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

**WINDERMERE OAKS WATER SUPPLY CORPORATION’S RESPONSE TO
RATEPAYERS’ MOTION TO PRECLUDE ADMISSION OR CONSIDERATION OF
EVIDENCE OR, ALTERNATIVELY, TO COMPEL A COMPLETE RESPONSE TO
RATEPAYERS’ REQUEST FOR INFORMATION AMENDED 6-9**

Windermere Oaks Water Supply Corporation (WOWSC) files this Response (WOWSC’s Response) to Ratepayers Representatives’ (Ratepayers’) Motion to Preclude Admission or Consideration of Evidence or, Alternatively, to Compel a Complete Response to Ratepayers’ Request for Information Amended 6-9 (Ratepayers’ Motion), and would respectfully show the following:

As a preliminary matter, it is unclear what relief Ratepayers’ Motion to Preclude Admission or Consideration of Evidence requests. Ratepayers cites Texas Rules of Civil Procedure Rule 193.6 and alleges that, because WOWSC failed to timely respond to Ratepayers’ Amended 6-9, WOWSC may not introduce related evidence into the record.¹ Ratepayers then cites to Attachment GR-2 to the Rebuttal Testimony of Grant Rabon, Attachment MN-4 to the Direct Testimony of Mike Nelson, and Attachment MN-5 to the Direct Testimony of Mike Nelson and the related testimonies as originally offered to prove WOWSC’s 2020 budget and financial state.² But it is unclear whether Ratepayers attempts to strike the attachments, the attachments’ related testimony, or both.³ As such, Ratepayers’ Motion fails to cite with particularity what evidence it seeks to preclude. Moreover, these attachments and testimonies are already in the record. Ratepayers previously filed objections to these testimonies, but its objections were rejected.⁴

¹ Ratepayers’ Motion to Preclude Admission or Consideration of Evidence or, Alternatively, to Compel a Complete Response to Ratepayers’ Request for Information Amended 6-9 at 8 (Feb. 28, 2023) (Ratepayers’ Motion).

² Ratepayers’ Motion at 8-9.

³ *Id.*

⁴ SOAH Order No. 13 – Granting Motion to Adopt Testimony; Denying Motions to Strike at 1 (Jun. 28,

In sum, WOWSC provided records and documentation to Ratepayers, and subsequently referred to these records, only because Ratepayers requested the information. Thus, WOWSC is not attempting to admit any evidence related to Ratepayers' RFIs; rather, to provide full transparency, it is complying with Ratepayers' request to furnish evidence for Ratepayers' benefit. Therefore, unless Ratepayers further clarifies what evidence it seeks to exclude, WOWSC interprets Ratepayers' Motion to merely compel additional information related to Ratepayers' Amended 6-9.

I. PROCEDURAL HISTORY

Ratepayers served its Amended Sixth Request for Information (RFI) to WOWSC on January 20, 2023, after the 3:00 p.m. filing deadline.⁵ Windermere timely filed its Response to Ratepayers' Amended Sixth RFI on February 6, 2023.⁶ Subsequently, on February 26, 2023, WOWSC filed its Supplemental Response to Ratepayers' Amended Sixth RFI.⁷ And on February 28, 2023, Ratepayers filed Ratepayers' Motion.⁸ Responsive pleadings shall be filed within five working days after receipt of the pleading to which the response is made.⁹ Therefore, WOWSC's Response is timely filed.

II. INTRODUCTION

Ratepayers' Motion repeats allegations that, throughout this proceeding, WOWSC has made "aggressive efforts" to withhold information, mischaracterize its rate making methodology, and deliberately mislead Public Utility Commission of Texas Staff (Commission Staff).¹⁰ It implies that WOWSC has acted dishonestly in bad faith. It even goes so far to misrepresent facts

2021); SOAH Order No. 8 – Ruling on Pending Motions at 4 (Apr. 1, 2021).

⁵ Ratepayer Representatives'(Ratepayers') Amended Sixth Request for Information (RFI) to Windermere Oaks Water Supply Corporation (WOWSC) (Jan. 20, 2023) (Ratepayers' Amended Sixth RFI); *see* Tex. Admin. Code (TAC) § 22.71(h) ("All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer").

⁶ WOWSC's Response to Ratepayers' Amended Sixth RFI (Feb. 6, 2023).

⁷ WOWSC's Supplemental Response to Ratepayers' Amended Sixth RFI (Feb. 23, 2023).

⁸ Ratepayers' Motion.

⁹ 16 TAC § 22.78.

