



Filing Receipt

Received - 2023-03-03 04:03:53 PM

Control Number - 50788

ItemNumber - 311

**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

**WINDERMERE OAKS WATER SUPPLY CORPORATION’S RESPONSE TO
RATEPAYERS’ MOTION TO COMPEL**

Windermere Oaks Water Supply Corporation (WOWSC) files this Response to Ratepayers’ Motion to Compel, and would respectfully show as follows:

I. PROCEDURAL HISTORY

The Representatives of the Ratepayers of WOWSC (Ratepayers) served its Eighth Request for Information (RFI) to WOWSC on February 22, 2023.¹ On February 27, 2023, WOWSC timely filed Objections to Ratepayers’ Eighth RFI² and, on March 1, 2023, Ratepayers filed its Motion to Compel WOWSC’s Response to Ratepayers’ Eighth RFI.³ WOWSC now timely files this Response to Ratepayers’ Motion to Compel.⁴

II. INTRODUCTION

In its Motion to Compel, Ratepayers misconstrues Mike Nelson’s testimony and alleges Mr. Nelson testified that, due to WOWSC’s corporate structure, the Public Utility Commission of Texas (Commission) “must force” WOWSC’s customers to pay unreasonable rates.⁵ Based on this misinterpretation, Ratepayers asserts that WOWSC, to satisfy its discovery burden, must conduct an onerous search through *all* Investor-Owned Utilities’ (IOUs) internal bylaws and IOU ratemaking proceedings.⁶ Ratepayers does not restrict its discovery requests to any jurisdiction or time frame; rather, it apparently expects that WOWSC expend limitless time and resources to

¹ Ratepayer Representatives’ (Ratepayers’) Eighth Request for Information (RFI) to Windermere Oaks Water Supply Corporation (WOWSC) (Feb. 22, 2023) (Ratepayers’ Eighth RFI).

² WOWSC’s Objections to Ratepayers’ Eighth RFI (Feb. 27, 2023) (WOWSC’s Objections).

³ Ratepayers’ Response to WOWSC’s Objections to Ratepayers’ Eighth RFI (Mar. 1, 2023) (Ratepayers’ Motion to Compel).

⁴ See 16 Tex. Admin. Code (TAC) § 22.144(f).

⁵ Ratepayers’ Motion to Compel at 1, 2, 3, 7, 8.

⁶ See Ratepayers’ Eighth RFI at 16-18.

review IOUs, their internal documents, and related ratemaking proceedings throughout the country.⁷

In contrast to Ratepayers’ assertion, Mr. Nelson never testified that WOWSC’s corporate structure “force[s]” the Commission to approve unreasonable rates. Neither did he testify to any specific IOUs. Moreover, he did not make any legal conclusions regarding the Commission’s authority or jurisdiction. Rather, Mr. Nelson offered opinion testimony, based on his experience as a non-profit Water Supply Corporation’s board member, regarding WOWSC’s corporate structure and how it differs to the general corporate structure of an IOU.⁸

Nevertheless, Ratepayers misinterprets Mr. Nelson’s testimony and issued requests for extensive records and legal analysis that, as discussed below, greatly exceeds permissible discovery procedures under the Texas Administrative Code and Texas Rules of Civil Procedure. Ratepayers’ vague, disproportionate, and burdensome RFIs violate the Texas Rules of Civil Procedure and, if allowed, would result in excessive legal fees related to an unbridled search through IOUs’ internal records and rate case proceedings. Ratepayers’ disregard for WOWSC’s legal fees is nothing new and, as discussed before, is particularly concerning in a rate appeal—such as this proceeding—that focuses solely on the necessity and reasonableness of outside legal expenses.⁹

III. ARGUMENT

Pursuant to 16 Tex. Admin. Code § 22.141(a), parties in a rate case proceeding “may obtain discovery regarding any matter, not privileged or exempted under...the Texas Rules of Civil Procedure.”¹⁰ Ratepayers’ 8-51A, 8-51B, 8-51C, 8-51D, 8-51E, 8-54A, and 8-54B involve exempted discovery and, therefore, must be rejected. Specifically, the requests (1) do not identify with reasonable particularity the information, documents, or materials sought; (2) relate to information available from an alternative source; (3) result in undue burden and expense; (4) relate to records that are not within WOWSC’s possession, custody, or control; (5) improperly seek legal conclusions; and (6) are overbroad.

⁷ *Id.*

⁸ See Supplemental Rebuttal Testimony of Mike Nelson at 11 (Nelson Supplemental Rebuttal) (Feb. 10, 2023).

⁹ See WOWSC’s Objection to Ratepayers’ Motion for Extension of Time at 2 (Dec. 6, 2022).

¹⁰ 16 TAC § 22.141(a).

