin, TX 78701
Phone: (512) 472-8591, x101
Fax: (512) 472-5186
Lara.Zent@trwa.org

www.trwa.org

-

This message may contain information that is confidential or subject to the attorney-client privilege. The information is intended solely for the use of the addressee(s). If you are not an addressee, your disclosure, copying, distribution or use of the contents of this message is

prohibited. If this message has been sent to you in error, please notify the sender by return e-mail. Thank you.

From: Joe Gimenez <1129jgg@gmail.com>
Sent: Monday, December 13, 2021 7:43 PM
To: Lara Zent <lara.zent@trwa.org>
Subject: "directors class" now being argued. See the attached

Joe Gimenez <1129jgg@gmail.com>
To: Lara Zent <lara.zent@trwa.org>
Cc: Kristen Fancher <kf@fancherlegal.com>

Wed, Dec 15, 2021 at 11:09 AM

Thank you for your response. This was a ray of sunshine. Let me know how I can help.

Best regards,

Joe

[Quoted text hidden]

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

**REQUEST FOR INTERIM RELIEF PENDING
COMMISSION’S RESOLUTION OF RATEPAYER APPEAL**

COME NOW the Ratepayers of Windermere Oaks Water Supply Corporation (“Company”) with this Request for Interim Relief Pending the Commission’s Resolution of this Ratepayer Appeal and would show as follows:

Summary

This is a ratepayer appeal of an increase in the base rates for water and wastewater service approved and implemented by the Company’s Board in March 2020. Pursuant to Section 13.043(b)(1), Tex. Water Code, the Commission has jurisdiction and authority to set rates that are higher, lower or the same as the rates the Board set, to set the effective date for those rates, to require refunds to customers, to authorize additional charges and to implement other remedial measures, all as the Commission sees fit.

By the Board’s own admission, its policies and practices (both before and after this appeal was filed) have already jeopardized the Company’s financial capacity to implement lower rates, refunds and other orders that are clearly within the Commission’s authority to enter in this proceeding. Of greater concern, it appears that even after the 2020 rate increase the Company has been and remains in a negative cash flow position with considerable unreported debt. The Board’s representatives have made clear that, if left to its own devices, the Board will continue indefinitely the policies and practices that appear to have already incapacitated the Company.

Ratepayers do not pretend to know what orders the Commission might enter at the conclusion of this appeal proceeding. Their Board has assured them, however, that unless someone steps in now the Company will not have the wherewithal to effectuate many orders that the Commission has authority to enter. Indeed, by the time this proceeding is concluded, the Company may not have the wherewithal to operate at all. Without belittling what an overall disaster this would be for the members/customers who depend on the Company for services, it most certainly would render meaningless both the Commission's exercise of jurisdiction in this matter and the considerable investment of time and resources for this proceeding.

Ratepayers believe it is in the best interests of the Company and its members/customers for the Commission to keep all of its regulatory options open while it considers and determines what should be done here. To do so requires prompt interim action. This Request seeks exactly that.

Background

In the aftermath of a 2016 sale of surplus land to a sitting director, members challenged the legality of the Board's actions, sought to restore the land to the Company and exercised statutory rights to receive information about the Board's activities. Claiming that the Company had a "legal duty" to prevent the directors from being held liable for actions taken in that capacity, the Board engaged two law firms and directed them to oppose the members' efforts. The Board agreed that the Company would pay all the legal fees the law firms charged.¹

¹ Whether these legal expenses are "allowable" for rate making purposes is at issue in the appeal proceeding but is not at issue for purposes of this request. Without regard to whether these expenses are "allowable," Company revenues have been used to pay some of them and the Board apparently has obligated the Company to pay the rest. The Board's mismanagement of these costs – whether "allowable" or not -- has resulted in serious and potentially irreversible financial consequences for the Company and its members/customers and has jeopardized the effectiveness of orders that might be entered in this proceeding.

The Company's actual cost for legal services for 2019 was approximately \$290,000. That is far more than the \$166,000 figure the Board had previously sponsored and translates to 63% of this small private utility's aggregate costs for 2019. Legal fees for 2019 could not be paid in full and the Company remained indebted for them at the beginning of 2020. The law firms continued to send monthly invoices for work done in 2020 and thereafter. The Board obligated the Company for all those fees. All the revenue generated by the 2020 rate increase was used to pay these legal costs but was not sufficient to pay them all and the Company's debt to the law firms increased each month. The Company's law firm debt has never been reflected on any of its financial reports and was not included for purposes of designing the Board's 2020 rate increase. The Company's law firm debt may have been as high as \$500,000 at the end of 2020.

The law firms have continued to invoice for work done in 2021 in connection with several matters, including the ongoing Double F litigation to recover Company land and to hold directors liable, the directors' lawsuit against the E&O insurer to recover benefits they claim are owed to them as "insureds," and the Company's opposition in this ratepayer appeal. Further, the Company characterizes as "legal" expenses amounts paid to nonlawyers, including the amounts Board President Joe Gimenez every month for being the Company's Public Information Officer. Since the Company's law firm debt is not reported on its financials, the current balance cannot be ascertained from those records. Neither of the Board's hearing representatives knew the balance due on the Company's law firm debt as of the time of the recent hearing.

According to Board President Gimenez, the Company's directors claim the Board has "no choice" but to approve the unlimited legal spending and the accrual of unlimited law firm debt by which they provide themselves with legal representation. By the directors' own admission, these approvals are not based upon any exercise of good judgment or any reasonable evaluation of

available resources. According to Mr. Gimenez, these approvals are driven by the Board's policy decision that "Directors should not be personally liable for lawsuits brought against them" and by the nonlawyer directors' insistence that the Company has a *legal duty* "to protect its volunteer board members and directors against personal liability for actions taken in their roles [as directors]." ² The Board's self-imagined "legal duty" to use Company resources to prevent themselves from being held responsible for their acts and omissions has caused the Company's legal expenses to achieve a position of top priority over all other Company expenses. The Board's hearing representatives made clear that the Company will continue these policies and practices going forward, and certainly throughout the pendency of this appeal.

The amounts already at issue in this appeal are very substantial, particularly for a 271-member cooperative utility in Spicewood, Texas. The Board's legal costs are approaching \$1 million and have constituted more than 50% of the Company's total annual expenses for each of the past several years. The 2020 rate increase was not designed to recover these legal costs and the additional revenue the rate increase generated has not been sufficient to pay more than a fraction of them. The Company's institutional lender will not allow the Board to use loan proceeds to pay these legal costs. The only other readily available pool of resources is needed for the purpose of providing water and wastewater services. ³

² Ratepayers consider this to be egregious Board misconduct, but that need not be decided for present purposes. These Board policies, practices and decision criteria have had enormous financial impact on the Company, to the point the Company is no longer capable of effectuating Commission orders that might be entered in this appeal. At the least, the circumstances warrant an independent review of these Board policies, practices and decision criteria by a qualified supervisor who is not involved with the underlying disputes or personalities and is not personally benefitted by the Company's legal expenditures.

³ The Company still owns 6.19 acres of surplus property in the Spicewood Airport that, according to the Board's appraiser, was worth over \$700,000 in 2016. Until 2014, the Company's wastewater treatment plant was operated there. It remains to be determined whether the Board is permitted to liquidate the Company's surplus real property to pay the directors' legal costs and that matter need not be determined now. The point here is simply that the considerable value of that surplus property is not available in the near term because the Board has failed to take the steps to make it so.

Request For Interim Relief Pending the Commission's Orders in this Proceeding

Ratepayers did not choose to receive utility service from a private water supply and sewer service company run by a “volunteer Board” comprised of people who claim their primary duties are to themselves, with the Company and the members/customers a distant second. Ratepayers are members/customers because they need potable water and sewer service, and the Commission has placed this particular form of retail public utility in a monopolistic position in the place where they live. The Company's members/customers have the same financial stake in their utility systems, facilities and operations as any outside investor in any IOU, and then some, though the members/customers are involuntary stakeholders. In lieu of a guaranteed return on investment, the members/customers have statutory and other guarantees that the nonprofit corporation in control of their investment will use it exclusively for their benefit, and -- provided they pay all rates and charges required of them -- will operate it to provide them with continuous and adequate water and wastewater service.

The Company's members/customers have paid the full amount of all increased rates and other charges their Board has demanded of them. Their utility should be financially strong, sustainable and able to provide them with services and also to comply with lawful Commission orders. That does not appear to be the case at this point. For the reasons outlined above, the situation is likely to get worse, rather than better, during the pendency of this appeal.

To have the Company call a halt to its financial transactions pending the Commission's issuance of orders in this appeal is not a viable option, and such a drastic step should not be required.⁴ Interim oversight and independent supervisory control over the Board's policies,

⁴ That said, Ratepayers certainly cannot rule out that a receiver may be required. These circumstances are egregious, and neither the Company's actual financial position nor what may be required to restore it to health are known at this time.

practices and decision-making, on the other hand, is a reasonable and conservative approach in these circumstances. This would allow the Company (and the Board) to continue to operate within its governing documents and its existing organizational structure, while also facilitating the implementation of corrective and remedial measures needed to restore the Company's financial integrity and ability to effectuate any order the Commission might enter in this proceeding and to keep it intact until orders are entered.⁵ It is axiomatic that the Board is not going to take these steps on its own. A qualified and disinterested Commission appointee with supervisory authority over the Board during the pendency of this appeal will be required.