¹⁰ Ratepayers' Motion at 8.

related to WOWSC's outside counsel.¹¹ Ratepayers' allegations are completely without basis and, moreover, arguably violate the Texas Rules of Professional Conduct.¹²

WOWSC has diligently complied with each RFI throughout this proceeding. Most recently, despite the expedited timeline on Rebuttal Testimony, and despite Ratepayers' decision to reject WOWSC's request for a good cause extension,¹³ WOWSC timely responded to the *ninety* RFIs in Ratepayers' Eighth RFI.¹⁴ And to provide full transparency, WOWSC has provided Supplemental Responses when it is not required to do so.¹⁵ It is therefore entirely misleading to claim that WOWSC has engaged in "aggressive efforts" to "foreclose[] inquir[ies]" throughout this proceeding.¹⁶ Ratepayers' various allegations are addressed below.

III. DISCUSSION

The Texas Rules of Civil Procedure control the scope of discovery in a rate case proceeding.¹⁷ As such, an RFI must request with reasonable particularity the information, documents, or material sought.¹⁸ And the responding party must "make a complete response, based on all information reasonably available to the responding attorney or its attorney at the time the response is made."¹⁹ However, the responding party is not required to produce a document or tangible thing unless it is within the party's possession, custody, or control.²⁰

¹¹ Ratepayers' Motion at 7 (stating that "Lloyd Gosselink did not even maintain billing files in 2020 to segregate work or expenses pertaining to the PIA requests, the Attorney General lawsuits or the Double F lawsuit, respectively; it does not appear Lloyd Gosselink has ever maintained any such files"). Lloyd Gosselink bills time regarding PIA requests and the related Attorney General lawsuit under the client matter number 3870-0. *See, e.g.*, Voluminous Supplemental Confidential Attachment Ratepayers 6-14 at 14. Lloyd Gosselink bills time related to the Double F lawsuit under the client matter number 3870-1. *See, e.g.*, Voluminous Supplemental Confidential Attachment Ratepayers 6-14 at 119.

¹² Tex. Disciplinary R. Prof. Conduct, Preamble (providing that "a lawyer should demonstrate respect for the legal system and for those who serve it, including judges, or other lawyers").

¹³ Ratepayers' Rejects WOWSC's Request for Good Cause Extension (attached as Exhibit 1).

¹⁴ Ratepayer' Eighth RFI to WOWSC (Feb. 22, 2022).

¹⁵ *See* WOWSC's Supplemental Response to Ratepayers' Eighth RFI (Mar. 6, 2023); WOWSC's Supplemental Response to Ratepayers' Seventh RFI (Feb. 24, 2023); WOWSC's Supplemental Response to Ratepayers' Amended Sixth RFI.

¹⁶ Ratepayers' Motion at 8.

¹⁷ 16 Tex. Admin. Code § 22.141(a).

¹⁸ Tex. R. Civ. Proc. Rule 196.1; *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

¹⁹ Tex. R. Civ. Proc. Rule 193.1.

²⁰ Tex. R. Civ. Proc. 192.3(b); 16 TAC § 22.141(a); *see also In re Methodist Primary Care Group*, 553

WOWSC satisfied its burden. Ratepayers, however, originally issued vague and ambiguous discovery requests that are now at issue. In an attempt to comply with these requests, WOWSC provided all the available information WOWSC had in its possession at the time Ratepayers made its requests. But Ratepayers subsequently requested additional, specific information and, moreover, now asserts that WOWSC originally withheld the newly requested information. As discussed below, Ratepayers' post hoc allegations that WOWSC intentionally withheld information in bad faith are misleading and disingenuous and, therefore, should be rejected.

A. Ratepayers' Amended 6-9 and WOWSC's Response.

Ratepayers' Amended 6-9 requested that WOWSC:

“[f]or each projected expenditure within each line item/expense category set forth on Attachments Staff 8-5 [WOWSC's 2020 Budget], please provide the following information at the time the rate case was approved: (a) [t]he amount and detailed description of the goods and/or services expected to be purchased or acquired; (b) [h]ow Windermere allocated such projected expenditure as between water service and sewer service, if it did; (c) [a]n explanation as to why such projected expenditure is reasonable and necessary, if Windermere so contends; (d) [a]n explanation as to how such projected expenditure is a cost of providing utility service, if Windermere so contends; and (e) [a]n explanation as to how the amount of such projected expenditure could have been anticipated with reasonable certainty at the time of the rate increase.”²¹

WOWSC responded with:

