



## Filing Receipt

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**SOAH DOCKET NO. 473-20-4071.WS  
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<b>RATEPAYERS APPEAL OF THE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DECISION BY WINDERMERE OAKS</b>	<b>§</b>	
<b>WATER SUPPLY CORPORATION TO</b>	<b>§</b>	<b>OF</b>
<b>CHANGE WATER AND SEWER</b>	<b>§</b>	
<b>RATES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**WINDERMERE OAKS WATER SUPPLY CORPORATION’S OBJECTIONS TO  
RATEPAYERS’ EIGHTH REQUEST FOR INFORMATION**

Windermere Oaks Water Supply Corporation (WOWSC), by and through its attorneys of record, files these Objections to Ratepayers’ Eighth Request for Information (RFI) to WOWSC, and respectfully shows as follows:

**I. PROCEDURAL HISTORY**

Ratepayers of WOWSC (Ratepayers) served its Eighth RFI to WOWSC on February 22, 2023. Pursuant to SOAH Order No. 23, these objections are timely filed within three business days of WOWSC’s receipt of the RFI.<sup>1</sup> Counsel for WOWSC has attempted to confer with Ratepayers’ Representatives to conduct good faith negotiations, but as of the filing deadline have failed to resolve the issues. While WOWSC will continue to negotiate with Ratepayers regarding these and any future objections, WOWSC files these objections for preservation of its legal rights under the established procedures. To the extent any agreement is subsequently reached, WOWSC will withdraw such objection.

**II. OBJECTIONS**

WOWSC objects to the following RFIs:

**RATEPAYERS RFI 8-51A:** Reference Nelson Supplemental Rebuttal Testimony at p. 11, lines 5-13. Please identify each IOU for which Windermere contends the shareholders/investors are responsible for such IOU’s debt, loan covenants, expenses and other obligations.

**Objections:**

WOWSC objects to this request because (1) it does not identify with reasonable particularity, the information, documents, or materials sought, (2) the information requested is

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<sup>1</sup> SOAH Order No. 23 – Memorializing Prehearing Conference; Adopting Procedural Schedule at 4 (Sept. 26, 2022).

public information and therefore can be obtained through an alternative source, and (3) producing documents in order to respond would be unduly burdensome and expensive.

Under the Texas Public Utility Commission's (Commission) rules at 16 TAC § 22.144(b)(1) and the Texas Rules of Civil Procedure 196.1, discovery requests must identify with reasonable particularity the information, documents, or material sought.<sup>2</sup> Additionally a discovery order cannot compel production well outside of the bounds of proper discovery,<sup>3</sup> and must bear a reasonable expectation of obtaining information that will aid the dispute's resolution.<sup>4</sup> Ratepayers' request for identification of each IOU is overbroad and does not limit the scope of which the identifications must be obtained. Ratepayers' request does not limit the question to Texas IOUs over which the Commission has jurisdiction. Therefore, it is unclear whether it is requesting a list of IOUs operating in the state, the nation, or the world. It would be impossible for WOWSC to comply with this request. Moreover, Mr. Nelson's testimony references the general corporate structure of IOUs and does not cite with particularity the corporate governance of any particular IOU. Generally speaking, IOUs have shareholders and/or are publicly traded companies which can shoulder financial burdens placed on the utility. It is an excessive request and unreasonable expectation for WOWSC to investigate all IOUs with no limitations on scope. Such a request is broad and vague and is not described with reasonable particularity for WOWSC to respond accurately and reasonably. Ratepayers' request burdens WOWSC by requiring unnecessary time and expense to respond. Furthermore, Mr. Nelson's testimony does not actually state that IOUs regulated by the Commission have had costs disallowed that its shareholders have borne. Rather, it merely states that IOUs are different from water supply corporations in that they have shareholders who can bear those costs.

Additionally, the requested information can be obtained by Ratepayers from an alternative source. Under the Texas Rules of Civil Procedure, a request is unduly burdensome when the discovery can be obtained from some other source that is more convenient, less burdensome, or less expensive.<sup>5</sup> The information requested by Ratepayers is openly available to the public.

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<sup>2</sup> See also *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

<sup>3</sup> *In re Contract Freighters Inc.*, 646 S.W.3d 810, 815 (Tex. 2022); see also *In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d 486, 488 (Tex. 2014).

<sup>4</sup> *In re State Farm Lloyds*, 520 S.W.3d 595, 611 (Tex. 2017).

<sup>5</sup> Tex. R. Civ. Proc. 192.4(a); see also *In re LCS SP, LLC*, 640 S.W.3d 848, 852-53 (Tex. 2022).

Requiring WOWSC to identify each IOU is unduly burdensome when Ratepayers can obtain the information through an alternative source.

