



Control Number: 50788



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PUC DOCKET NO. 50788



RATEPAYERS APPEAL OF THE § BEFORE THE STATE OFFICE
DECISION BY THE WINDERMERE §
OAKS WATER SUPPLY § OF
CORPORATION TO CHANGE WATER §
AND SEWER RATES § ADMINISTRATIVE HEARINGS

**WOWSC RATEPAYERS REPRESENTATIVES MOTION TO COMPEL WINDERMERE
OAKS WATER SUPPLY CORPORATION TO RATEPAYERS
FIRST REQUEST FOR INFORMATION**

TO THE HONORABLE JUDGE WISEMAN

COMES NOW, the Ratepayers Representatives of the Windermere Oaks Water Supply Corporation (“Ratepayers”) and files this Motion to Compel in response to the Windermere Oaks Water Supply Corporation Objections to Ratepayers’ First Set of Request of Information and, in support thereof, respectfully shows as follows:

BACKGROUND

On August 26, 2020, Ratepayers filed and served their first set of requests for information (“RFIs”) on Windermere Oaks Water Supply Corporation (“WOWSC”). On September 8, 2020, WOWSC filed their Objections to the Ratepayers’ First Request for Information. The specific objections to Ratepayers’ RFI included 1-1, 1-2, 1-3, 1-7 and 1-12. Pursuant to 16 Tex. Admin. Code §22.144(e), the party seeking discovery must file a motion to compel no later than five working days after an objection is received. Five working days after Tuesday, September 8, 2020 is Tuesday, September 15, 2020; therefore, this motion has been filed timely by the Ratepayers.

FAILURE TO NEGOTIATE

In its Objections to the Ratepayers' RFIs, the WOWSC states that, "[c]ounsel for the WOWSC has attempted to confer with the Ratepayers' Representatives to conduct good faith negotiations, but as of the filing deadline have failed to resolve the issues." The Ratepayers attempted to resolve any questions related to Ratepayers RFIs by means of electronic email, however Counsel for the WOWSC preferred to have telephone conversations which unfortunately were not convenient to the Ratepayers, therefore the Ratepayers suggested to WOWSC Counsel communicating any questions to RFIs via electronic email. Additionally, the Ratepayers acknowledge the insurmountable continued legal expenses which are being passed onto the WOWSC Ratepayers and believe that email communication with the WOWSC Counsel would be best suited as opposed to extended conference calls which could create a further burden on the ratepayers for unnecessary legal fees which the WOWSC Ratepayers will inevitably have to assume.¹ The WOWSC Counsel never communicated their questions via electronic email and preferred communication via telephone conference. WOWSC objections to RFI 1-1, RFI 1-2 could have easily be resolved via electronic email.

MOTION TO COMPEL

A. Ratepayers' Request for Information No 1-1 & No 1-2

Ratepayers' Request for RFI 1-1:

Produce all TRWA Water Rate Studies/Rate Analysis/Rate Assistance documents for the years 2017, 2018 and 2019 completed by TRWA including but not limited to a copy of the final report, any notes taken during meetings and any email correspondence.

Ratepayers' Request for RFI 1-2:

Produce all TRWA Wastewater Rate Studies/Rate Analysis/Rate Assistance documents for the years 2017, 2018 and 2019 completed by TRWA including but not limited to a copy of the final report, any notes taken during meetings and any email correspondence.

¹ Attached as Exhibit A is a copy of the email exchange between Counsel for WOWSC and Ratepayers

WOWSC Response to RFI 1-1 and 1-2:

WOWSC objects to this request because (1) it does not identify with reasonable particularity the information, documents or material sought, (2) it would require WOWSC to create a document not in existence, and therefore, not within WOWSC's possession, and (3) creating a document to respond would be unduly burdensome and expensive. Additionally, WOWSC objects to this request because it would require WOWSC to create a document not in existence, and therefore, not within WOWSC's possession, and creating a document to respond would be unduly burdensome and expensive. Notwithstanding these objections, WOWSC will provide the combined water and sewer rate sheet prepared by TRWA.

Ratepayers Response:

The WOWSC provides identical answers to RFI 1-1 and RFI 1-2 and therefore the Ratepayers will address both objections as one. The Ratepayers move to compel the WOWSC to answer RFI 1-1 and RFI 1-2 because the Ratepayers allege that all the answers to these requests can be easily accessed through WOWSC records and are already in existence and therefore the WOWSC objections are not valid for the following reasons:

Mike Nelson, WOWSC Secretary/Treasurer is charged with drafting the official minutes of the WOWSC. Additionally, WOWSC President, Joe Gimenez typically reviews minutes in each board meeting for board approval. It is assumed that all board members have reviewed the minutes prior to approving the official minutes. The language for RFI 1-1 and RFI 1-2 comes directly from the WOWSC official minutes which are posted on their website². In the minutes are listed below.