“(a) [s]ee Attachment GR-2 to the Rebuttal Testimony of Grant Rabon; (b) [s]ee Attachment Ratepayers 4-6 at 5-9. See Columns ‘YTD Budget’ and ‘Annual Budget’ to see the budgeted allocation of costs between water and wastewater services; (c) [s]ee Attachment GR-2 to the Rebuttal Testimony of Grant Rabon; (d) WOWSC is a nonprofit corporation without shareholders. Therefore, all expenditures related to provision of water and wastewater service are a cost of providing utility service; (e) [t]o project its expenditures, WOWSC reviews expenditures from the prior year and assesses its future needs. Based on this review and assessment, it projects the upcoming year's expenditures and implements rates to recover capital accordingly.”²²

S.W.3d 709, 722 (Tex. App.—Houston [14th Dist.] 2018).

²¹ Ratepayers' Amended Sixth RFI at 6; *see also* Ratepayers' Motion at 5.

²² WOWSC's Supplemental Response to Ratepayers' Amended Sixth RFI at 12-13; *see also* Ratepayers' Motion at Exhibit 4.

Attachment GR-2 provides a spreadsheet of all WOWSC's line-item expenses over 2020 that contains the goods and expenses WOWSC acquired.²³ Additionally, it compares the actual costs to WOWSC's budget, which indicates why such goods and expenses were necessary.²⁴ Attachment Ratepayers 4-6 distinguishes costs associated with WOWSC's 2019 wastewater and water services.²⁵ The remaining responses provide explanations to Ratepayers' remaining questions.

B. Ratepayers failed to specify with "reasonable particularity" the information, documents, or materials sought.

Ratepayers now asserts that these responses do not contain sufficient "detail" and, specifically, assert that "underlying documentation" is necessary to comply with this discovery request.²⁶ Importantly, Ratepayers' Amended 6-9 does not request "underlying documentation." Rather, it requests a "detailed description" of various budgeted expenses. "Detailed description" is vague and subject to multiple interpretations. It certainly does not satisfy discovery standards that requires a party to request with "reasonable particularity" the information, documents, or material sought.²⁷

WOWSC provided a detailed description of the line items contained in Attachment Staff 8-5 and, importantly, provided everything it had in its possession, custody, or control at the time of the discovery request. WOWSC therefore satisfied its burden. If Ratepayers sought underlying documentation such as actual checks and deposit slips, it should have requested them. Instead, it chooses to extend the discovery process, file contentious pleadings with baseless allegations, and require that WOWSC expend additional time and resources to respond.

C. WOWSC provided the requested information at issue in its Supplemental Response to Ratepayers' Eighth RFI.

In Ratepayers' Eighth RFI to WOWSC, Ratepayers requested "a complete duplicate" of WOWSC's Quickbooks data.²⁸ Accordingly, WOWSC provided a PDF copy of its QuickBooks

²³ See Rebuttal Testimony of Grant Rabon at 4-8 and Attachment GR-2 (Jun. 7, 2021).

²⁴ *Id.*

²⁵ See WOWSC's Response to Ratepayers' Fourth RFI, Attachment Ratepayers 4-6 at 5-6 (Nov. 18, 2022).

²⁶ Ratepayers' Motion at 4.

²⁷ Tex. R. Civ. Proc. Rule 196.1; *In re TIG Ins. Co.*, 172 S.W.3d 160, 168 (Tex. App. – Beaumont 2005, no pet.).

²⁸ Ratepayers' Eighth RFI to WOWSC at 9.

general ledger, which for purposes of WOWSC’s access to QuickBooks, is a “complete duplicate” of the Corporation’s data.²⁹ Subsequently, Ratepayers’ counsel clarified its request and demanded “source documents,” rather than an “accountant’s copy.”³⁰

Again, Ratepayers should have initially requested source documents, rather than “a complete duplicate.” This is a vague term that, due to the nature of Quickbooks, is subject to multiple interpretations. Ratepayers even acknowledge this and, in a recent filing, stated that a complete copy of QuickBooks data “should include, if the platform is used properly” additional detail.³¹ If entities can “use[]” a platform properly or improperly, the platform can necessarily be used in different ways. As such, a “complete duplicate” of an entity’s QuickBook data is subjective and depends on how the entity employs the program. Nevertheless, Ratepayers again chooses to accuse WOWSC of intentionally withholding requested information.³²

After Ratepayers clarified that it sought source documents, WOWSC contacted its accountant, the entity that has access to the requested records, for the requested information and has since provided the information in a supplemental response.³³ Specifically, WOWSC’s Supplemental Response to Ratepayers’ Eighth RFI contains the previously provided QuickBook general ledger’s corresponding checks and deposit slips from 2019 to 2023.³⁴ It is therefore responsive to Ratepayers’ Motion to compel the “underlying documentation” related to WOWSC’s 2020 expenses.³⁵ Thus, Ratepayers’ Motion is now moot.