The Commission's rules and the Texas Rules of Civil Procedure both recognize objections on the grounds of over breadth and burdensomeness. Specifically, the Commission's rules permit the presiding officer to limit discovery requests to protect a party from undue burden.<sup>6</sup> Similarly, the Texas Rules of Civil Procedure state that "discovery should be limited if it is determined that the burden or expense of the proposed discovery outweighs its likely benefit,"<sup>7</sup> and that discovery should be limited "to protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights."<sup>8</sup> The burden and expense that is required by WOWSC to identify IOUs in order to respond to Ratepayers' request outweighs the benefit of the discovery. Because WOWSC has not produced a list identifying every IOU in the country, or even world, with a corporate structure that allows shareholders to absorb debt and expenses, WOWSC should not be required to undergo the cost and burden of producing such a list solely for the purpose of responding to Ratepayers' RFI.

**RATEPAYERS RFI 8-51B:** For each IOU identified in response to Ratepayers' 8-51A, please produce the articles, bylaws and other documents Windermere contends creates or imposes such responsibility on the shareholders/investors.

**Objections:**

WOWSC objects to this request because (1) it does not identify with reasonable particularity, the information, documents, or materials sought, (2) the documents can be obtained from an alternative source, (3) producing documents in order to respond would be unduly burdensome and expensive, (4) it requests documents not in WOWSC's possession, nor reasonably available; and (5) WOWSC objects to RFI 8-51A.

Under the Commission's rules at 16 TAC § 22.144(b)(1) and the Texas Rules of Civil Procedure 196.1, discovery requests must identify with reasonable particularity the information, documents, or material sought.<sup>9</sup> Additionally, a discovery order cannot compel production well

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<sup>6</sup> 16 TAC § 22.142(a)(1)(D).

<sup>7</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>8</sup> Tex. R. Civ. Proc. 192.6(b).

<sup>9</sup> See also *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

outside the bounds of proper discovery,<sup>10</sup> and must bear a reasonable expectation of obtaining information that will aid the dispute's resolution.<sup>11</sup> Ratepayers' request for articles, bylaws, and other documents for each IOU identified is overbroad and does not limit the scope from which these documents must be obtained. Ratepayers' request does not limit the question to Texas IOUs over which the Commission has jurisdiction. Therefore, it is unclear whether it is requesting corporate governance documents of IOUs operating in the state, the nation, or the world. It would be impossible for WOWSC to comply with this request. Regardless, it is unclear whether WOWSC would be able to access such documents. It is an excessive request and unreasonable expectation for WOWSC to obtain such broad information with no limitations on scope. Such a request is broad and vague and is not described with reasonable particularity in order for WOWSC to accurately and reasonably respond. Ratepayers' request burdens WOWSC with expending unnecessary time and expense to respond. Furthermore, Mr. Nelson's testimony does not actually state that IOUs regulated by the Commission have had costs disallowed that its shareholders have borne. It merely states that IOUs are different from water supply corporations in that they have shareholders who can bear those costs.

Additionally, the requested information can possibly be obtained by Ratepayers from an alternative source. Under the Texas Rules of Civil Procedure, a request is unduly burdensome when the discovery can be obtained from some other source that is more convenient, less burdensome, or less expensive.<sup>12</sup> The information requested by Ratepayers is openly available to the public. Requiring WOWSC to produce such documents results in WOWSC expending time and expenses to respond which is unduly burdensome because Ratepayers can obtain the information through another source.

The Texas Rules of Civil Procedure further finds a request to be unduly burdensome when the discovery is not proportional to the needs of the case.<sup>13</sup> The proportionality standard requires a case-by-case balancing of jurisprudential considerations.<sup>14</sup> Ratepayers' broad request for

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<sup>10</sup> *In re Contract Freighters Inc.*, 646 S.W.3d 810, 815, *see also In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d 486, 488 (Tex. 2014).

<sup>11</sup> *In re State Farm Lloyds*, 520 S.W.3d 595, 611 (Tex. 2017).

<sup>12</sup> Tex. R. Civ. Proc. 192.4(a); *see also In re LCS SP, LLC*, 640 S.W.3d 848, 852-53 (Tex. 2022).

<sup>13</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>14</sup> *In re K&L Auto Crushers*, 627 S.W.3d 239, 253 (Tex. 2021); *see also In re State Farm Lloyds*, 520 S.W.3d 595, 599 (Tex. 2017).

production of the IOU's articles, by-laws, and other documents that create or impose shareholders/investors responsibility for such IOU's debt, loan, covenants, expenses and other obligations is not proportional to the needs of the case. The unnecessary time and expense it would take WOWSC to produce this information would far outweigh the benefit of the requested discovery, the needs of the case, and the amount in controversy. Ratepayers' request is, therefore, unduly burdensome on WOWSC.