At a minimum, the Board supervisor should be given supervisory authority over all Board decisions impacting the Company's financial condition. The Board supervisor should be directed to perform (or commission) an independent audit of the Company's books and records.⁶ The Board supervisor should be directed to make an evaluation of (i) the Company's current financial condition, (ii) Board policies, practices and decision criteria that determine the Company's financial transactions, (iii) the Company's capacity and financial wherewithal to fully effectuate the range of Commission orders that may be entered in this appeal and (iv) other matters the Commission deems necessary or appropriate. The Board supervisor should be directed to identify and promptly implement corrective or remedial measures necessary (i) to bring the Company into compliance with its governing documents and tariff, (ii) to restore/rehabilitate the Company's financial integrity and wherewithal to provide services to the members/customers in compliance

⁵ Ratepayers analogize this request to an application for preliminary injunctive relief to prevent the destruction of the subject matter of pending litigation. See *In re 1707 New York Ave., LLC*, 2014 WL 4946976, at *1 (Tex. App. – Ft. Worth 2014) (orig. proceeding) (prevention of demolition of building at issue warranted to protect court's jurisdiction over subject matter) and *In re Teague*, 2006 WL 302123, at *1 (Tex. App. – Ft. Worth 2006) (orig. proceeding) ("It is well settled that an appellate court is authorized to protect its jurisdiction by preserving the subject matter of the appeal in order to make its decrees effective.").

⁶ So far as Ratepayers are aware, there has not been an independent audit of the Company's books and records for many years.

with Commission orders that may be entered in this proceeding (iii) to preserve the Company's financial health and wherewithal during the pendency of this appeal, (iv) to protect the members/customers from further loss or prejudice and (v) for any other purpose the Commission deems necessary or appropriate.

In light of the Board's insistence that the Company could not effectuate a refund order if the Commission entered one, the Board supervisor should be directed to determine whether the Company should be required to furnish and keep in force for the duration of this appeal proceeding a bond⁷ for the protection of members/customers who may be entitled to a refund. In that regard, the Board supervisor should be directed to ascertain from the Company's books and records the amount of additional revenue, on a monthly basis, that the Company has collected as a result of the 2020 rate increase and that the Company will in all likelihood collect during the pendency of this appeal.

In light of the Board's insistence that the Company would be jeopardized if the Commission concludes the full amount of the Company's appeal case expenses cannot be passed on to the members/customers, the Board supervisor should be directed to determine whether the Company should be required to furnish and keep in force for the duration of this appeal proceeding a bond for the protection of members/customers, who may be entitled to such a determination. In that regard, the Board supervisor should be directed to ascertain an adequate bond amount.

The Company's total cost to provide legal services for directors is staggering. The Board insists the Company will be jeopardized if it does not collect from someone the full amount of that cost. In the event the Commission determines that the provision of legal services for

⁷ Ratepayers analogize this to the bond a Class A utility must provide under Section 13.187(i), Tex. Water Code, if it wishes to implement rates that are under Commission scrutiny.

directors is part of the legitimate business of a water supply and sewer service cooperative and that the costs at issue here are eligible to be passed on to any customers, the Commission would have authority to create a separate class of customers (for discussion purposes, the “Director Class”) that includes only the directors for whom the Company provided legal services and to pass on the Company’s cost to provide such services only to the members of the Director Class through increased rates or other charges. The Board supervisor should be directed to evaluate the need to require directors who may be included in the Director Class to provide bonds and keep them in force for the duration of this appeal, such bonds to be in an amount adequate to ensure that each potential member of the Director Class can and will pay all special rates or other charges required for the Company to recover all of its costs.

Prayer

Ratepayers respectfully request that the Commission order the above-described interim relief and/or such other relief as the Commission determines is appropriate in these circumstances to preserve the subject matter of its jurisdiction and to protect the effectiveness of orders it is authorized to enter in the proceeding.

Respectfully Submitted,

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

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

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 11, 2021.

/s/ Kathryn E. Allen



joe.gimenez <1129jjg@gmail.com>

As expected

2 messages

Joe Gimenez <1129jjg@gmail.com>
To: "Lara N. Zent" <Lara.zent@trwa.org>

Mon, Dec 20, 2021 at 10:07 PM

Best regards,
Joe Gimenez

 **20-4071.WS_ SOAH ORDER NO. 16.pdf**
122K

Lara Zent <lara.zent@trwa.org>
To: Joe Gimenez <1129jjg@gmail.com>

Wed, Dec 22, 2021 at 8:14 AM

That's a relief. Thanks Joe.

Happy Holidays! I hope you can forget about all this stuff for a little while.

My best,

Lara

Lara Zent
Executive Director & General Counsel
Texas Rural Water Association

1616 Rio Grande
Austin, TX 78701
Phone: (512) 472-8591, x101
Fax: (512) 472-5186
Lara.Zent@trwa.org

www.trwa.org

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From: Joe Gimenez <1129jgg@gmail.com>
Sent: Monday, December 20, 2021 10:08 PM
To: Lara Zent <lara.zent@trwa.org>
Subject: As expected

Best regards,

Joe Gimenez

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

**SOAH ORDER NO. 16
DENYING MOTION FOR INTERIM RELIEF**

On December 11, 2021, appellants filed a motion for interim relief, asking for the appointment of a supervisor over the board of the water supply corporation and related relief. Windermere Oaks Water Supply Corporation timely responded. Staff did not respond. The motion is DENIED.

The motion cites no authority for the relief requested and the administrative law judges (ALJs) have found none. The ALJs further find that the motion is not timely—a week after a hearing on the merits—and beyond the scope of the preliminary order.

Additionally, in the interest of avoiding additional rate case expenses, the parties are ADVISED against filing any motions that do not relate to the disposition of the proceeding in a fair and efficient manner.

SIGNED December 20, 2021.



CHRISTIAAN SIANO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



joe gimenez <1129jjg@gmail.com>

Good news for WOWSC today

1 message

Joe Gimenez <1129jjg@gmail.com>
To: "Lara N. Zent" <Lara.zent@trwa.org>

Thu, Mar 31, 2022 at 3:45 PM

Lara,

The ALJs recommended dismissal of the ratepayers case against the Windermere Oaks Water Supply Corporation today.

I appreciate TRWAs willingness to assist WOWSC in this matter.

Best regards,
Joe Gimenez

 **473-20-4071_ Proposal for Decision.pdf**
504K



State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 31, 2022

TO: Stephen Journeay, 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

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,


Christiaan Siano
Administrative Law Judge

Enclosure

xc: All Parties of Record

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

PROPOSAL FOR DECISION

I. INTRODUCTION

Ratepayers (Ratepayers) of Windermere Oaks Water Supply Corporation (Windermere or WOWSC) appealed a rate decision by Windermere’s board of directors approving an increase to water and sewer base rates to recover the cost of certain outside legal expenses. Staff (Staff) of the Public Utility Commission of Texas (Commission) supports removing the legal expenses from the revenue requirement. For the reasons explained below, the administrative law judges (ALJs) recommend that the Commission dismiss this appeal and award the rate case expense amount supported by Windermere.

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter pursuant to Texas Water Code § 13.043. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters relating to the conduct of the hearing and issuance of a proposal for decision, if needed, pursuant to Texas Government Code § 2003.049.

On February 1, 2020, Windermere’s board of directors approved a rate increase effective March 23, 2020. Within 90 days thereafter, on April 27, 2020, Ratepayers appealed the board’s decision. The petition was signed by 52 of Windermere’s 271 active connections. Windermere filed

a response to the petition.¹ The Commission found the petition sufficient and referred the case to SOAH, requesting the assignment of an ALJ to conduct a hearing and issue a proposal for decision, if necessary.² No party requested interim rates or an effective date other than the original one proposed by Windermere. This matter was referred to mediation, which did not resolve the dispute.³

In support of its rate increase and rate case expenses, Windermere filed direct testimony of George Burriss, Joe Gimenez, Mike Nelson, and Jamie Mauldin. Ratepayers filed direct testimony of Daniel Flunker, Pattie Flunker, Bill Stein, and Kathryn E. Allen. Staff filed direct testimony of Spencer English, Stephen Mendoza, Heidi Graham, and Maxine Gilford. The testimony of Spencer English was subsequently adopted by Mark Filarowicz.⁴ Windermere filed rebuttal testimony of Mike Nelson, Joe Gimenez, and Grant Rabon. Both Staff and Windermere filed supplement direct testimony on rate case expenses.

A hearing was held on December 1-3, 2021, via videoconference. Ratepayers, Staff, and the Windermere appeared. The record closed initially on January 25, 2022, with the submission of reply briefs.⁵ The record was reopened on February 15, 2022, to admit WOWSC Exhibit 22, which provided updated rate case expenses.⁶

Counsel for Windermere represented that it provided written notice of the hearing to all affected customers at a February 2, 2021 open meeting, albeit not on a Commission-prescribed

¹ WOWSC Response to Order No. 1 (May 27, 2020).