A. Reasonable Particularity

Under the Commission rules at 16 TAC § 22.144(b)(1) and the Texas Rules of Civil Procedure Rule 196.1(b), discovery requests must identify with reasonable particularity the information, documents, or material sought.¹¹ Ratepayers asserts that, because Ratepayers 8-51A, 8-51B, 8-51C, 8-51D, 8-51E, 8-54A, and 8-54B all reference specific testimony and describe “with specificity the materials requested,” the RFIs are within the permissible scope of discovery.¹²

As a preliminary matter, it is irrelevant that Ratepayers’ RFIs “reference[] the testimony as to which inquiry is made.”¹³ Rather, the requester must identify the information “to be produced” with reasonable particularity.¹⁴ As discussed below, none of Ratepayers’ RFIs satisfy this burden.

1. Ratepayers’ 8-51A

Ratepayers’ 8-51A requests that WOWSC “identify each IOU for which Windermere contends the shareholders/investors are responsible for such IOU’s debt, loan covenants, expenses, and other obligations.”¹⁵ Ratepayers subsequently contends that this RFI merely seeks “the identity of each IOU Mr. Nelson attempts to ‘contrast’” with WOWSC. But Mr. Nelson’s testimony does not reference any particular IOU. It opines that, in general, IOUs have shareholders that can shoulder a utility’s financial burden. As such, because there are no individual, specific IOUs for WOWSC to identify in response to Ratepayers’ 8-51A, the discovery request does not identify “with reasonable particularity” the materials sought.¹⁶ Rather, it places an enormous burden on WOWSC to investigate all IOUs with no limitations on scope. Such a request greatly exceeds the parameters of permissible discovery and should therefore be rejected.

2. Ratepayers’ 8-51B

Ratepayers’ 8-51B again seeks information related to individual IOUs.¹⁷ Specifically, it requests that WOWSC “produce the articles, bylaws and other documents” of the IOUs identified

¹¹ See also *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

¹² Ratepayers’ Motion to Compel at 4.

¹³ *Id.*

¹⁴ *In re TIG Ins. Co.*, 172 S.W.3d at 168.

¹⁵ See Ratepayers’ Eighth RFI at 16-17.

¹⁶ Tex. R. Civ. Proc. 196.1(b).

¹⁷ Ratepayers’ Eighth RFI at 17.

in response to Ratepayers' 8-51A.¹⁸ As discussed above, because Mr. Nelson did not refer to any individual IOUs in his testimony, Ratepayers' 8-51A does not identify with "reasonable particularity" the materials sought.¹⁹ Rather, it requests that WOWSC conduct a limitless review of IOUs and their internal documents. This is far outside the scope of permissible discover and, therefore, should be rejected.

3. Ratepayers' 8-51C

Ratepayers mistakenly claims that WOWSC objected to Ratepayers' 8-51C because it failed to describe with specificity the information or materials requested.²⁰ However, WOWSC objected to this discovery request because it is meant to harass WOWSC and requests information that is available to the public.²¹ As such, this discovery request will be addressed below.

4. Ratepayers' 8-51D

Ratepayers requests that WOWSC, if it denies Ratepayers' 8-51C, conduct an extensive search through Commission precedent to identify "the statutes, regulations, judicial opinions, Commission orders and/or other authority Windermere contends authorizes the Commission to require (or permit) ratepayers of the IOUs to pay rates that are not just and reasonable."²² Windermere has never contended that any statute, rule, or precedent authorizes the Commission to "require (or permit)" IOU customers to pay unreasonable rates. Therefore, to adequately respond to this RFI, Windermere would require an extensive search through all IOU rate case rules, statute, and precedent. As such, the RFI "fails to identify with reasonable particularity the information, documents, or material sought" and should be rejected.²³

5. Ratepayers' 8-51E

Ratepayers requests that WOWSC "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."²⁴ Again, Ratepayers fails to limit its request to a specific jurisdiction or time period.

¹⁸ *Id.*

¹⁹ Tex. R. Civ. Proc. 196.1(b).

²⁰ Ratepayers' Motion to Compel at 4-5.

²¹ *Id.* at 6.

²² Ratepayers' Eighth RFI at 17.

²³ *See* Tex. R. Civ. Proc. 196.1(b).

²⁴ Ratepayers' Eighth RFI at 17.

As such, it is unclear whether Ratepayers seeks IOU-related precedent in Texas, the country, or the world. Accordingly, Ratepayers fails to “fail to identify with reasonable particularity the information, documents, or material sought.”²⁵ Therefore, its RFI should be rejected.