1. WOWSC Official Minutes, December 13, 2017 – referencing preliminary results received from Texas Rural Water Association (TRWA), data being submitted to TRWA for the rate analysis and final recommendations from TRWA.³

² www.wowsc.org

³ https://www.wowsc.org/documents/778/2017-12-13_WOWSC_Minutes_Approved_1.11.18.pdf

2. WOWSC Official Minutes, January 11, 2018 – referencing Manager’s Report specifically TRWA brought a report to the board for their review along with only the water rate sheet.⁴
3. WOWSC Official Minutes November 20, 2019 – referencing consideration of rate increase, specifically rate analysis for Water and Wastewater, never mentioned separate reports.⁵
4. WOWSC Official Minutes January 1, 2020 – referencing TRWA model for review for upcoming Members meeting and rate increase scenarios.⁶
5. WOWSC Official Minutes February 1, 2020 – referencing directors had a meeting with TRWA to review rate analysis, no TRWA wastewater study and various scenarios with legal fees.⁷

We appreciate WOWSC’s acknowledgement of combining the rate studies/rate analysis to this RFI however, it is our contention that the additional documents in this RFI request do exist as stated in the official minutes of the WOWSC and we believe they and can be easily obtained.

B. Ratepayers’ Request for Information No 1-3

Admit or Deny the current base water rate and base sewer rates charged by the Corporation would substantially decrease if the 2019 legal fees totaling \$169,000 or more were not included in the Rate Study/Rate Analysis performed by TRWA?

WOWSC Response to RFI 1-3

WOWSC objects to this request because it does not identify with reasonable particularity the information, documents or material sought, as required by the Commission's rules at 16 TAC §22.144(b)(1) and the Texas Rules of Civil Procedure 196.1. Ratepayers ask vaguely for WOWSC to admit or deny whether base rates would "substantially decrease," if legal fees were not included in the rate study/rate analysis performed by TRWA. The term "substantially decreased" is undefined and vague, and calls for a subjective response. Therefore, WOWSC should be relieved of responding to such a vague request. Additionally, 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

⁴ https://www.wowsc.org/documents/778/WOWSC_Jan_11_2018_approved_minutes.pdf

⁵ https://www.wowsc.org/documents/778/2019-11-20_WOWSC_Board_Meeting_Minutes_Approved.pdf

⁶ https://www.wowsc.org/documents/778/2020-01-23_WOWSC_Board_Meeting_Minutes_Approved.pdf

⁷ https://www.wowsc.org/documents/778/2020-02-01_WOWSC_Annual_Board_Meeting_Minutes_Approved.pdf

annoyance." Ratepayers' vague request for admission does not call for any sort of substantive response, but is meant for the purpose of harassing WOWSC about the amount of legal fees included in WOWSC's rate study. The amount of legal fees is already listed in Ratepayers' request and they are asking WOWSC to provide an opinion on the vague question of what would constitute "substantially decrease".

Ratepayers Response:

WOWSC's accusations that the Ratepayers are attempting to harass the WOWSC is unfounded, preposterous and simply a tactic to bully the Ratepayers. The Ratepayers request comes directly from statements made by the WOWSC President, Joe Gimenez in a letter dated January 29, 2020 sent out to the WOWSC Membership in which the President states "legal assaults are forcing our Board to raise **your water rates – significantly – to cover ongoing legal expense...**"⁸ Additionally, the WOWSC minutes from February 1, 2020 state "need to increase rates to cover the recent large legal invoices" and to have TRWA determine scenarios for the Ratepayers if the WOWSC no longer had legal fees.⁹ It appears by these continued statements by the WOWSC they want to emphasize to the Ratepayers the "substantial" difference in rates if legal fees were not included in the water and sewer rate increase. This request is simply reconfirming the WOWSC position regarding legal fees in the rate increase.

C. Ratepayers' Request for Information No 1-7

Provide total billing for 2019 legal expenses.

WOWSC Response to RFI No. 1-7

WOWSC objects to this request because it does not identify with reasonable particularity the information, documents, or material sought, as required by the Commission's rules at 16 TAC § 22.144(b)(1) and the Texas Rules of Civil Procedure 196.1. Ratepayers request documents regarding the WOWSC's "total billing for 2019 legal expenses," without specifying whether they mean: (1) the amount of 2019 legal expenses billed by legal counsel; or (2) the amount of 2019

⁸ https://wowsc.org/documents/778/Note_to_members_Jan_28_2020__final_.pdf

⁹ https://www.wowsc.org/documents/778/2020-02-01_WOWSC_Annual_Board_Meeting_Minutes_Approved.pdf

legal expenses actually paid to legal counsel; and (3) whether they are seeking amounts incurred by legal counsel in 2019 or amounts paid to legal counsel in 2019. Such a request is broad and vague, and is not described with reasonable particularity in order for WOWSC to accurately respond. Ratepayers' request burdens WOWSC with expending unnecessary time and expense to respond.