² PUC Order No. 3 (June 23, 2020); Order of Referral (June 23, 2020).

³ SOAH Order No. 5 (Oct. 8, 2020); Mediator's Report on Mediation (Jan. 19, 2021).

⁴ SOAH Order No. 13 (June 28, 2021).

⁵ Commission Staff did not timely file a reply brief or move to extend the deadline; therefore, its reply brief was not considered in this proposal for decision.

⁶ SOAH Order No. 18 (Feb. 15, 2022).

notice form, which it never received.⁷ No party contested the sufficiency of the notice in initial briefs.⁸ The ALJs find that Windermere substantially complied with 16 Texas Administrative Code (TAC) § 24.101(c)(6) and that notice to customers was sufficient.⁹

III. SCOPE OF REVIEW

Under section 13.043 of the Water Code, the Commission shall hear *de novo* an appeal from a decision a nonprofit water-supply corporation's governing body affecting rates, considering only the information available to the governing body at the time it made its decision, except to the extent subsequent events tend to shed light on what conditions existed at the time of the decision.¹⁰ The scope of review is further set out in section 13.043(j), which states in relevant part—

In an appeal under this section, the utility commission shall ensure that every appealed rate is just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in

⁷ Tr. at 589. Windermere counsel, Ms. Katz, represented that the original procedural schedule in this matter was provided to customers on February 2, 2021, while continuances were provided at duly posted open meetings on August 17, 2021, August 24, 2021, September 30, 2021, and November 18, 2021. Tr. at 589-90.

⁸ While Staff characterized notice as an uncontested issue, Staff Initial Brief at 2, Ratepayers argued for the first time in reply brief that notice of the hearing was not provided “in a form prescribed by the Commission,” as required by 16 Texas Administrative Code (TAC) § 24.101(c)(6). Ratepayers Reply Brief at 4-5. This complaint is WAIVED. The issue was not raised in initial briefs. *See* SOAH Order No. 15 at 2 (“**The ALJs may consider waived any statement or argument set forth in a brief to the extent that it (1) lacks accurate citations to the evidence and law, or (2) is in a party’s reply brief but should have been in its initial brief.**” (emphasis original)). Nor was the issue raised in testimony or any statement of position. 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.”); 16 TAC § 22.124(a) (“[I]nsofar as its prefiled direct testimony does not address issues that a party intends to litigate, each party that has prefiled direct testimony shall file a statement of position no later than three working days before the start of a hearing”).

⁹ Any due process notice requirements are satisfied by the fact that this is an appeal and both the appellants and the corporation in fact appeared. *See Pierce v. Tex. Racing Comm’n*, 212 S.W.3d 745, 758-59 (Tex. App.—Austin 2006, pet. denied) (actual notice sufficient to satisfy due process notice requirement).

¹⁰ Tex. Water Code § 13.043(e); *Petition for Review of Certain Rate Making Actions of the City of Austin*, Docket No. 6560, Examiner’s Report at 15 (Apr. 16, 1986). The Examiner’s Report in Docket No. 6560 (after amendment in respects not relevant here) was adopted by the Commission. Docket No. 6560, Order at 1 (Apr. 25, 1986). *See also Petition by Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055*, Docket No. 40627, Supplemental Preliminary Order at 6 (Dec. 13, 2012).

application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility.¹¹

The Commission has construed this language to require an initial finding that the appealed rates are unreasonably preferential, prejudicial, or discriminatory before the Commission may fix just and reasonable rates.¹²

The Commission may also consider evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings.¹³

IV. BURDEN OF PROOF

The water or sewer service provider has the burden of proof to show its rates are just and reasonable.¹⁴ On “any other matters,” the burden of proof is on the movant.¹⁵ Here, before reaching the question of whether Windermere’s rates are just and reasonable, it must be determined whether the rates are unreasonably preferential, prejudicial, or discriminatory. Because Ratepayers seek affirmative relief that would change the *status quo*, and placing the burden of proof on the service provider would require it to prove a negative by showing that the rates are *not* unreasonably preferential, prejudicial, or discriminatory, the ALJs conclude that the party

¹¹ Section 13.043(j) was amended effective September 1, 2021. Act of May 22, 2021, 87th Leg., R.S., ch. 279, § 1 (H.B. 3689). The amendment does not affect the analysis here because the operative language is unchanged.

¹² *Ratepayers’ Appeal of the Decision by Bear Creek Special Utility District to Change Rates*, Docket No. 49351, Order on Rehearing at 3, 20 (Conclusion of Law No. 8) (Nov. 19, 2021); *Tex. Water Comm’n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied); Preliminary Order at 4 n.11 (noting that the initial determination under § 13.043(j) required by *City of Fort Worth* was not limited to appeals under § 13.043(f), and “[t]herefore, the same initial inquiry under subsection (j) must be made in this appeal under § 13.043(b) before the Commission can reset rates”).

¹³ Tex. Water Code § 13.043(e).

¹⁴ 16 TAC § 24.12.

¹⁵ *Id.* Docket No. 49351 did not address burden of proof on the threshold issue because there the district agreed with Staff’s rate design, showing that its rates were unreasonably preferential, prejudicial, and discriminatory. Proposal For Decision at 15 (May 18, 2021).

challenging the rates bears the burden of proof as to this initial question.¹⁶ Assuming this burden is met, the service provider then has the burden to show that the rates are just and reasonable.

V. DISCUSSION

Windermere is a non-profit water supply and sewer service corporation governed by chapters 49 and 67 of the Water Code as well as the Texas Business Organizations Code.¹⁷ Windermere has one class of members, as defined by the Water Code.¹⁸ Windermere is managed by a member-elected board of directors.¹⁹ Directors must be members and customers of the corporation.²⁰ Although directors are authorized to receive compensation for their services, here they do not.²¹ Windermere serves approximately 271 water connections and 245 sewer connections.²²

¹⁶ See 1 TAC § 155.427 (in determining which party bears the burden of proof, after considering applicable statute and agency rules, the judge may consider the party seeking affirmative relief, to change the *status quo*, and whether a party would be required to prove a negative); see also 16 TAC § 24.317 (placing burden on petitioner in wholesale water or sewer appeal to prove that the challenged rate is adverse to the public interest—an analogous threshold issue in such appeals).

¹⁷ WOWSC Ex. 2 at 5 (Gimenez Dir.); Tex. Water Code § 67.004 (stating that water supply corporations are subject to the Texas Non-Profit Corporation Act). The Texas Non-Profit Corporation Act was repealed January 1, 2010 and codified as chapter 22 of the Business Organizations Code. House Comm. on Bus. & Indus., Bill Analysis at 1, Tex. H.B. 1156, 78th Leg., R.S. (2003) (“Unless otherwise noted, the provisions of this Code are nonsubstantive revisions of comparable provisions found in the ... Texas Non-Profit Corporation Act...”); *Id.* at 63 (“Chapter 22 codifies the provisions relating to nonprofit corporations currently located in Art. 1396-1.01 *et seq.*”); Tex. Bus. Orgs. Code § 2.010(2) (“A nonprofit corporation may not be organized or registered under this code to conduct its affairs in this state to . . . engage in water supply or sewer service except as an entity incorporated under Chapter 67, Water Code.”).

¹⁸ Tex. Water Code § 13.002(11) (“Member” means a person who holds a membership in a water supply or sewer service corporation and is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.).

¹⁹ WOWSC Ex. 2 at 5-6 (Gimenez Dir.); Tex. Water Code §§ 67.005-.0075.

²⁰ WOWSC Ex. 2 at 5-6 (Gimenez Dir.); Tex. Water Code § 67.0051(a)(2).

²¹ WOWSC Ex. 2 at 6 (Gimenez Dir.), Attachment JG-2 (Bylaws); Tex. Water Code § 67.006(c).

²² WOWSC Ex. 2 at 9 (Gimenez Dir.); WOWSC Ex. 8 at (Bates) 7.

A. The Rate Decision

The primary issue in this case is whether Windermere's rates should include certain outside legal expenses relating to three lawsuits stemming from a 2015 sale of corporate land to a then-board member.²³ In one of those lawsuits, individual board members were named, in addition to Windermere, as defendants.²⁴ In that case, Windermere also paid the legal costs of defending the individual board members.²⁵ To finance the legal expenses while maintaining normal operations, Windermere included \$171 thousand in base rates.²⁶ The increase was allocated 60% to water and 40% to sewer.²⁷ This resulted in a monthly base rate increase from \$50.95 to \$90.39 for water, and from \$40.12 to \$66.41 for sewer.²⁸

Ratepayers and Staff argue that the inclusion of these outside legal expenses in rates is not just and reasonable, and therefore they should be removed from the revenue requirement.²⁹ Windermere asserts that the outside legal expenses were necessary and justified, and therefore their inclusion in rates is just and reasonable.

As a threshold issue, the ALJs assess whether the rates are unreasonably preferential, prejudicial, or discriminatory without regard to whether the rates are just and reasonable.