IV. CONCLUSION

For the foregoing reasons, WOWSC respectfully requests that Ratepayers’ Motion be denied. WOWSC further requests that it be granted all other relief to which it is entitled.

²⁹ See WOWSC’s Response to Ratepayers’ 8-24 at 180.

³⁰ Ratepayers’ Counsel Clarified Request (attached as Exhibit 2).

³¹ Ratepayers’ Objections to Supplemental Rebuttal Testimony of Mike Nelson and Motion to Strike at 7 (Mar. 3, 2023).

³² *Id.*

³³ WOWSC’s Supplemental Response to Ratepayers’ Eighth RFI.

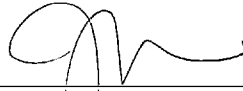
³⁴ *Id.*

³⁵ Ratepayer’s Motion at 4.

Respectfully submitted,

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

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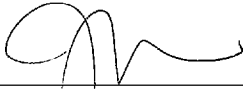
JAMIE L. MAULDIN
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rarnett@lglawfirm.com

**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 March 7, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE MAULDIN

From: kathryn allen <kallen@keallenlaw.com>

Sent: Wednesday, March 1, 2023 6:28 AM

To: Jamie Mauldin <jmauldin@lglawfirm.com>

Cc: Merritt Lander <merritt.lander@puc.texas.gov>; Richard Arnett <rarnett@lglawfirm.com>; Brittney Garza <bgarza@lglawfirm.com>; Amanda Benavides <abenavides@lglawfirm.com>; Erika Roberts <eroberts@lglawfirm.com>

Subject: Re: Docket 50788: Request for Extension Response to Ratepayers 8th RFIs

Jamie,

We are not able to accommodate your request.

Given the existing schedule, if we do not have the information and materials by the current deadline, we will not be able to properly prepare for the upcoming hearing. Had Windermere been candid and forthcoming about its rate design and theories of recovery from the outset, it would not have been necessary to propound either the 8th or 9th RFIs at all - much less at this point in the proceeding. Being unprepared is simply not a risk Ratepayers are prepared to accept. I trust you can understand this.

Thanks very much.



The Law Office of Kathryn E. Allen, PLLC

114 W. 7th Street, Suite 1100

Austin, Texas 78701

o. (512) 495-1400

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kallen@keallenlaw.com

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From: Jamie Mauldin <jmauldin@lglawfirm.com>
Sent: Tuesday, February 28, 2023 6:02 PM
To: kathryn allen <kallen@keallenlaw.com>
Cc: Merritt Lander <merritt.lander@puc.texas.gov>; Richard Arnett <rarnett@lglawfirm.com>; Brittney Garza <bgarza@lglawfirm.com>; Amanda Benavides <abenavides@lglawfirm.com>; Erika Roberts <eroberts@lglawfirm.com>
Subject: Docket 50788: Request for Extension Response to Ratepayers 8th RFIs

Kathryn,

My team and I have been working diligently since we received the 8th set of RFIs last week to get the responses ready for filing tomorrow. However, I'm asking to see if you would agree to a one to two day extension on these responses. I'm sure you can appreciate that the number of requests and responsive documents are rather extensive and I would appreciate an additional day or two to respond. We did not anticipate being asked over 50 RFIs on rebuttal testimony or I would not have agreed to a 5-day turnaround.

Could you agree to an extension for response to Friday, March 3rd with the aim to get the responses filed by Thursday, March 2nd? If we agree, we can state in our pleading that parties agreed to the extension and therefore it was timely filed. There would be nothing to do on your part. Please let me know as soon possible.

Thank you for your consideration,
Jamie



JAMIE MAULDIN
Principal
512-322-5890 Direct
512-771-5232
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900, Austin, TX 78701
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From: Jamie Mauldin
Sent: Tuesday, February 28, 2023 9:42 PM
To: kathryn allen
Cc: Merritt Lander; Richard Arnett; Brittney Garza; Amanda Benavides; Erika Roberts
Subject: RE: Docket 50788: Request for Extension Response to Ratepayers 8th RFIs

Kathryn,

I would like to get you as much information as possible without having to supplement or work together afterward to get you additional information that we cannot produce in the allotted time. Regarding your comment below, I would just note that we only have 5 days to respond to your requests.

Please let me know as soon as possible.