The Commission's rules and the Texas Rules of Civil Procedure both recognize objections on the grounds of over breadth and burdensomeness. Specifically, the Commission's rules permit the presiding officer to limit discovery requests to protect a party from undue burden.<sup>15</sup> Similarly, the Texas Rules of Civil Procedure state that "discovery should be limited if it is determined that the burden or expense of the proposed discovery outweighs its likely benefit,"<sup>16</sup> and that discovery should be limited "to protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights."<sup>17</sup> As explained above, the burden and expense on WOWSC due to Ratepayers' request outweighs the benefit of the discovery. Because WOWSC has not already produced any of these requested records, WOWSC should not be required to undergo the cost and burden of producing articles, bylaws, and documents solely for the purpose of responding to Ratepayers' RFI.

Finally, WOWSC objects to this request because the documents requested are not within WOWSC's possession, nor reasonably available to WOWSC, therefore, creating a document would be unduly burdensome and expensive. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control.<sup>18</sup> Further, a party is not required to produce information that is not reasonably available to the party when the response is made.<sup>19</sup> At the time of Ratepayers' request, WOWSC had not obtained and produced IOUs' documentation relating to shareholder/investor responsibility for IOUs' debt, loan covenants, expenses, or other obligations. Nor would it have done so in order to make the basic statement

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<sup>15</sup> 16 TAC § 22.142(a)(1)(D).

<sup>16</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>17</sup> Tex. R. Civ. Proc. 192.6(b).

<sup>18</sup> Tex. R. Civ. Proc. 192.3(b); 16 TAC § 22.141(a); *see also In re Methodist Primary Care Group*, 553 S.W.3d 709, 722 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2018).

<sup>19</sup> Tex. R. Civ. Proc. 193.1.

about IOU corporate governance referenced in Mr. Nelson's testimony. These documents are not readily available and require WOWSC to spend unnecessary time and expenses to seek out such documentation to respond. Because these requested documents are not within WOWSC's possession, nor readily available to WOWSC, WOWSC should not be required to respond to Ratepayers' request.

**RATEPAYERS RFI 8-51C:** Admit that the Commission has no authority to require (or permit) the ratepayers of the IOUs identified in response to Ratepayers' 8- 51A to pay rates that are not just and reasonable.

**Objections:**

WOWSC objects to this request because it is meant to harass WOWSC and requests information that is available to the public.

WOWSC objects to this request because it is meant for the purpose of harassing WOWSC. Under 16 TAC § 22.142(a)(1)(A): "[t]he presiding officer may issue an order limiting discovery requests for... protection of a party or other person from undue burden, unnecessary expense, harassment or annoyance." Ratepayers' request for admission does not call for any sort of substantive response but is meant for the purpose of harassing WOWSC about the authority of the Commission over IOUs. Additionally, this request for admission calls for a legal conclusion which WOWSC does not have the authority to answer.

Under the Texas Rules of Civil Procedure, a request is unduly burdensome when the discovery can be obtained from some other source that is more convenient, less burdensome, or less expensive.<sup>20</sup> The information requested by Ratepayers is openly available to the public. Requiring WOWSC to respond results in WOWSC expending time and expenses when Ratepayers can obtain the information requested from an alternative source resulting in a more convenient, less burdensome, and less expensive alternative.

Additionally, as discussed above, Ratepayers' 8-51A is not limited in scope, is unduly burdensome, and is overly broad. As such, WOWSC cannot respond to this related RFI.

**RATEPAYERS RFI 8-51D:** If Ratepayers' 8-51C is denied, in whole or in part, please identify the statutes, regulations, judicial opinions, Commission orders and/or other authority

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<sup>20</sup> Tex. R. Civ. Proc. 192.4(a); *see also In re LCS SP, LLC*, 640 S.W.3d 848, 852-53 (Tex. 2022).

Windermere contends authorizes the Commission to require (or permit) ratepayers of the IOUs to pay rates that are not just and reasonable.

**Objections:**

WOWSC objects to this request because (1) it does not identify with reasonable particularity, the information, documents, or materials sought, (2) the documents can be obtained from an alternative source, (3) producing documents to respond would be unduly burdensome and expensive, (4) it requests documents not in WOWSC's possession, nor reasonably available, and (5) WOWSC objects to RFI 8-51C.

Under the Commission's rules at 16 TAC § 22.144(b)(1) and the Texas Rules of Civil Procedure 196.1, discovery requests must identify with reasonable particularity the information, documents, or material sought.<sup>21</sup> Additionally a discovery order cannot compel production well outside of the bounds of proper discovery,<sup>22</sup> and must bear a reasonable expectation of obtaining information that will aid the dispute's resolution.<sup>23</sup> Ratepayers' request for statutes, regulations, judicial opinions, Commission orders, and/or other authority is overbroad and does not limit the scope of which these documents must be obtained from. A request is overbroad if it is not properly "tailored as to time, place, or subject matter."<sup>24</sup> Ratepayers' RFI does not tailor the request to time, place, or subject matter, therefore, it is an excessive request and unreasonable expectation for WOWSC to obtain such broad information with no limitations on scope. Such a request is broad and vague and is not described with reasonable particularity for WOWSC to respond accurately and reasonably. Ratepayers' request burdens WOWSC with expending unnecessary time and expense to respond. Furthermore, Mr. Nelson's testimony does not actually state that IOUs regulated by the Commission have had costs disallowed that its shareholders have borne. It merely states that IOUs are different from water supply corporations in that they have shareholders who can bear those costs.