Ratepayers Response:

The request for the WOWSC 2019 legal expense will be enhanced to clarify the Ratepayers request. Please provide in writing the total sum of money in United States dollars all and every type of legal representation in 2019 which the was billed to WOWSC. Please total these amounts all together as one figure. We are not requesting what was paid by the WOWSC in 2019.

Ratepayers' Request for Information No 1-9

Please provide all unredacted attorney invoices for the years 2018 and 2019.

WOWSC Response to RFI No. 1-9

WOWSC objects to this request because the entries in the legal invoices from the years 2018 and 2019 (Legal Invoices) are privileged pursuant to Rule 503 of the Texas Rules of Evidence (TRE 503) and Rule 192.5 of the Texas Rules of Civil Procedure (TRCP 192.5). Specifically, TRE 503, and TRCP 192.5 allow a client to withhold information contained in a legal invoice pursuant to the attorney-client and the work product privileges.

Ratepayers Response

So as to not belabor the Court with unnecessary responses to WOWSC extensive arguments for their objection to RFI 1-9, we solely choose to address the WOWSC reliance on privilege pursuant to Rule 503 of the Texas Rules of Evidence (TRE 503)¹⁰ and Rule 192.5 of the Texas Rules of Civil Procedure (TRCP 192.5)¹¹.

¹⁰ <https://www.txcourts.gov/media/921665/tx-rules-of-evidence.pdf>

¹¹ <https://www.txcourts.gov/media/1055394/trcp-20150901.pdf>

It is well established in the tenets of law regarding the importance of the protection of attorney-client privilege. However, it is also recognized in the tenets of law the significance of losing that privilege, waived by the “Offensive Use” privilege.¹² The Ratepayers can appreciate the protection of relationships between the client and attorney, however it appears that the WOWSC is attempting to prevent discovery of information from the ratepayers, discovery which the Ratepayers are relying on to support our claim for relief. The rate appeal is based on whether it is just and reasonable or unjust and unreasonable for the WOWSC to include the 2019 massive legal expenses in their recent rate increase. The WOWSC is relying on the legal fees to support their rate hike, which that choice was made by the WOWSC Directors, however by making that choice they have waived the privilege that would otherwise be applicable to the legal invoices. In their attempt to prevent the ratepayers from having access to the evidence which justifies the WOWSC 71% rate increase, the WOWSC is using their privilege under TRCE 503(d) as a sword rather than as a shield.¹³ The Offensive Use Doctrine can be applied when;

1. a party who asserts privilege seeks affirmative relief;
2. The privilege information, if believed by the fact finder, in all probability would be outcome determinative of the action asserted; and
3. The evidence is not otherwise available to the opposing party.¹⁴

We conclude the WOWSC have met all three of the elements of the offensive use doctrine and therefore the privilege has been waived and unredacted 2018 and 2019 legal invoices are discoverable.

Ratepayers’ Request for Information No 1-12

Provide a current list of all property the Corporation owns and that is reasonably necessary for and used in the operation of the corporation:

¹² See *Ginsberg v. Fifth Court of Appeals*, 686 S.W.2d 105 (Tex. 1985)

¹³ See *Republic Ins. Co. v. Davis*, 856 S.W.2d 158, 163 (Tex. 1993)

¹⁴ *Id* 158, 163 and 166

- (A) to acquire, treat, store, transport, sell, or distribute water; or
- (B) to provide wastewater service and is under active construction or other physical preparation for future use and;
- (C) provide a list of all property the Corporation owns that is not applicable to (A) and

WOWSC Response to RFI No. 1-12

WOWSC objects to this request because it would require WOWSC to create a document not in existence, and therefore, not within WOWSC's possession, and creating a document to respond would be unduly burdensome and expensive.

Ratepayers Response

The Ratepayers request a list of all the land that the WOWSC owns as stated in RFI No. 1-12 (A) and (B) to gain a better understanding of the financials of the WOWSC, specifically the assets to assist the Ratepayers in determining what information was available to the WOWSC at the time the governing body made its decision and evidence of reasonable expenses.¹⁵

CONCLUSION

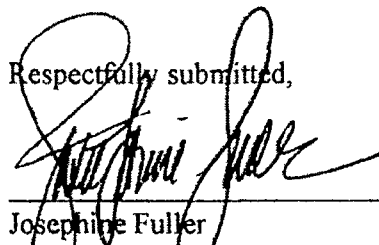
The WOWSC assertion that the Ratepayers are using the rate appeal case as merely an attempt to seek out documents which are related to the underlying ongoing litigation between the WOWSC and some Ratepayers is nothing more than their attempt to spitefully thwart the Ratepayers argument of unjust and unreasonable rates. If the Ratepayers are prevented from doing a checks and balances to ensure our rates are just and reasonable then the public's best interest has been subverted.