6. Ratepayers’ 8-54A

Ratepayers’ 8-54A effectively requests WOWSC to review all Commission rate case precedent to 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.”²⁶ The RFI does not clarify whether Windermere should review Commission precedent related to water, electricity, or telecommunications. Moreover, it does not specify a time period. As such, the RFI “fails to identify with reasonable particularity the information, documents, or material sought” and, therefore, should be rejected.²⁷

7. Ratepayers’ 8-54B

Ratepayers’ 8-54B effectively requests WOWSC to review all Commission orders to identify “each order 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.”²⁸ Although Ratepayers limits its request to orders, it fails to specify which orders. Specifically, it requests that WOWSC produce orders in “which the Commission considered...similar factors.” “Similar factors” is vague and subject to multiple interpretations. Ratepayers therefore “failed to identify with reasonable particularity the information, documents, or material sought” and, accordingly, its RFI should be rejected.²⁹

B. Documents Available from an Alternative Source

For purposes of requested information available in the public record, Ratepayers asserts that Windermere has a duty to identify where in the public record Ratepayers can locate the

²⁵ See Tex. R. Civ. Proc. 196.1(b).

²⁶ Ratepayers’ Eighth RFI at 18.

²⁷ See Tex. R. Civ. Proc. 196.1(b).

²⁸ Ratepayers’ Eighth RFI at 18.

²⁹ See Tex. R. Civ. Proc. 196.1(b).

requested information.³⁰ It cites to 16 TAC § 22.144(c)(2)(E), which provides that “where a request may be answered by...reference to information that currently exists in the form of a document, computer record, or other existing tangible thing...it is a *sufficient* answer to the request to specify the records from which the answer may be derived...”³¹

Because the PUC rule provides that, for purposes of requests related to information that exist in other records, it is “sufficient” to specify the records, it merely *permits* an answer that specifies the records from which the information may be derived. Ratepayers therefore misconstrues the PUC rule to *require* a certain response. The Texas Rules of Civil Procedure, however, restrict the scope of discovery and provide that “[t]he discovery methods permitted by [the Texas Rules of Civil Procedure] should be limited by the court if it determines...that...the discovery sought is...obtainable from some other source that is more convenient, less burdensome, or less expensive.”³² Accordingly, if the requester may obtain the requested information from a source that, compared to discovery, results in less burden and expense, the discovery request should be rejected.

WOWSC objected to Ratepayers’ 8-51A, 8-51B, 8-51C, 8-51D, 8-51E, 8-54A, and 8-54B in part because Ratepayers can obtain the requested information from the public record.³³ And because Ratepayers’ requests require that WOWSC investigate all IOUs with no limitations on scope and, moreover, fail to identify the requested information with reasonable particularity, WOWSC’s search through the public record to provide responses would result in an undue burden and excessive legal fees. As such, if Ratepayers requires the requested information to “prevent trial by ambush,” it could conduct a reasonable search through the public record to obtain the requested information itself.³⁴ Because Ratepayers could reasonably obtain the information requested in Ratepayers’ 8-51A, 8-51B, 8-51C, 8-51D, 8-51E, 8-54A, and 8-54B from an alternate source and greatly reduce WOWSC’s burden and expense, these RFIs should be rejected.

³⁰ Ratepayers’ Motion to Compel at 5-6.

³¹ *Id.*; 16 TAC § 24.144(c)(2)(E) (emphasis added).

³² Tex. R Civ. Proc. Rule 192.4(a).

³³ *See* WOWSC’s Objections.

³⁴ *See* Ratepayers’ Motion to Compel at 4.

C. Undue Burden

Ratepayers contends that WOWSC must “sponsor sweeping opinion testimony” by conducting a limitless search through IOUs, their internal documents, and related rate case precedent.³⁵ Accordingly, it issued Ratepayers’ 8-51A, 8-51B, 8-51D, 8-51E, 8-54A, and 8-54B. As discussed above, because these discovery requests are not limited in scope, an effort to produce responses would require excessive resources and legal fees. The RFIs should therefore be rejected.

Texas law provides that “discovery should be limited if [the court] determines that the burden or expense of the proposed discovery outweighs its likely benefit.”³⁶ Based on Ratepayers’ Motion, it appears that the primary benefit of information sought in Ratepayers’ 8-51A, 8-51B, 8-51D, 8-51E, 8-54A, and 8-54B is to reveal Windermere’s “financial stability.”³⁷ But as discussed above, each of these discovery requests relates to unspecified IOUs, not Windermere. Several other RFIs in Ratepayers’ Eighth RFI directly related to Windermere and, accordingly, Windermere provided Ratepayers in depth analysis and documentation.³⁸ The objected RFIs, however, do not have any relation to Windermere’s financial state and are irrelevant to the current proceeding. Thus, because the RFIs would require Windermere to expend limitless time and resources to adequately respond, the “burden or expense of the proposed discovery [far] outweighs its likely benefit.”³⁹ Therefore, Ratepayers’ 8-51A, 8-51B, 8-51D, 8-51E, 8-54A, and 8-54B should be rejected.