Additionally, the requested information can be obtained by Ratepayers from an alternative source. Under the Texas Rules of Civil Procedure, a request is unduly burdensome when the

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<sup>21</sup> See also *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

<sup>22</sup> *In re Contract Freighters Inc.*, 646 S.W.3d 810, 815, see also *In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d 486, 488 (Tex. 2014).

<sup>23</sup> *In re State Farm Lloyds*, 520 S.W.3d 595, 611 (Tex. 2017).

<sup>24</sup> *In re K&L Auto Crushers*, 627 S.W.3d 239, 252, see also *In re Nat'l Lloyds Ins. Co.*, 507 S.W.3d 219, 226 (Tex. 2016).



discovery can be obtained from some other source that is more convenient, less burdensome, or less expensive.<sup>25</sup> The information requested by Ratepayers is openly available to the public. Requiring WOWSC to produce statutes, regulations, judicial opinions, Commission orders, and/or other authority causes WOWSC to be burdened with expending time and expenses to produce such information solely to respond, and it is unduly burdensome when Ratepayers can obtain the information through an alternative source that is publicly available.

The Texas Rules of Civil Procedure further finds a request to be unduly burdensome when the discovery is not proportional to the needs of the case.<sup>26</sup> The proportionality standard requires a case-by-case balancing of jurisprudential considerations.<sup>27</sup> Ratepayers' broad request for production of statutes, regulations, judicial opinions, Commission orders, and/or other authority is not proportional to the needs of the case. The unnecessary time and expense it would take WOWSC to produce this information would far outweigh the benefit of the requested discovery, the needs of the case, and the amount in controversy. Ratepayers' request is, therefore, unduly burdensome on WOWSC.

The Commission's rules and the Texas Rules of Civil Procedure both recognize objections on the grounds of over breadth and burdensomeness. Specifically, the Commission's rules permit the presiding officer to limit discovery requests to protect a party from undue burden.<sup>28</sup> Similarly, the Texas Rules of Civil Procedure state that "discovery should be limited if it is determined that the burden or expense of the proposed discovery outweighs its likely benefit,"<sup>29</sup> and that discovery should be limited "to protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights."<sup>30</sup> As explained above, the burden and expense on WOWSC due to Ratepayers' request outweighs the benefit of the discovery. Because WOWSC has not already produced any of these requested records, WOWSC should not be required to undergo the cost and burden of producing statutes, regulations, judicial

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<sup>25</sup> Tex. R. Civ. Proc. 192.4(a); *see also In re LCS SP, LLC*, 640 S.W.3d 848, 852-53 (Tex. 2022).

<sup>26</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>27</sup> *In re K&L Auto Crushers*, 627 S.W.3d at 253; *see also In re State Farm Lloyds*, 520 S.W.3d 595, 599 (Tex. 2017).

<sup>28</sup> 16 TAC § 22.142(a)(1)(D).

<sup>29</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>30</sup> Tex. R. Civ. Proc. 192.6(b).

opinions, Commission orders, and/or other authority solely for the purpose of responding to Ratepayers' RFI.

Finally, WOWSC objects to this request because the documents requested are not within WOWSC's possession, nor reasonably available to WOWSC, therefore, creating a document would be unduly burdensome and expensive. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control.<sup>31</sup> Further, a party is not required to produce information that is not reasonably available to the party when the response is made.<sup>32</sup> At the time of Ratepayers' request, WOWSC had not obtained and produced statutes, regulations, judicial opinions, Commission orders, and/or other authority. These documents are not readily available and require WOWSC to spend unnecessary time and expense to seek out such documentation to respond. Because these requested documents are not within WOWSC's possession, nor readily available to WOWSC, WOWSC should not be required to respond to Ratepayers' request.

Additionally, as discussed above, Ratepayers' 8-51A and 8-51C are not limited in scope, are unduly burdensome, and are overly broad. As such, WOWSC cannot respond to this related RFI.

**RATEPAYERS RFI 8-51E:** To the extent not identified in response to Ratepayers' 8-51D, please identify each order in which the ratepayers of an IOU have been required (or permitted) to pay rates (as defined in the Water Code) that are not just and reasonable.

**Objections:**

WOWSC objects to this request because (1) it does not identify with reasonable particularity, the information, documents, or materials sought, (2) the documents can be obtained from an alternative source, (3) producing documents to respond would be unduly burdensome and expensive, (4) it requests documents not in WOWSC's possession, nor reasonably available; and (5) WOWSC objects to Ratepayers' RFI 8-51D.