²³ WOWSC Ex. 2 at 18 (Gimenez Dir.).

²⁴ WOWSC Ex. 2 at 19 (Gimenez Dir.); WOWSC Ex. 3 at 9 (Gimenez Reb.); *Rene Ffrench, John Richard Dial, and Stuart Bruce Sorgen, Individually and as Representatives for Windermere Oaks Water Supply Corporation v. Friendship Homes & Hangars, LLC, WOWSC, and its Directors William Earnest; Thomas Michael Madden; Dana Martin; Robert Mebane; Patrick Mulligan* Joe Gimenez, Mike Nelson, and Dorothy Taylor, Cause No. 48292 (33rd Dist. Ct., Burnet County, Tex.).

²⁵ WOWSC Ex. 3 at 7, 11 (Gimenez Reb.).

²⁶ WOWSC Ex. 2 at 13 (Gimenez Dir.).

²⁷ Staff does not challenge this allocation. Staff Ex. 4 at 6 (Gilford Dir.), Attachment MG-5; Staff Ex. 2 (Mendoza Dir.), Attachment SJM-3.

²⁸ WOWSC Ex. 7 at 5-6 (Nelson Dir.).

²⁹ Staff Ex. 4 at 6-7 (Gilford Dir.).

B. Threshold Issue

No party addressed in prefiled testimony or statement of position whether the rates were unreasonably preferential, prejudicial, or discriminatory, despite being listed as an issue to be addressed in this proceeding.³⁰ Though alerted to this omission at the commencement of the hearing, the parties chose to move forward on the record as submitted.³¹

1. Staff and Ratepayer Positions

In initial briefs, Staff and Ratepayers argue that the threshold issue does not apply. Staff argues that whether the rates are unreasonably preferential, prejudicial, or discriminatory is one of three thresholds—along with whether the rates are just and reasonable and whether they are sufficient, equitable, and consistent—any one of which, if overcome, allows the Commission to set new rates.³² Somewhat similarly, Ratepayers directly challenge whether this inquiry presents a threshold issue to this case. Generally, Ratepayers argue that the threshold issue does not apply because the *City of Fort Worth* case, upon which the Commission’s construction is based, addressed contractual rates under the Federal Power Act, and that the Legislature’s recent amendment to Water Code § 13.043(j) was intended to remove this as a threshold issue. The ALJs do not further address these challenges because the Commission’s precedent is clear and the recent amendment to subsection (j) did not change the operative language.³³

³⁰ See Preliminary Order at Issue Nos. 4-and 5 (July 16, 2020).

³¹ Tr. at 14-17.

³² Ratepayers Initial Brief at 4; Staff Initial Brief at 2.

³³ *Ratepayers’ Appeal of the Decision by Bear Creek Special Utility District to Change Rates*, Docket No. 49351, Order on Rehearing at 3, 20 (Conclusion of Law No. 8) (Nov. 19, 2021); *Tex. Water Comm’n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied); Preliminary Order at 4 n.11 (noting that the initial determination under § 13.043(j) required by *City of Fort Worth* was not limited to appeals under § 13.043(f), and “[t]herefore, the same initial inquiry under subsection (j) must be made in this appeal under § 13.043(b) before the Commission can reset rates”).

Substantively, Ratepayers argue—summarily and without record citation—that the rates are “unduly preferential and discriminatory,” because “while all customers are required to pay the increased rates,” only the named board-member defendants benefited from the increase.³⁴ Ratepayers also argue that Windermere violated its tariff by not requiring individual board members to pay for those legal services.³⁵

2. WSC Position

Windermere argues that the rates set by the board are not unreasonably preferential, prejudicial, and discriminatory, and that the appeal therefore fails on the threshold issue. More specifically, Windermere contends that because there is only one customer class, and each rate is uniform for all customers,³⁶ the rates cannot be discriminatory. Moreover, it adds, the board increased only the base rates to ensure that its customers, including board members, shared the cost equally.³⁷

In response to the assertion that Windermere violated its tariff, Windermere notes that the tariff refers to the cost of providing utility services, not legal defense funds, when addressing direct assignment of costs.³⁸ Therefore, it concludes, the tariff provision is not implicated.

³⁴ Ratepayers Initial Brief at 6-7.

³⁵ *Id.*; WOWSC Ex. 12 at (Bates) 46, paragraph 27 (“All services outside the normal scope of utility operations that the Corporation may be compelled to provide at the request of a customer or Member shall be charged to the recipient based on the cost of providing such service.”). WOWSC Ex. 2 (Gimenez Dir.), Attachment JG-1 also purports to be the tariff; however, it is not accessible on the flash-drive provided by the WSC, which contains only links, now expired, to an access site.

³⁶ Tr. at 82 (Burriss Clarifying) and 94 (Burriss Cross); *see* WOWSC Ex. 2 at 5 (Gimenez Dir.); *see also* WOWSC Ex. 3 at 24 (Gimenez Reb.).

³⁷ *See* WOWSC Ex. 8 at 11 (Nelson Reb.); WOWSC Ex. 9 at 9 (Rabon Reb.).

³⁸ WOWSC Reply Brief at 7.

3. Analysis

The ALJs conclude that Ratepayers failed to meet their burden of proof to show that the appealed rates are unreasonably preferential, prejudicial, or discriminatory. First, Ratepayers' petition does not assert that the rates are preferential, prejudicial, or discriminatory, only that they are not just and reasonable.³⁹ Ratepayers' petition admits that there is no meter size "except for the 5/8" x 3/4".⁴⁰ Thus, Ratepayers' pleading, on its face, shows no preference, prejudice, or discrimination. Second, Ratepayers appealed only the base rates, and water and sewer service each have a single base rate.⁴¹ Although a single meter size alone is not enough to show inequality, where, as here, all customers, including Board members, pay the same rates, this affirmatively shows no preference, prejudice, or discrimination. Additionally, board members pay the same rates and receive any utility service as all other ratepayers.

Ratepayers' argument to the contrary is not persuasive. Ratepayers do not explain how "only the customers who are defendants in the member lawsuits receive the benefit." They do not explain what the benefit is⁴² nor how it is exclusive to the customers who are defendants in the member lawsuits. Put simply, Ratepayers' argument is unsupported by evidence and is insufficient to support a finding that the rates are unreasonably preferential, prejudicial, or discriminatory.

³⁹ First Amended Ratepayer Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates at 1-2 (Apr. 30, 2020).

⁴⁰ *Id.*

⁴¹ Staff Ex. 2 at 4 (Mendoza Dir.); Tr. at 553, 556-58 (Mendoza Cross); Staff Initial Brief at 5.

⁴² Even assuming *arguendo* that the benefit Ratepayers reference is the legal defense expenses of the named board members, this too fails. There is no evidence that any expense on behalf of the board's volunteer directors confers on those members a preferential rate, or discriminates against all non-board member ratepayers. First, it is axiomatic that the evaluation of a rate must relate to the service for which it is exchanged—not, as here, a customers' service to the water provider. Moreover, evidence shows that the WSC incurred expenses on behalf of volunteer board members incident to their service on the board. Covering the legal defense expenses of named directors guards against corporate demise, a benefit to all customers. *See* WOWSC Ex. 3 at 14-15 (Gimenez Reb.) (identifying legal and policy reasons for covering director legal defense costs). Directors enjoy significant protection against personal liability under the business judgment rule, safe harbor provisions for non-profit corporations, and the corporate bylaws. *See Sneed v. Webre*, 465 S.W.3d 169, 178 (Tex. 2015); Tex. Bus. Orgs. Code § 22.221; WOWSC Ex. 2 (Gimenez Dir.), Attachment JG-2 at Art. 8, § 18. A corporation in turn has discretion in advancing legal expenses on behalf of directors and officers, which becomes mandatory if they prevail. Tex. Bus. Orgs. Code. §§ 8.104-.105, .051.

Finally, any alleged violation of Windermere's tariff does not demonstrate that the *rates* are preferential, prejudicial, or discriminatory. Moreover, the ALJs agree that the referenced tariff provisions refer to the cost of providing utility services, not legal defense funds, when addressing direct assignment of costs.⁴³

The preponderance of the evidence shows that the rates are not unreasonably preferential, prejudicial, or discriminatory. The Ratepayers having failed to meet their burden of proof on this threshold issue, the ALJs do not address whether the rates are just and reasonable.

C. Rate Case Expenses

Staff supports Windermere's requested rate case expenses while Ratepayers oppose Windermere's recovery of rate case expenses for this proceeding on two grounds.⁴⁴ First, Ratepayers argue that rate case expenses are not justified because Staff reviewed the reasonableness of rate case expenses under 16 TAC § 24.44, which, they argue, applies to hearings that benefit ratepayers and serve the public interest, a standard that Ratepayers assert would only be met if the rates are reduced.⁴⁵ The ALJs agree that section 24.44 does not apply to rate appeals under Water Code § 13.043, but not for the reason Ratepayers suggest.

Section 24.44 applies to a utility's recovery of rate case expenses in rate proceedings under Water Code sections 13.187 or 13.1871.⁴⁶ However, a water supply corporation is not a "utility" as

⁴³ WOWSC Reply Brief at 7.