D. Lack of Possession, Custody, or Control of Responsive Materials

As a preliminary matter, Ratepayers acknowledges that for purposes of Ratepayers’ 8-51B, WOWSC does not have access to IOUs articles or bylaws and, as such, apparently acquiesces to WOWSC’s objection to Ratepayers’ 8-51B.⁴⁰ As discussed in its Objections, WOWSC does not have access to any unspecified IOUs’ internal documents. Thus, because a party is not required

³⁵ Ratepayers’ Motion to Compel at 6.

³⁶ Tex. R. Civ. Proc. 1924.4(b).

³⁷ Ratepayers’ Motion to Compel at 7 (providing that “[p]roportionality is not implicated here. It is hard to imagine a matter of more immediate importance to Windermere’s ratepayers than the utility’s financial stability”).

³⁸ *See, e.g.*, WOWSC’s Responses to Ratepayers’ 8-1, 8-2, 8-26, and 8-29.

³⁹ Tex. R. Civ. Proc. 1924.4(b).

⁴⁰ Ratepayers’ Motion to Compel at 8.

to produce a document or tangible thing unless it is within the party's possession, custody, or control, Ratepayers' 8-51B should be rejected.⁴¹

Ratepayers asserts that because 8-51D, 8-51E, 8-54A, and 8-54B "seek information," Windermere has an obligation "to furnish all responsive information known or reasonably available to [WOWSC]."⁴² Ratepayers therefore disregards that, under Texas law, a party is not required to produce information that is not reasonably available to the party when the response is made.⁴³ As discussed above, Ratepayers requests documents and information that WOWSC could only locate through an exhaustive search into IOUs' internal documents and Commission precedent. Therefore, the information sought through Ratepayers' 8-51D, 8-51E, 8-54A, and 8-54B was not "reasonably available" to WOWSC when Ratepayers issued its RFI. As such, Ratepayers' 8-51D, 8-51E, 8-54A, and 8-54B should be rejected.

E. Legal Conclusion

Ratepayers' asserts that because Ratepayers' 8-51C is "a request for the testifying witness's perceptions and contentions pertaining to a fundamental aspect of his testimony," it is not a request for a legal conclusion.⁴⁴ However, Ratepayers' 8-51C expressly requests WOWSC to determine whether "the Commission has [] authority to require (or permit) the ratepayers of [] IOUs... to pay rates that are not just and reasonable."⁴⁵ Whether statute or rule grants the Commission authority to impose rates is clearly a legal conclusion. Moreover, as discussed above, Mr. Nelson never testified regarding the Commission's authority; rather, he reviewed WOWSC's corporate structure and the general corporate structure of IOUs. As such, in contrast to Ratepayers' contention, the Commission's authority is not "a fundamental aspect of [Mr. Nelson's] testimony." Thus, Ratepayers' 8-51C seeks nothing more than a legal conclusion and, therefore, should be rejected.

⁴¹ 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 [14th Dist.] 2018).

⁴² Ratepayers' Motion to Compel at 8.

⁴³ Tex. R. Civ. Proc. 193.1

⁴⁴ Ratepayers' Motion to Compel at 9.

⁴⁵ Ratepayers' Eighth RFI at 17.

F. Overbreadth

Importantly, Ratepayers failed to address WOWSC’s assertion that Ratepayers’ discovery requests are overbroad.⁴⁶ As discussed above, Ratepayers’ 8-51A, 8-51B, 8-51C, 8-51D, 8-51E, 8-54A, and 8-54B are not limited to IOUs in any specific jurisdiction or time period. As such, Ratepayers’ apparently expects WOWSC to conduct a nationwide review of IOUs and related rate case proceedings.

Texas law provides that a discovery request is overbroad if the request is not “tailored as to time, place, or subject matter.”⁴⁷ A limitless search for IOUs, their internal documents, and related rate cases is not tailored to a specific time, place, or subject matter. Rather, such a request is broad and vague and is not described with reasonable particularity for WOWSC to respond accurately and reasonably. As such, these RFIs must be rejected.

IV. PRAYER

WOWSC respectfully requests that Ratepayers’ Motion to Compel be denied, that WOWSC’s objections be sustained, and that it be granted 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)



JAMIE L MAULDIN
State Bar No. 24065694
jmauldin@lglawfirm.com

RICHARD A. ARNETT II
State Bar No. 24131230
rarnett@lglawfirm.com

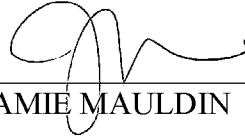
⁴⁶ *Id.*

⁴⁷ *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).

**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 March 3, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



A handwritten signature in black ink, appearing to read 'J. Mauldin', is positioned above a horizontal line.

JAMIE MAULDIN