Under the Commission's rules at 16 TAC § 22.144(b)(1) and the Texas Rules of Civil Procedure 196.1, discovery requests must identify with reasonable particularity the information,

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<sup>31</sup> Tex. R. Civ. Proc. 192.3(b); 16 TAC § 22.141(a); *see also In re Methodist Primary Care Group*, 553 S.W.3d 709, 722 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2018).

<sup>32</sup> Tex. R. Civ. Proc. 193.1.

documents, or material sought.<sup>33</sup> Additionally a discovery order cannot compel production well outside the bounds of proper discovery,<sup>34</sup> and must bear a reasonable expectation of obtaining information that will aid the dispute's resolution.<sup>35</sup> Ratepayer's request for identification of Commission orders in which ratepayers of an IOU have been required to pay rates that are not just and reasonable is overbroad and does not limit the scope from which these documents must be obtained. A request is overbroad if it is not properly "tailored as to time, place, or subject matter."<sup>36</sup> Ratepayers does not tailor the request to time, place, or subject matter, therefore, it is an excessive request and unreasonable expectation for WOWSC to obtain such broad information with no limitations on scope. Such a request is overly broad and does not describe the information requested with reasonable particularity for WOWSC to respond accurately and reasonably. Ratepayers' request burdens WOWSC with expending unnecessary time and expense to respond. Furthermore, Mr. Nelson's testimony does not actually state that IOUs regulated by the Commission have had costs disallowed that its shareholders have borne. It merely states that IOUs are different from water supply corporations in that they have shareholders who can bare those costs.

Additionally, the requested information can be obtained by Ratepayers from an alternative source. Under the Texas Rules of Civil Procedure, a request is unduly burdensome when the discovery can be obtained from some other source that is more convenient, less burdensome, or less expensive.<sup>37</sup> The information requested by Ratepayers is openly available to the public on the Commission's interchange. Requiring WOWSC to produce orders in which the ratepayers of an IOU have been required to pay rates that are not just and reasonable causes WOWSC to be burdened with expending time and expense to produce such information solely to respond, and it is unduly burdensome when Ratepayers can obtain the information through an alternative source that is publicly available.

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<sup>33</sup> See also *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

<sup>34</sup> *In re Contract Freighters Inc.*, 646 S.W.3d at 815, see also *In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d 486, 488 (Tex. 2014).

<sup>35</sup> *In re State Farm Lloyds*, 520 S.W.3d 595, 611 (Tex. 2017).

<sup>36</sup> *In re K&L Auto Crushers*, 627 S.W.3d 239, 252, see also *In re Nat'l Lloyds Ins. Co.*, 507 S.W.3d 219, 226 (Tex. 2016).

<sup>37</sup> Tex. R. Civ. Proc. 192.4(a); see also *In re LCS SP, LLC*, 640 S.W.3d 848, 852-53 (Tex. 2022).

The Texas Rules of Civil Procedure further finds a request to be unduly burdensome when the discovery is not proportional to the needs of the case.<sup>38</sup> The proportionality standard requires a case-by-case balancing of jurisprudential considerations.<sup>39</sup> Ratepayers' broad request is not proportional to the needs of the case. The unnecessary time and expense it would take WOWSC to produce this information would far outweigh the benefit of the requested discovery, the needs of the case, and the amount in controversy. Ratepayers' request is, therefore, unduly burdensome on WOWSC.

The Commission's rules and the Texas Rules of Civil Procedure both recognize objections on the grounds of over breadth and burdensomeness. Specifically, the Commission's rules permit the presiding officer to limit discovery requests to protect a party from undue burden.<sup>40</sup> Similarly, the Texas Rules of Civil Procedure state that "discovery should be limited if it is determined that the burden or expense of the proposed discovery outweighs its likely benefit,"<sup>41</sup> and that discovery should be limited "to protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights."<sup>42</sup> As explained above, the burden and expense on WOWSC due to Ratepayers' request outweighs the benefit of the discovery. Because WOWSC has not already produced any of these requested records, WOWSC should not be required to undergo the cost and burden of producing Commission orders in which the ratepayers of an IOU have been required to pay rates that are not just and reasonable solely for the purpose of responding to Ratepayers' RFI.

Finally, WOWSC objects to this request because the documents requested are not within WOWSC's possession, nor reasonably available to WOWSC, therefore, creating a document would be unduly burdensome and expensive. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control.<sup>43</sup> Further, a party is not required to produce information that is not reasonably available to the party when the response

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<sup>38</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>39</sup> *In re K&L Auto Crushers*, 627 S.W.3d at 253; *see also In re State Farm Lloyds*, 520 S.W.3d 595, 599 (Tex. 2017).

<sup>40</sup> 16 TAC § 22.142(a)(1)(D).

<sup>41</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>42</sup> Tex. R. Civ. Proc. 192.6(b).