⁴⁴ Ratepayers raise the issue of rate case expenses for the first time in post-hearing briefing. They did not prefile direct testimony or a statement of position regarding opposition to rate case expenses. 16 TAC § 22.124(a) ("[I]nsofar as its prefiled direct testimony does not address issues that a party intends to litigate, each party that has prefiled direct testimony shall file a statement of position no later than three working days before the start of a hearing.").

⁴⁵ Ratepayers Initial Brief at 7.

⁴⁶ 16 TAC § 24.44(a). Texas Water Code sections 13.187 and 13.1871 govern Class A and B utility applications to change rates.

defined by the Water Code, and this case is not a rate proceeding under Water Code section 13.187 or 13.1871.⁴⁷ Therefore, section 24.44 does not govern the recovery of rate case expenses here. Rather, the Water Code specifically authorizes the recovery of rate case expenses in an appeal under section 13.043(e).⁴⁸ Moreover, a water supply corporation “may employ and compensate counsel to represent the corporation as the board determines is necessary.”⁴⁹ Staff looked to section 24.44 as a guide in evaluating the reasonableness of rate case expenses but was not required to do so.⁵⁰

Next, Ratepayers argue that rate case expenses should not be allowed because Windermere, in their view, abused the appeal process through various wrongdoings on the part of the board and legal counsel. Ratepayers’ arguments largely lack record citation and evidentiary support. Generally, Ratepayers base their argument against the recovery of rate case expenses by addressing their disagreement with the board’s ratemaking process. The argument is without merit.

The Commission may allow recovery of reasonable expenses incurred by Windermere in the appeal proceedings.⁵¹ The evidence of rate case expenses presented by Ms. Mauldin is un rebutted.⁵²

⁴⁷ See Tex. Water Code § 13.002(23) (defining “utility” to exclude “a municipal corporation, *water supply or sewer service corporation*, or a political subdivision of the state”) (emphasis added).

⁴⁸ Tex. Water Code § 13.043(e) (The Commission “may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings.”).

⁴⁹ Tex. Water Code § 67.013.

⁵⁰ Staff Initial Brief at 10.

⁵¹ Tex. Water Code § 13.043(e). Unlike 16 TAC § 24.44, the Commission’s rules do not address determining the reasonableness of rate case expenses in appeals such as this one.

⁵² WOWSC Ex. 4 (Mauldin Dir.); WOWSC Ex. 5 (Mauldin 1st Supp. Dir.); WOWSC Ex. 6 (Mauldin 2nd Supp. Dir.); WOWSC Ex. 22 (Mauldin 3rd Supp. Dir.).

1. Amount

Windermere requests \$345,227.03 in rate case expenses, as of December 15, 2021.⁵³ This amount does not account for trailing rate case expenses—expenses incurred between the date of the report and when the Commission’s decision becomes final. Staff supports Windermere’s collection of rate case expenses incurred in this appeal. Staff’s brief, as with its testimony, accounted only for rate case expenses incurred through October 31, 2021.⁵⁴ Staff based its recommendation on the testimony, including supplements, of Ms. Mauldin. Ms. Mauldin’s third supplement provides equal detail and Staff filed no objection to its admission.

The ALJs find \$345,227.03 in rate case expenses to be reasonable and recommend that Windermere be authorized to recover that amount. Because this amount does not account for trailing expenses incurred after December 15, 2021, the ALJs recommend that Windermere file an affidavit or supplemental testimony closer in time to the Commission’s consideration of this matter reflecting the then-current total.

2. Recovery Mechanism

Staff recommends that rate case expenses be recovered through a surcharge over a five-year period to alleviate financial burden on the customers. Staff recommends that this surcharge be charged to all customers at a monthly amount equal to the total rate case expenses divided by the current number of connections, divided by five years, divided by twelve months. Windermere argues that prolonging recovery over such a long time would severely impact its ability to retain current counsel, and without counsel, the nonprofit water supply corporation would be at risk of

⁵³ WOWSC Ex. 22 (Mauldin 3rd Supp. Dir.).

⁵⁴ Staff Initial Brief at 9; Staff Ex. 5 at 4 (Gilford Supp. Dir.).

additional litigation.⁵⁵ According to Windermere, the litigation is ongoing and shows no sign of stopping.⁵⁶ Instead, Windermere asks to recover rate case expenses over two years.

The ALJs are concerned with the bill impact to customers of a two-year recovery, which would be in addition to the existing base rates of \$90.39 for water and \$66.41 for sewer per month. With 271 connections, the currently supported amount of rate case expenses, spread over two years, will exceed \$50 per month per customer.⁵⁷ Over five years, this amount would be closer to \$20 per month.⁵⁸ However, over a 42-month recovery period, this amount approaches \$30 per month.⁵⁹ Although still unusually long, the ALJs find that this recovery period balances the need to mitigate the bill impact on customers and Windermere's need to recover its rate case expenses in a timely manner.

Additionally, Staff witness Maxine Gilford recommended recovering the rate case expenses through a surcharge that would terminate once Windermere collects the amount awarded. The ALJs agree and recommend that the rate case expenses be recovered through a surcharge until the earlier of 42 months after the surcharge takes effect or full recovery of the final amount awarded.

VI. CONCLUSION

Because the ALJs do not find that the appealed rates are unreasonably preferential, prejudicial, or discriminatory, the ALJs do not reach the substantive issues of whether the rates are just and reasonable. The ALJs recommend that the Commission dismiss this appeal and allow

⁵⁵ WOWSC Ex. 8 at 8 (Nelson Reb.).

⁵⁶ *Id.*

⁵⁷ By the ALJs' calculation: $\$345,227.03/271/2/12=\53.08 .

⁵⁸ By the ALJs' calculation: $\$345,227.03/271/5/12=\21.23 .

⁵⁹ By the ALJs' calculation: $\$345,227.03/271/42=\30.33 .

Windermere to recover its rate case expenses through a surcharge until the earlier of 42 months after the surcharge takes effect or full recovery of the amount awarded.

Alternatively, if the Commission believes it is appropriate to address whether the rates are just and reasonable, the ALJs recommend that the Commission remand this matter to SOAH for a proposal for decision based on the existing record and argument, so as to avoid additional rate case expenses.

VII. FINDINGS OF FACT

General and Procedural Findings

1. Windermere Oaks Water Supply Corporation (Windermere or WOWSC) is a nonprofit water supply and sewer service corporation operating under chapters 49 and 67 of the Texas Water Code (TWC).
2. Windermere's water and sewer service certificates of convenience and necessity numbers are 12011 and 20662.
3. Windermere is managed by a member-elected board of directors, where each director must be a member and customer of the corporation.
4. Windermere has five board members, and the board of directors elects its officers.
5. On February 1, 2020, the board approved a rate increase that took effect beginning March 23, 2020.
6. On or about February 11, 2020, Windermere sent notice of its rate increase to its customers.
7. On April 27, 2020, certain ratepayers (Ratepayers) timely filed a petition under TWC § 13.043(b) to appeal the decision by the board.
8. The petition was filed within 90 days after the effective date of the rate change.
9. As of the date of the board's decision to increase rates in 2020, Windermere had 271 water connections and 245 sewer connections.

10. Fifty-two ratepayers signed the petition.
11. Greater than 10 percent of Windermere's total active connections at the time of filing signed a petition to contest the rate increase.
12. On May 27, 2020, Windermere filed a response to the petition.
13. No party requested an effective date other than the original one proposed by Windermere.
14. The appealed rates were in effect from March 23, 2020, to the present.
15. Only the base rates for water and sewer service were appealed.
16. On June 23, 2020, by Order No. 3, a Public Utility Commission of Texas (Commission) administrative law judge (ALJ) found the petition administratively complete.
17. On June 23, 2020, the Commission referred the case to the State Office of Administrative Hearings (SOAH), requesting the assignment of an ALJ to conduct a hearing and issue a proposal for decision, if necessary.
18. On July 16, 2020, the Commission issued a Preliminary Order identifying eleven issues to be addressed in the SOAH proceeding.
19. On October 8, 2020, by SOAH Order No. 5, this matter was referred to mediation.
20. On January 19, 2021, a mediator's report stated that the parties did not reach agreement during mediation.
21. No party moved to establish interim rates.
22. On March 10, 2021, Windermere filed direct testimony of George Burriss, Joe Gimenez, Mike Nelson and Jamie Mauldin.
23. On April 7, 2021, Ratepayers filed direct testimony of Daniel Flunker, Pattie Flunker, Bill Stein, and Kathryn E. Allen.
24. On May 5, 2021, Commission staff (Staff) filed direct testimony of Spencer English, Stephen Mendoza, Heidi Graham, and Maxine Gilford. The testimony of Spencer English was subsequently adopted by Mark Filarowicz.
25. On July 7, 2021, the Windermere filed rebuttal testimony of Mike Nelson, Joe Gimenez, and Grant Rabon.