Thanks,
Jamie



JAMIE MAULDIN

Principal

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Sent: Tuesday, February 28, 2023 9:31 PM
To: Jamie Mauldin <jmauldin@lglawfirm.com>
Cc: Merritt Lander <merritt.lander@puc.texas.gov>; Richard Arnett <rarnett@lglawfirm.com>; Brittney Garza <bgarza@lglawfirm.com>; Amanda Benavides <abenavides@lglawfirm.com>; Erika Roberts <eroberts@lglawfirm.com>
Subject: Re: Docket 50788: Request for Extension Response to Ratepayers 8th RFIs

Typically, I would agree to this request as a professional courtesy. However, you declined to grant us an extension when we asked for it and you took full advantage of a few minutes of tardiness on the filing of our supplemental testimony to have it stricken. Under these circumstances, I do not have the authority to agree without consulting with the representatives. I will get back to you as promptly as I can.



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kallen@keallenlaw.com

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Sent: Tuesday, February 28, 2023 6:02 PM

To: kathryn allen <kallen@keallenlaw.com>

Cc: Merritt Lander <merritt.lander@puc.texas.gov>; Richard Arnett <rarnett@lglawfirm.com>; Brittney Garza <bgarza@lglawfirm.com>; Amanda Benavides <abenavides@lglawfirm.com>; Erika Roberts <eroberts@lglawfirm.com>

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Kathryn,

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Could you agree to an extension for response to Friday, March 3rd with the aim to get the responses filed by Thursday, March 2nd? If we agree, we can state in our pleading that parties agreed to the extension and therefore it was timely filed. There would be nothing to do on your part. Please let me know as soon as possible.

Thank you for your consideration,
Jamie



JAMIE MAULDIN

Principal

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From: kathryn allen <kallen@keallenlaw.com>
Sent: Friday, March 3, 2023 3:25 PM
To: Richard Arnett
Cc: Jamie Mauldin; Lander, Merritt
Subject: Re: Quickbooks

Richard,

I'm told that we need exactly what we requested and that it should be readily available. I don't mean to be disrespectful, but I honestly don't have time or energy to wrangle with you about this. Please provide the requested information by noon on Monday. Otherwise, I will understand that we need to move to compel.

Thank you.



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m. (512) 422-5541
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kallen@keallenlaw.com

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From: Richard Arnett <rarnett@lglawfirm.com>
Sent: Thursday, March 2, 2023 4:19 PM
To: kathryn allen <kallen@keallenlaw.com>
Cc: Jamie Mauldin <jmauldin@lglawfirm.com>; Lander, Merritt <Merritt.Lander@puc.texas.gov>
Subject: RE: Quickbooks

Yes, that is correct. We are working on providing additional source information.



RICHARD ARNETT
512-322-5855 Direct
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From: kathryn allen <kallen@keallenlaw.com>

Sent: Thursday, March 2, 2023 3:01 PM

To: Richard Arnett <rarnett@lglawfirm.com>

Cc: Jamie Mauldin <jmauldin@lglawfirm.com>; Lander, Merritt <Merritt.Lander@puc.texas.gov>

Subject: Re: Quickbooks

Thank you for getting back to me so promptly. For the avoidance of misunderstanding, thus far Windermere has produced a PDF of its general ledger spreadsheet but nothing more from its Quickbooks data - correct?



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To: kathryn allen <kallen@keallenlaw.com>

Cc: Jamie Mauldin <jmauldin@lglawfirm.com>; Lander, Merritt <Merritt.Lander@puc.texas.gov>

Subject: RE: Quickbooks

Kathryn,

I shared your concern with our client and will soon let you know if there is anything else we can provide.

Thanks,
 Rick



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Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900, Austin, TX 78701
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From: kathryn allen <kallen@keallenlaw.com>

Sent: Thursday, March 2, 2023 11:57 AM

To: Richard Arnett <rarnett@lglawfirm.com>

Cc: Jamie Mauldin <jmauldin@lglawfirm.com>; Lander, Merritt <Merritt.Lander@puc.texas.gov>

Subject: Quickbooks

Richard,

Please understand that I can barely use my iPhone and bear with me.

I'm finding a PDF of the general ledger, but not an electronic copy of the QuickBooks data. Please give me some guidance as to where I can find the electronic data.

Again, to be clear, we asked for a complete copy of the data, which will include not just a spreadsheet but also the source documents Windermere has, copies of the checks that were generated, etc. We do not seek an "accountant's copy," as an "accountant's copy" can be edited and we neither need nor want that functionality.

Thanks so much.



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