<sup>43</sup> Tex. R. Civ. Proc. 192.3(b); 16 TAC § 22.141(a); *see also In re Methodist Primary Care Group*, 553 S.W.3d 709, 722 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2018).

is made.<sup>44</sup> At the time of Ratepayers' request, WOWSC had not obtained and produced Commission orders in which the ratepayers of an IOU have been required to pay rates that are not just and reasonable. These documents are not readily available and require WOWSC to spend unnecessary time and expense to seek out such documentation to respond. Because these requested documents are not within WOWSC's possession, nor readily available to WOWSC, WOWSC should not be required to respond to Ratepayers' request.

Additionally, as discussed above, Ratepayers' 8-51A, 8-51C, and 8-51D are not limited in scope, are unduly burdensome, and are overly broad. As such, WOWSC cannot respond to this related RFI.

**RATEPAYERS RFI 8-54A:** Reference Nelson Supplemental Rebuttal Testimony at p. 11, lines 5-13. Identify each order in which the Commission has allowed recovery of expenses that are not reasonable and necessary on the grounds that the vendor/supplier/contractor would not receive payment if the expenses were disallowed.

**Objections:**

WOWSC objects to this request because (1) it does not identify with reasonable particularity, the information, documents, or materials sought, (2) the documents can be obtained from an alternative source, (3) producing documents in order to respond would be unduly burdensome and expensive, and (4) it requests documents not in WOWSC's possession, nor reasonably available.

Under the Commission's rules at 16 TAC § 22.144(b)(1) and the Texas Rules of Civil Procedure 196.1, discovery requests must identify with reasonable particularity the information, document, or material sought.<sup>45</sup> Additionally a discovery order cannot compel production well outside the bounds of proper discovery,<sup>46</sup> and must bear a reasonable expectation of obtaining information that will aid the dispute's resolution.<sup>47</sup> Mr. Nelson's testimony references the general corporate structure of IOUs and does not cite with particularity the corporate governance of any specific IOU, nor does it address the subject of Ratepayers' RFI. Generally speaking, IOUs have

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<sup>44</sup> Tex. R. Civ. Proc. 193.1.

<sup>45</sup> See also *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

<sup>46</sup> *In re Contract Freighters Inc.*, 646 S.W.3d at 815, see also *In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d 486, 488 (Tex. 2014).

<sup>47</sup> *In re State Farm Lloyds*, 520 S.W.3d 595, 611 (Tex. 2017).

shareholders and/or are publicly traded companies which can shoulder financial burdens placed on the utility. Ratepayers' request for orders in which the Commission has allowed recovery of expenses that are not reasonable and necessary on the grounds that the vendor/supplier/contractor would not receive payment if the expenses were disallowed is overbroad and does not limit the scope from which these documents must be obtained. A request is overbroad if it is not properly "tailored as to time, place, or subject matter."<sup>48</sup> Ratepayers does not tailor the request to time, place, or subject matter, therefore, it is an excessive request and unreasonable expectation for WOWSC to obtain such broad information with no limitations on scope. Such a request is overly broad and does not describe the information requested with reasonable particularity for WOWSC to respond accurately and reasonably. Ratepayers' request burdens WOWSC with expending unnecessary time and expense to respond. Furthermore, Mr. Nelson's testimony does not actually state that IOUs regulated by the Commission have had costs disallowed that its shareholders have borne. It merely states that IOUs are different from water supply corporations in that they have shareholders who can bear those costs.

Additionally, the requested information can be obtained by Ratepayers from an alternative source. Under the Texas Rules of Civil Procedure, a request is unduly burdensome when the discovery can be obtained from some other source that is more convenient, less burdensome, or less expensive.<sup>49</sup> The information requested by Ratepayers is openly available to the public on the Commission's interchange. Requiring WOWSC to produce orders in which the Commission has allowed recovery of expenses that are not reasonable and necessary on the grounds that the vendor/supplier/contractor would not receive payment if the expenses were disallowed causes WOWSC to be burdened with expending time and expense to produce such information solely to respond, and it is unduly burdensome when Ratepayers can obtain the information through an alternative source that is publicly available.

The Texas Rules of Civil Procedure further finds a request to be unduly burdensome when the discovery is not proportional to the needs of the case.<sup>50</sup> The proportionality standard requires

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<sup>48</sup> *In re K&L Auto Crushers*, 627 S.W.3d 239, 252, *see also In re Nat'l Lloyds Ins. Co.*, 507 S.W.3d 219, 226 (Tex. 2016).

<sup>49</sup> Tex. R. Civ. Proc. 192.4(a); *see also In re LCS SP, LLC*, 640 S.W.3d 848, 852-53 (Tex. 2022).

<sup>50</sup> Tex. R. Civ. Proc. 192.4(b).

a case-by-case balancing of jurisprudential considerations.<sup>51</sup> Ratepayers' broad request is not proportional to the needs of the case. The unnecessary time and expense it would take WOWSC to produce this information would far outweigh the benefit of the requested discovery, the needs of the case, and the amount in controversy. Ratepayers' request is, therefore, unduly burdensome on WOWSC.