26. On June 7, 2021, Windermere filed the first supplemental direct testimony of Jamie Mauldin.
27. On November 19, 2021, Windermere filed the second supplemental direct testimony of Jamie Mauldin.
28. On November 23, 2021, Staff filed the supplemental direct testimony of Maxine Gilford.
29. Windermere provided written notice of the hearing to all affected customers.
30. On December 1-3, 2021, a hearing on the merits was held before ALJs Christiaan Siano and Daniel Wiseman via Zoom videoconference at which Windermere, Ratepayers, and Staff appeared.
31. On December 6, 2021, SOAH Order No. 15 set a post-hearing briefing schedule.
32. On December 11, 2021, Ratepayers filed a motion for interim relief.
33. On December 20, 2021, SOAH Order No. 16 denied the motion for interim relief.
34. Under SOAH Order No. 15, initial post-hearing briefs were due on December 30, 2021, and reply briefs were due on January 25, 2022.
35. On December 30, 2021, Windermere filed the third supplement direct testimony of Jamie Mauldin.
36. On February 1, 2022, Windermere moved to strike portions of Ratepayers' reply brief and response to Windermere's motion to admit evidence.
37. By SOAH Order No. 17, the motions to strike were denied.
38. By SOAH Order No. 18, the record was reopened and WOWSC Exhibit 22 was admitted into the evidentiary record. The record closed on February 15, 2022.

Background

39. Windermere provides water and sewer service.
40. Windermere board's February 1, 2020 rate decision resulted in a monthly base rate of \$90.39 for water service and \$66.41 for sewer service.
41. There is no meter size except for the 5/8" x 3/4" meter.

42. Water and sewer service each have a single base rate applicable to a single meter size.
43. All customers are charged the same rates.

Rate Case Expenses

44. The rate case expenses of \$345,227.03 through December 15, 2021, are supported as reasonable and necessary.
45. A 42-month recovery period for rate case expenses is reasonable considering the rate impact on customers and the need to recover rate case expenses in a timely manner.
46. The rate case expense surcharge should be calculated based on a 42-month recovery, and the surcharge should continue until the earlier of 42 months after the surcharge takes effect or all reasonable and necessary rate case expenses are fully recovered.

VIII. CONCLUSIONS OF LAW

1. Windermere is a nonprofit water supply and sewer service corporation governed by TWC chapters 49 and 67 and is a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
2. Windermere is governed by the Business Organizations Code. TWC § 67.004; House Comm. on Bus. & Indus., Bill Analysis at 1, 63, Tex. H.B. 1156, 78th Leg., R.S. (2003).
3. The Commission has jurisdiction over this proceeding under TWC § 13.043(b)(1) and 16 TAC § 24.101.
4. Upon referral, SOAH has jurisdiction to conduct the hearing and issue a proposal for decision pursuant to Texas Government Code § 2003.049.
5. Notice of the hearing was provided consistent with Texas Government Code §§ 2001.051-.052 and 16 TAC § 22.55.
6. Windermere substantially complied with 16 TAC § 24.101(c)(6) regarding notice of the hearing.
7. The petition for review was timely filed with the Commission and with Windermere in compliance with TWC § 13.043(c) and 16 TAC § 24.101(b).
8. The petition for review was signed by more than 10 percent of Windermere's ratepayers whose rates were changed by the rates appealed and who were eligible to file an appeal

under TWC § 13.043(b) in compliance with TWC § 13.043(c), 16 TAC § 24.101(b) and (d), and 16 TAC § 24.103(b).

9. Windermere's volumetric rates are not subject to this appeal.
10. In a rate appeal, the service provider bears the burden of proof to establish that the contested rates are just and reasonable. 16 TAC § 24.12.
11. The Commission hears this appeal *de novo*.
12. Under TWC § 13.043(e), the Commission may in an appeal brought under TWC § 13.043(b) consider the information that was available to the governing body of the retail public utility at the time the governing body set the rates appealed; any information that shows, or tends to show, the information that was available to the governing body at the time it set the rates appealed; and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings.
13. The Commission must find that the appealed rates are unreasonably preferential, prejudicial, or discriminatory before setting just and reasonable rates. TWC § 13.043(j); *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).
14. The party challenging the rates has the burden of proof to establish that the contested rates are unreasonably preferential, prejudicial, or discriminatory. 16 TAC § 24.12; 1 TAC § 155.427.
15. The assessment of whether the rates are unreasonably preferential, prejudicial, or discriminatory is done without regard to whether the rates are just and reasonable.
16. Windermere has one class of members, as defined by TWC § 13.002(11).
17. The appealed rates were not shown to be unreasonably preferential, prejudicial, or discriminatory. TWC § 13.043(j).
18. The Commission may allow the recovery of Windermere's reasonable expenses incurred in the appeal proceedings. TWC § 13.043(e).
19. A water supply corporation may employ and compensate counsel to represent the corporation as the board determines is necessary. TWC § 67.013.
20. 16 TAC § 24.44 does not apply to rate appeals brought under TWC § 13.043(b), but may be used as a guide in evaluating the reasonableness of rate case expenses.

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

PROPOSAL FOR DECISION

PAGE 19

21. The Commission may allow Windermere to impose surcharges to recover rate case expenses. TWC § 13.043(e).
22. Windermere should be authorized to recover its reasonable rate case expenses through a surcharge. TWC § 13.043(e).

IX. PROPOSED ORDERING PARAGRAPHS

1. The appeal is denied.
2. This case is dismissed.
3. The Corporation shall surcharge each connection \$____ per month in rate case expenses. The monthly rate case expense surcharge shall cease at the earlier of 42 months after the rider takes effect or full recovery of the amount awarded.
4. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

SIGNED March 31, 2022.



CHRISTIAAN SIANO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



joe.gimenez <1129jjg@gmail.com>

WOWSC PUC Schedule

2 messages

Joe Gimenez <1129jjg@gmail.com>
To: "Lara N. Zent" <Lara.zent@trwa.org>

Wed, May 4, 2022 at 12:08 PM

Lara,

We heard yesterday that the Proposal for Decision re WOWSC rate case now has a schedule for exceptions and replies before the June 16 hearing by the commission. Here is the link https://interchange.puc.texas.gov/Documents/50788_183_1205603.PDF.

Our attorney Jamie Mauldin was going to advise you all of this development. I'm just doubling up with this notice.

Hope you're well. I will be glad to be finished with this process. Not fun, costly and unnecessary.

Best regards,
Joe Gimenez

Lara Zent <lara.zent@trwa.org>
To: Joe Gimenez <1129jjg@gmail.com>
Cc: Kristen Francher <kf@francherlegal.com>

Wed, May 4, 2022 at 12:36 PM

Joe,

Thanks for the update. I'll get with Kristen Francher to discuss our engagement.

Best regards,

Lara

Lara Zent
Executive Director & General Counsel
Texas Rural Water Association

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joe.gimenez <1129jjg@gmail.com>

Letter to Commission

2 messages

Joe Gimenez <1129jjg@gmail.com>
To: "Lara N. Zent" <Lara.zent@trwa.org>

Tue, Jun 7, 2022 at 1:42 PM

Lara,

Thank you so much for the TRWA's excellent letter in support of the PFD. All points nailed exactly the angst I have felt for so long with regards to the Staff positions. They, like the Ratepayer Representatives and the plaintiffs in the underlying suit, behave like a shadow board. We here in Windermere are very appreciative of all the support that TRWA provides our water corporation. And I can't tell you how disappointed I was not to have had the schedule flexibility to visit with you all at the Round Rock conference!

Again, many thanks for this letter in support of WOWSC!

Best regards,
Joe Gimenez

Lara Zent <lara.zent@trwa.org>
To: Joe Gimenez <1129jjg@gmail.com>

Tue, Jun 7, 2022 at 1:47 PM

You're welcome Joe. These are important issues that we hope the commission will get right. We hope our input helps get them there – we'll see.

My best,

Lara

Lara Zent
Executive Director & General Counsel
Texas Rural Water Association

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joe gimenez <1129jjg@gmail.com>

Trial Outcome for Windermere Oaks

2 messages

Joe Gimenez <1129jjg@gmail.com>
 To: "Lara N. Zent" <Lara.zent@trwa.org>

Mon, Nov 21, 2022 at 12:44 PM

Lara,

The trial involving the interested director in the land sale case concluded Friday. The jury decided the land value was nowhere near the 1 million plus which the plaintiffs had wanted and required only \$70,000 in damages against the interested director. We hope that PUC Staff will now put the rate case aside based on this outcome, and if there is any assistance that TRWA might be willing to give (a letter) we would be most appreciative. We are going to put out the following communication to members today. I hope you have a great Thanksgiving holiday. Best regards, Joe Gimenez

Dear WOWSC Members,

The trial of the lawsuit regarding the sale of certain WOWSC property to Friendship Homes and Hangers back in 2015 finally concluded on Friday, November 18th.

After nearly a *full week* of evidence and testimony, the jury in the case came back with a verdict that, in short, found that Dana Martin and Friendship Homes behaved improperly in the transaction, and that they should pay damages to the WOWSC in the amount of \$70,000, representing the difference in value paid by Friendship Homes compared to what the jury found the property sold was actually worth.

The jury was presented with specific questions as to the liability of both Friendship Homes and Hangars and Dana Martin, and the jury found them liable; however, it is also notable that the jury *did not find* that Ms. Martin acted with any malicious intent.