¹⁵ See TWC § 13.043(e)

PRAYER

WHEREFORE, PREMISES CONSIDERED, Ratepayers request these motions to compel be permitted requiring the WOWSC to provide responses to Ratepayers RFIs. The Ratepayers also request any other relief to which it may show itself justly entitled.

Respectfully submitted,



Josephine Fuller
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(512) 743-2553

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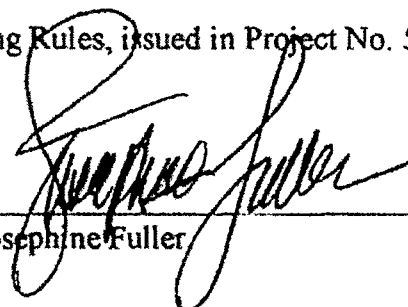


Patti Flunker, Ratepayer Representative
305 Coventry Road
Spicewood, Texas 78669
(512) 699-1082

ratepayersrepiosiefuller@gmail.com

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 email on September 15, 2020 in accordance with the Order Suspending Rules, issued in Project No. 50664.



Josephine Fuller

A handwritten signature in black ink, reading "Patti Flunker". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke extending to the left.

Patti Flunker, Ratepayer Representative

EXHIBIT A



Josie Fuller <ratepayersrepjosiefuller@gmail.com>

Docket 50788 [IWOV-PROD_LGDMS.FID512667]

Josie Fuller <ratepayersrepjosiefuller@gmail.com>

Fri, Sep 4, 2020 at 5:01 PM

To: Jamie Mauldin <jmauldin@lglawfirm.com>

Cc: Patrick Dinnin <pdinnin@lglawfirm.com>

Jamie,

Please advise on which RFI(s)# the protected order is for along with any additional questions you may have for us. We don't foresee an issue with the protected order being filed, just wanting to know which RFI(s)# it will refer to. Thanks and have a good holiday weekend.

Josie and Patti

On Fri, Sep 4, 2020 at 1:26 PM Jamie Mauldin <jmauldin@lglawfirm.com> wrote:

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Josie Fuller <ratepayersrepjosiefuller@gmail.com>

Docket 50788 [IWOV-PROD_LGDMS.FID512667]

Jamie Mauldin <jmauldin@lglawfirm.com>
To: Josie Fuller <ratepayersrepjosiefuller@gmail.com>
Cc: Patrick Dinnin <pdinnin@lglawfirm.com>

Fri, Sep 4, 2020 at 5:10 PM

Hi there-

The protective order is a blanket order for all confidential materials. What it does is prevent confidential information that is filed in response to the RFIs from being posted on the Commission interchange. Parties who sign the protective order will receive all of the confidential documents.

I would still like to chat about some objections WOWSC will have to your RFIs in hopes that we can agree on some language and get clarity as to what you are wanting. Are you available to discuss Tuesday morning?

Thanks,

Jamie



JAMIE L. MAULDIN
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From: Josie Fuller <ratepayersrepjosiefuller@gmail.com>
Sent: Friday, September 4, 2020 5:01 PM
To: Jamie Mauldin <jmauldin@lglawfirm.com>
Cc: Patrick Dinnin <pdinnin@lglawfirm.com>
Subject: Re: Docket 50788 [IWOV-PROD_LGDMS.FID512667]

Jamie,



Josie Fuller <ratepayersrepiosiefuller@gmail.com>

Docket 50788 [IWOV-PROD_LGDMS.FID512667]

Josie Fuller <ratepayersrepiosiefuller@gmail.com>

Tue, Sep 8, 2020 at 9:48 AM

To: Jamie Mauldin <jmauldin@lglawfirm.com>

Cc: Patrick Dinnin <pdinnin@lglawfirm.com>

Jamie,

We are not opposed to your filing of a protected order, simply wanting to know which RFI's you feel rise to the level of a protected order, legal invoices?

Regarding your questions on possible objections the WOWSC may have to some of our RFI's or to get better clarity on our request, we feel that these can easily be resolved via email communication and it is not necessary to have a telephone conference. We are deeply concerned with the excessive legal expenses by the WOWSC Board and believe it would be in the best interest of the ratepayers to keep your legal fees to a minimum. Thanks

Josie and Patti

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9/15/2020

Gmail - Docket 50788 [IWOV-PROD_LGDMS.FID512667]

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