The Commission's rules and the Texas Rules of Civil Procedure both recognize objections on the grounds of over breadth and burdensomeness. Specifically, the Commission's rules permit the presiding officer to limit discovery requests to protect a party from undue burden.<sup>52</sup> Similarly, the Texas Rules of Civil Procedure state that "discovery should be limited if it is determined that the burden or expense of the proposed discovery outweighs its likely benefit,"<sup>53</sup> and that discovery should be limited "to protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights."<sup>54</sup> As explained above, the burden and expense on WOWSC due to Ratepayers' request outweighs the benefit of the discovery. Because WOWSC has not produced any of these request records, WOWSC should not be required to undergo the cost and burden of producing orders in which the Commission has allowed recovery of expenses that are not reasonable and necessary on the grounds that the vendor/supplier/contractor would not receive payment if the expenses were disallowed solely for the purpose of responding to Ratepayers' RFI.

Finally, WOWSC objects to this request because the documents requested are not within WOWSC's possession, nor reasonably available to WOWSC, therefore, responding would be unduly burdensome and expensive. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control.<sup>55</sup> Further, a party is not required to produce information that is not reasonably available to the party when the response is made.<sup>56</sup> At the time of Ratepayers' request, WOWSC had not obtained and produced orders in which the

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<sup>51</sup> *In re K&L Auto Crushers*, 627 S.W.3d 239, 253; *see also In re State Farm Lloyds*, 520 S.W.3d 595, 599 (Tex. 2017).

<sup>52</sup> 16 TAC § 22.142(a)(1)(D).

<sup>53</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>54</sup> Tex. R. Civ. Proc. 192.6(b).

<sup>55</sup> Tex. R. Civ. Proc. 192.3(b); 16 TAC § 22.141(a); *see also In re Methodist Primary Care Group*, 553 S.W.3d 709, 722 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2018).

<sup>56</sup> Tex. R. Civ. Proc. 193.1.

Commission has allowed recovery of expenses that are not reasonable and necessary on the grounds that the vendor/supplier/contractor would not receive payment if the expenses were disallowed. These documents are not in WOWSC's possession and would require WOWSC to spend unnecessary time and expense to seek out such documentation to respond. Because these requested documents are not within WOWSC's possession, nor readily available to WOWSC, WOWSC should not be required to respond to Ratepayers' request.

**RATEPAYERS RFI 8-54B:** Reference Nelson Supplemental Rebuttal Testimony at p. 11, lines 5-13. Identify each order in which the Commission has considered the financial wherewithal of the shareholders/investors (i.e., whether they had the ability to pay disallowed expenses), the legal obligations of the shareholders/investors vis-à-vis the utility and its creditors (i.e., whether they could be held responsible for disallowed expenses), and similar factors as relevant to the determination whether particular expenses are recoverable in rates (as defined in the Water Code).

### **Objections:**

WOWSC objects to this request because (1) it does not identify with reasonable particularity, the information, documents, or materials sought, (2) the documents can be obtained from an alternative source, (3) producing documents to respond would be unduly burdensome and expensive, and (4) it requests documents not in WOWSC's possession, nor reasonably available.

Under the Commission's rules at 16 TAC § 22.144(b)(1) and the Texas Rules of Civil Procedure 196.1, discovery requests must identify with reasonable particularity the information, documents, or material sought.<sup>57</sup> Additionally a discovery order cannot compel production well outside the bounds of proper discovery,<sup>58</sup> and must bear a reasonable expectation of obtaining information that will aid the dispute's resolution.<sup>59</sup> Ratepayers' request for orders in which the Commission has considered the financial wherewithal of the shareholders/investors, the legal obligations of the shareholders/investors vis-à-vis the utility and its creditors, and similar factors as relevant to the determination whether particular expenses are recoverable in rates is overbroad and does not limit the scope of which these documents must be obtained from. A request is

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<sup>57</sup> See also *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

<sup>58</sup> *In re Contract Freighters Inc.*, 646 S.W.3d at 815, see also *In re Nat'l Lloyds Ins. Co.*, 449 S.W.3d 486, 488 (Tex. 2014).

<sup>59</sup> *In re State Farm Lloyds*, 520 S.W.3d 595, 611 (Tex. 2017).



overbroad if it is not properly “tailored as to time, place, or subject matter.”<sup>60</sup> While Ratepayers does tailor this request to subject matter of orders, Ratepayers’ request is not properly tailored to time, which would result in WOWSC spending excess time and expense to respond. Such a request is overly broad and does not describe the information requested with reasonable particularity for WOWSC to respond accurately and reasonably. Ratepayers’ request burdens WOWSC with expending unnecessary time and expense to respond.