The result of those findings will be a judgment that money damages of \$70,000 are awarded against those defendants, to be paid to the WOWSC, subject to plaintiffs' claims to some of that money.

Additionally, at the close of evidence, the court issued judgment *dismissing* all of the plaintiffs' claims that WOWSC had acted "ultra vires," or outside its powers.

Finally, there is one remaining claim involving the WOWSC that remains pending, related to whether any/how much of the \$70,000 awarded to the WOWSC should be paid to the plaintiffs in connection with their costs in pursuing the case; the court will make that determination at a later date.

This trial came at the conclusion of a grueling and divisive litigation process, and after the enormous expenditure of legal fees.

In order to obtain just this result, the plaintiffs testified that their attorney's fees alone were over \$460,000.

You will note that the WSC was *not* a plaintiff against Ms. Martin and Friendship at this trial; as was discussed at length at the October 26, 2019 meeting of the WSC board, the Board appropriately weighed the potential costs and uncertainty as to the potential legal claims against Ms. Martin and Friendship Homes in deciding *not* to pursue those claims further (as the plaintiffs and a small group of WSC members wanted).

As reflected in the public discussions at that 2019 meeting, the 2019 Board thoughtfully considered the actions of the 2015 Board, the competing appraisals and other evidence of the property's value, the potential damage to the WSC's reputation as a seller if it tried to sue a buyer of its property (making it potentially difficult to find future willing buyers to purchase WOWSC's remaining airport property), and other related concerns, and determined that full litigation against

Dana Martin and Friendship Homes would be imprudent, too costly, and questionable for full recovery of \$1 million+ that the plaintiffs believed likely.

After all of this litigation, and all of these legal expenses, the jury's finding that the claims were worth only \$70,000 supports the Board's decision three years ago *not* to risk significant ratepayer dollars in pursuit of a risky and uncertain claim.

In summary, after trial of the case to a jury of 12 citizens of Burnet county, this case is over, with a finding against Ms. Martin and Friendship Homes **and no findings or judgments against any of the WOWSC's other directors (past and current) or against the WOWSC in any respect.**

Ms. Martin, Friendship Homes, and the plaintiffs may appeal this verdict, and the WOWSC knows that they might do so.

The WOWSC however is hopeful that the parties accept the will of the jury and do not appeal so as to diminish future legal costs to the company's members.

The WOWSC specifically hopes that at the very least, the plaintiffs will not appeal any of the court's actions dismissing the other directors or the WOWSC, so that the WOWSC does not have to incur any effort or legal costs in that appeal.

Additionally, when the result of this case becomes final (after appeals, if any are asserted), the WOWSC will consider and take action with respect to any attorney's fees it advanced Ms. Martin's defense regarding claims made against her as a former director (such attorney's fees were paid with respect to the defense of all current and former directors named as defendants, with all of those directors other than Ms. Martin being dismissed from the case by the court). The WOWSC has a right to reimbursement of those fees in the event of a final judgment finding Ms. Martin liable, and will consider and take appropriate action at the appropriate time.

There will surely be some other related developments and actions flowing from the results of this case, but for now, we wanted to share with you the immediate results, and the WSC's wishes to move forward and once and for all, put this matter behind us and to heal as a community.

The WSC hopes you all have a wonderful Thanksgiving with your family and friends.

Sincerely,

The WOWSC Legal Subcommittee

Joe Gimenez, President Mike Nelson Vice President

Lara Zent <lara.zent@trwa.org>
To: Joe Gimenez <1129jjg@gmail.com>

Wed, Nov 23, 2022 at 4:50 PM

Joe,

Thank you so much for the update and I'm happy to hear you had a favorable outcome.

I wish you and your family wonderful Thanksgiving holiday!

Best regards,

Lara

Lara Zent
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joe gimenez <1129jjg@gmail.com>

FW: [EXT]Membership renewal, winter weather and more

1 message

Nathan Cantrell <nathan.cantrell@trwa.org>

Fri, Dec 23, 2022 at 1:42 PM

To: George Burriss <watermgmt@yahoo.com>, "1129jjg@gmail.com" <1129jjg@gmail.com>

George,

See the attached pipeline sent out from TRWA concerning the new winter storm rule.

I recommend signing up for this email, which you can do at the bottom of the notice.

I hope you have a wonderful Holiday Season.

Nathan Cantrell

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From: TRWA Pipeline Team <editor@trwa.org>
Sent: Thursday, December 22, 2022 3:00 PM
To: Nathan Cantrell <nathan.cantrell@trwa.org>
Subject: [EXT]Membership renewal, winter weather and more



The TRWA Weekly Pipeline lands in your inbox every Thursday afternoon with links to important information about the Texas rural water industry. Know of a topic our members should be reading about? Email potential content to editor@trwa.org! Read more below!!



Winter weather is here; here's what you need to know

The weather forecast calls for below freezing temperatures starting today, December 22, and possibly continuing through next Tuesday, December 27, in parts of the state. TRWA encourages all utilities to prepare themselves and their customers for the dangers cold weather can bring, and there's a new requirement already in effect passed by the Texas legislature in 2021 and recently adopted in the PUCT's rules.

On October 20, 2022, the Public Utility Commission of Texas (PUCT) adopted *Section 24.173 Late Fees and Disconnections During an Extreme Weather Emergency for Nonpayment* (Rule) which prohibits investor-owned utilities (IOU), water supply corporations (WSC), water districts, (including special utility districts (SUD)) and counties from disconnecting customers, or issuing late fees for nonpayment of bills, during extreme cold weather emergencies.

Extreme cold weather emergencies are periods beginning when the previous day's highest temperature in an area did not exceed 28 degrees Fahrenheit and the temperature is predicted to remain at, or below, that level for the next 24 hours according to the nearest National Weather Service reports for your area. The extreme weather emergency ends on the second business day the temperature exceeds 28 degrees Fahrenheit. Under the new rules, affected customers have a 30-day window to request a payment schedule. If a customer makes a request within those 30 days, the service provider must offer them a payment schedule.

On, or before, January 31, 2023, all IOUs, WSCs, districts, and counties must send each of its customers a one-time written notice (Notice) of the Rule's requirements in English and Spanish. The TRWA has posted a sample Notice form on our website, which you may download by clicking the button below. The Notice can be sent as a billing insert or in a separate communication and must be delivered by first class mail, hand delivery or electronically if the customer has agreed to receive emails.

TRWA recommends that each utility have its general manager sign an affidavit stating when, how and to whom the Notice was sent. Please attach a copy of the Notice and the list of customers who received the Notice to the affidavit. This signed, notarized and dated affidavit should be kept in the system's files.

Whether or not a system has sent out the notice to their customers, the requirements of this law regarding late fees and disconnection are already in effect and utilities must abide by them.

If you have any questions, please reach out to our legal team.

Sample PUCT notice

Don't forget to renew your TRWA Membership

TRWA memberships run year-to-year, which means all memberships expire December 31 and must be renewed for 2023. You can renew your membership online quickly and easily. Click the button below for step-by-step instructions on how to renew and update your account information.

Learn how to renew your TRWA membership online

TRWA offers more benefits to our members than ever before: from technical assistance to training and conference discounts to access to Quench Magazine and other publications and resources and much, much more. Renew your membership early to make sure you're a part of our coalition as we advocate for members and the rural water and wastewater community during the 2023 Legislative Session.

When you're ready to renew, click the instructions above and log in to your account at trwa.org to get started. If you have any questions, please contact us by emailing membership@trwa.org. For those who prefer to renew by mail, the TRWA Membership Team recently sent out membership renewal packets.

Holiday Office Closures

The TRWA Office will be closed Friday, December 23 and Monday, December 26 in observance of the Christmas Eve and Christmas holidays. It will also be closed Monday, January 2, 2023 in observance of the New Years Day holiday.



TRWA OPPORTUNITIES

Come work with us at TRWA!



The Texas Rural Water Association is currently hiring for two key positions in our association.

We're looking for a Financial, Managerial and Technical Assistance Specialist in our Environmental Services Department, primarily in northeastern Texas. The position will provide technical assistance to promote the development, growth and sustainability of the assigned water or wastewater utility.

In addition, our Training Department is hiring an Instructor. This position conducts state-approved water, wastewater and customer service inspection training courses across the state.

To see more information on these positions and get details on how to apply, visit our TRWA Job Opportunities page by [clicking here](#).

Let TRWA file your Eminent Domain Report

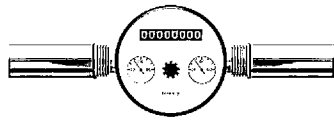
The deadline for filing your Eminent Domain report is February 1, 2023. TRWA can save your system time and hassle by filing this report for you for a small fee.

Please keep in mind that you must sign up for this service each year; we will not automatically file for you, even if we filed yours in 2022.

Entities that fail to file by February 1, 2023 will be notified by the Comptroller's Office and may be subject to a civil penalty of \$1,000, so get yours in early. Click the button below to go to our filing form.