Additionally, the requested information can be obtained by Ratepayers from an alternative source. Under the Texas Rules of Civil Procedure, a request is unduly burdensome when the discovery can be obtained from some other source that is more convenient, less burdensome, or less expensive.<sup>61</sup> The information requested by Ratepayers is openly available to the public on the Commission’s interchange. Requiring WOWSC to produce orders in which the Commission has considered the financial wherewithal of the shareholders/investors, the legal obligations of the shareholders/investors vis-à-vis the utility and its creditors, and similar factors as relevant to the determination whether particular expenses are recoverable in rates causes WOWSC to be burdened with expending time and expense to produce such information solely to respond, and it is unduly burdensome when Ratepayers can obtain the information through an alternative source that is publicly available.

The Texas Rules of Civil Procedure further finds a request to be unduly burdensome when the discovery is not proportional to the needs of the case.<sup>62</sup> The proportionality standard requires a case-by-case balancing of jurisprudential considerations.<sup>63</sup> Ratepayers’ broad request is not proportional to the needs of the case. The unnecessary time and expense it would take WOWSC to produce this information would far outweigh the benefit of the requested discovery, the needs of the case, and the amount in controversy. Ratepayers’ request is, therefore, unduly burdensome on WOWSC. Furthermore, Mr. Nelson’s testimony does not actually state that IOUs regulated by the Commission have had costs disallowed that its shareholders have borne. It merely states that

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<sup>60</sup> *In re K&L Auto Crushers*, 627 S.W.3d 239, 252, *see also In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219,226 (Tex. 2016).

<sup>61</sup> Tex. R. Civ. Proc. 192.4(a); *see also In re LCS SP, LLC*, 640 S.W.3d 848, 852-53 (Tex. 2022).

<sup>62</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>63</sup> *In re K&L Auto Crushers*, 627 S.W.3d 239, 253; *see also In re State Farm Lloyds*, 520 S.W.3d 595, 599 (Tex. 2017).

IOUs are different from water supply corporations in that they have shareholders who can bear those costs.

The Commission's rules and the Texas Rules of Civil Procedure both recognize objections on the grounds of over breadth and burdensomeness. Specifically, the Commission's rules permit the presiding officer to limit discovery requests to protect a party from undue burden.<sup>64</sup> Similarly, the Texas Rules of Civil Procedure state that "discovery should be limited if it is determined that the burden or expense of the proposed discovery outweighs its likely benefit,"<sup>65</sup> and that discovery should be limited "to protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights."<sup>66</sup> As explained above, the burden and expense on WOWSC due to Ratepayers' request outweighs the benefit of the discovery. Because WOWSC has not already produced any of these requested records, WOWSC should not be required to undergo the cost and burden of producing orders in which the Commission has considered the financial wherewithal of the shareholders/investors, the legal obligations of the shareholders/investors vis-à-vis the utility and its creditors, and similar factors as relevant to the determination whether particular expenses are recoverable in rates solely for the purpose of responding to Ratepayers' RFI.

Finally, WOWSC objects to this request because the documents requested are not within WOWSC's possession, nor reasonably available to WOWSC, therefore, creating a document would be unduly burdensome and expensive. A party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control.<sup>67</sup> Further, a party is not required to produce information that is not reasonably available to the party when the response is made.<sup>68</sup> At the time of Ratepayers' request, WOWSC had not obtained and produced orders in which the Commission has considered the financial wherewithal of the shareholders/investors, the legal obligations of the shareholders/investors vis-à-vis the utility and its creditors, and similar factors as relevant to the determination whether particular expenses are recoverable in rates. These

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<sup>64</sup> 16 TAC § 22.142(a)(1)(D).

<sup>65</sup> Tex. R. Civ. Proc. 192.4(b).

<sup>66</sup> Tex. R. Civ. Proc. 192.6(b).

<sup>67</sup> Tex. R. Civ. Proc. 192.3(b); 16 TAC § 22.141(a); *see also In re Methodist Primary Care Group*, 553 S.W.3d 709, 722 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2018).

<sup>68</sup> Tex. R. Civ. Proc. 193.1.

documents are not readily available and require WOWSC to spend unnecessary time and expense to seek out such documentation to respond. Because these requested documents are not within WOWSC's possession, nor readily available to WOWSC, WOWSC should not be required to respond to Ratepayers' request.

### **III. PRAYER**

WHEREFORE, PREMISES CONSIDERED, WOWSC requests these objections be sustained and WOWSC be relieved of responding to these RFIs. WOWSC also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)



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JAMIE L. MAULDIN  
State Bar No. 24065694  
[jmauldin@lglawfirm.com](mailto:jmauldin@lglawfirm.com)

RICHARD A. ARNETT II  
State Bar No. 24131230  
[rarnett@lglawfirm.com](mailto:rarnett@lglawfirm.com)

**ATTORNEYS FOR WINDERMERE OAKS  
WATER SUPPLY CORPORATION**

### **CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on February 27, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



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JAMIE L. MAULDIN