Eminent Domain Filing 2023



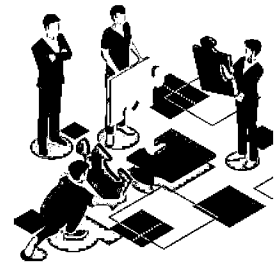


TRWA TRAINING AND EDUCATION

UPCOMING CLASSES

Upcoming In-Person Courses:

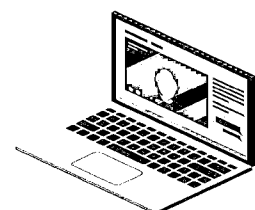
We will add in-person classes as they are requested. **Register two weeks in advance to protect your spot.** Check our event page regularly for updated class schedules! *If you would like to host an in-person course at your system, click here.*



- Surface Water Production 1 - Aubrey - January 10-12, 2023
- Groundwater Production - Riverside - January 24-26, 2023
- Valve & Hydrant Maintenance - Lindale - January 24-26, 2023
- Basic Water Works Operations - San Antonio - January 31 - February 2, 2023
- Basic Water Works Operations - West Tawakoni - January 31 - February 2, 2023
- Valve & Hydrant Maintenance - Lorena - January 31 - February 2, 2023

Upcoming Virtual Courses:

The following are instructor led virtual classes. These classes fill up fast, so register now while we still have availability. **Register at least two weeks in advance; course materials are mailed to each participant before the first day of class.**



- [Virtual - Basic Water Works Operations - January 17-19, 2023](#)

[View all Training and Education Opportunities](#)

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This email was sent to nathan.cantrell@trwa.org

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

WOWSC'S SUPPLEMENTAL RESPONSE TO RATEPAYERS SEVENTH RFI

RATEPAYERS 7-18: Please describe all efforts (if any have been made) to market or sell Windermere's remaining tract within Spicewood Airport. This RFI encompasses, without limitation, each request (if Windermere contends any has been made) to the plaintiffs in Cause No. 48292 for a release of the *lis pendens*.

RESPONSE: WOWSC has made verbal requests to the plaintiffs in Cause No. 48292 for a release of the *lis pendens*. But plaintiffs responded that it would release the *lis pendens* only upon certain conditions.

WOWSC has made no effort to market or sell the remaining tract due to the *lis pendens*.

Prepared by: Counsel
Sponsored by: Counsel

SOAH DOCKET NO. 473-20-4071.WS**DOCKET NO. 50788****WOWSC'S SUPPLEMENTAL RESPONSE TO RATEPAYERS SEVENTH RFI**

RATEPAYERS 7-21: Reference the chart below listing parcels of real property shown on the Burnet County tax rolls as property of Windermere. For each parcel, please provide the requested information concerning (i) its fair market value and (ii) the portion used for operations or occupied by an incomplete improvement to be used for operations.

BCAD Prop. ID	Parcel Size	Fair Market Value		Portion of tract that is (i) reasonably necessary for and used in Windermere's operation to provide water supply and/or sewer service, or (ii) an incomplete improvement designed and intended to be used in such operation	
		1/2020	Present	1/2020	Present
45556	0.2299	\$90,314	\$105,908	100%	100%
45557	0.2646	\$26,412	\$41,129	100%	100%
45575	0.4004	\$57,555	\$101,158	100%	100%
45779	0.1286	\$2,670	\$9,810	100%	100%
56117	0.266 ac.	Unknown	Unknown	100%	100%
56136	24 ac.	\$480,000	\$480,000	100%	100%
56161	4.027 ac.	\$161,250	\$158,126	0%	0%
62330	2.9857 ac.	\$104,500	\$104,500	0%	0%
65687	35.954 ac.	\$744,066	\$740,222	100%	100%

RESPONSE: See table above. WOWSC only owns an easement interest over BCAD Property 56117. It is therefore unknown what the easement interest's market value was in January 2020, and what it is in the present. Moreover, WOWSC does not have, and is not offering, an opinion regarding the market value of any tract or interest referenced. The values above were provided by the Burnet CAD.

Prepared by: Counsel
Sponsored by: Counsel

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

WOWSC'S SUPPLEMENTAL RESPONSE TO RATEPAYERS SEVENTH RFI

RATEPAYERS 7-22: Reference Revised Attachment MN-6. Please describe the process (i.e., due diligence) by which the information contained therein was gathered and compiled, identify the person(s) who performed that work and produce the billing records and other underlying documents from which the information was obtained.

RESPONSE: See WOWSC's Response to Ratepayers 7-26; see also WOWSC's Response to Staff 7-1; WOWSC's Response to Staff 8-3; Attachment Staff 8-3.

Prepared by: Mike Nelson
Sponsored by: Mike Nelson

WOWSC'S SUPPLEMENTAL RESPONSE TO RATEPAYERS SEVENTH RFI

RATEPAYERS 7-28:

Reference Windermere's Response to Staff 8-9 and Attachment Staff 8-9, in particular page 4 of 10. Please produce the cost estimates for the 2 projects referred to (which apparently were attached at one time), the records reflecting all costs (paid and incurred) for each of these projects and the annual savings, if any, to Windermere's customers generated by each project

RESPONSE:

Staff 8-9 only referred to a single LCRA project: the Firm Water Conservation Cost-Share Program. However, WOWSC applied this project to its wastewater and water systems.

The LCRA project cost WOWSC \$34,281 and the LCRA \$14,094. See Attachment Staff 8-9.

An estimation of the annual savings are as follows: (1) \$1,517.84 for raw water cost; (2) \$6,808.06 for COGS water treatment cost. The total estimated annual saving is \$8,325.90. See Supplemental Attachment Ratepayers 7-28.

Prepared by: Mike Nelson
Sponsored by: Mike Nelson

2/19/2023

Subject: WOWSC's LCRA Water Conservation Projects' Cost Savings Per Year Estimate

Year	Pre-Water Conservation				Post-Water Conservation			Pre - Post	Pre/Post
	2018	2019	2020	3 year average	2021	2022	2-year average	Delta	Ratio
Acre Feet Used	57.88	57.81	68.31	61.33	47.55	50.12	48.835	12.50	1.256
# of Members	259	271	287	272	287	288	288	-16.00	0.944

A] Raw Water Cost Savings

Y2022 LCRA Water Cost for: water used up to 59 ac/ft = \$155 per ac/ft

water used over 59 ac/ft = \$310 per ac/ft ==> 100% penalty

unused water below 59 ac/ft = \$77.50 per ac/ft ==> 50% penalty

Pre-Water Conservation water cost \$9,867.30

Post-Water Conservation water cost \$8,349.46

Raw Water Cost Savings \$1,517.84**B] Cost of Good Sold (COGS) Cost Savings from Reduced Water Treatment****Year 2022 WOWSC Cost of Goods Sold**

57000-5 - COS Chemicals - Water \$11,023.20

57500-5 - COS Electricity - Water \$11,252.26

58000-5 - COS-Sludge Removal - Water \$4,318.54

Total \$26,594.00**COGS Cost Savings (Total * 0.256) \$6,808.06****C] Total Cost Savings Estimate per Year \$8,325.90**

Note: The cost saving estimation is pessimistic as the # of Members has increased by sixteen members on the average pre vs post

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WOWSC'S SUPPLEMENTAL RESPONSE TO RATEPAYERS SEVENTH RFI

RATEPAYERS 7-29: Please explain where Mike Nelson obtained the revised information for his answers in the Revised Attachment MN-6.

RESPONSE: Mike Nelson obtained the information in his revenue model and WOWSC's Y2019 end of month Director Reports.

For WOWSC's Y2019 end of month Directors' Reports, see Voluminous Confidential Attachment Ratepayers 7-26.

See also WOWSC's Response to Staff 7-1; WOWSC's Response to Staff 8-3; Attachment Staff 8-3.

Prepared by: Mike Nelson
Sponsored by: Mike Nelson

The following files are not convertible:

(Windermere Oaks WSC-2016).xls	Supplemental Attachment Ratepayers 7-9
(WW+Rate+Calc+worksheet).xls	Supplemental Attachment Ratepayers 7-9
(Windermere Oaks WSC-2016).xls	Supplemental Attachment Ratepayers 7-9
(WW+Rate+Calc+worksheet) (5-9-19).xls	Supplemental Attachment Ratepayers 7-9
(Windermear Oaks 2017).xls	Supplemental Attachment Ratepayers 7-9
(TRWA Rate Analysis worksheet for 2019).xls	Supplemental Attachment Ratepayers 7-9
(Windermere Oaks WSC 2019 C).xls	Supplemental Attachment Ratepayers 7-9
(Windermere Oaks WSC 2019 D).xls	Supplemental Attachment Ratepayers 7-9
(Windermere Oaks WSC 2019 E).xls	Supplemental Attachment Ratepayers 7-9
(Windermere Oaks WSC 2019 A).xls	Supplemental Attachment Ratepayers 7-9
(Windermere Oaks WSC 2019 B).xls	Supplemental Attachment Ratepayers 7-9
(TRWA Rate Analysis worksheet for 2019) (Nov. 2020).xls	Supplemental Attachment Ratepayers 7-9
28.xlsx	

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.