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

**COMMISSION STAFF'S INITIAL BRIEF
ON ISSUES ADDRESSED IN THE SECOND HEARING ON THE MERITS**

Dated: April 11, 2023

Respectfully submitted,

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I. INTRODUCTION

For almost three years, Windermere has misrepresented to the Commission both its revenue requirement and the allocation of funds from its revenue requirement to pay for external legal expenses. Time and time again, Windermere has stated that its revenue requirement is \$576,192. Time and time again, Windermere has indicated that \$171,337 of that \$576,192 was allocated to legal and accounting fees, much of which stemmed from a lawsuit Windermere's sale of property to a former member of Windermere's Board of Directors for less than market value.¹ However, at the hearing on the merits that took place in December 2021, Windermere revealed that it had considered a revenue requirement of \$576,192, found it wanting, and instead designed its rates to recover approximately \$240,000 in legal expenses.² Then, on January 9, 2023, only two and a half months before the second hearing on the merits, Windermere revealed that its rates were actually designed to recover \$643,565 per year, \$250,000 of which was allocated to legal and appraisal fees.³ Windermere has maintained that its revenue requirement is \$576,192. However, its rates, combined with its other revenues, result in a budgeted income of \$643,565. This makes clear that Windermere's numbers are unreliable and therefore the Commission should look to Staff's recommended revenue requirement as the basis for determining just and reasonable rates.

Staff has yet to find a mathematical process, based on the numbers provided by Windermere, that allows Staff to arrive at the rates that Windermere chose to adopt. The 2019 actual costs do not yield a revenue requirement that would result in the rates that Windermere adopted.⁴ The 2019 actual costs, adjusted for known and measurable changes, do not yield a revenue requirement that would result in the rates that Windermere adopted.⁵ Not even the numbers in the 2020 budget, which are the latest set of numbers that Windermere has pointed to as the basis for its rates, can be manipulated to arrive at a revenue requirement that would result in the appealed rates. When pressed for an explanation of these mathematical inconsistencies, Board President Joe Gimenez put it succinctly, stating, "I'm having a hard time squaring the circle."⁶ For

¹ WOWSC Ex. 26 at 9-10.

² HoM 1, Tr. Day 1 at 199, 8-11 (Nelson Cross) (December 1, 2021).

³ Staff HoM 2 Ex. 41 at 2.

⁴ See Ratepayers Ex. 36; see WOWSC Exhibit 7 Attachment MN-1.

⁵ HoM 2, Tr. Day 1 at 780-784 (Gimenez Cross) (March 22, 2023).

⁶ *Id.* at 787-791; *id.* at 791, 7-8.

three years, Staff has struggled to do the same, only to conclude that understanding the calculations underlying Windermere's rates is impossible. The numbers just do not make sense.

As the Commission will see, the rates established by Windermere do not satisfy Texas Water Code (TWC) § 13.043(j) and 16 Texas Administrative Code (TAC) § 24.101(i). Windermere's rates are neither just nor reasonable, as they are premised on a false revenue requirement. Windermere's rates are neither just nor reasonable, as its stated revenue requirement does not take into account other revenues.⁷ Further, even if one were to hypothetically assume that Windermere's revenue requirement is legitimate, Windermere's rates are neither just nor reasonable, as they allocate extraordinary legal expenses, which are variable costs, entirely to base rates.

Staff's primary recommendation is that these legal expenses are not costs of service and should therefore not be recoverable through base or volumetric rates. While Windermere is obligated to satisfy its debts, there is more than one way to skin a cat, and Windermere should not be allowed to dip into its customers pockets for \$250,000 per year.

As an alternative to collecting \$250,000 from customers, Windermere has assets of which it may dispose to reduce its current financial obligations. Windermere has non-member income. Windermere is entitled to the recovery of funds from the former Director who purchased property from Windermere at below market value.⁸ Windermere has prevailed against its insurance provider, which denied coverage for legal expenses related to the land sale.⁹ While Windermere has cried financial ruin at the mere mention of a roll back in its rates, there are other means that would allow Windermere to pay its debts without incorporating hundreds of thousands of additional dollars per year into its water and sewer rates, burdening its customers with the cost of its inscrutable financial direction. The adoption of Staff's recommended rates, which are premised on Windermere's reasonable costs of service, would allow Windermere to maintain its financial integrity while also allowing it to pay what it owes.

Given Windermere's consistent failure to maintain and provide clear and accurate records, Staff's secondary and final recommendation is that the Commission order Windermere to submit

⁷ HoM 2 Staff Ex. 9.

⁸ HoM 2, Tr. Day 1 at 776, 4-14 (Gimenez Cross) (March 22, 2023).

⁹ *Id.* at 776, 1-4 (Gimenez Cross) (March 22, 2023).

compliance filings moving forward that would allow the Commission to track Windermere's financial progress as it pays down debts that were not prudently incurred. As part of these compliance filings, Staff recommends that the Commission require Windermere to undergo an independent management audit, as well as file financial reports that accurately depict its financial health, including the incurrence of any new debt. In circumstances where there are concerns regarding the reliability of data provided in support of rates, the Commission has ordered a similar audit.¹⁰

There is zero benefit for ratepayers if the Commission adopts just and reasonable rates put in place, only to have Windermere continue to incur a quarter of a million dollars in legal debt each year. There must be a finite financial limit put in place for this small water system that serves fewer than 300 people. Given that compliance dockets are often opened to track a utility's recovery of rate case expenses, Staff recommends that the Commission open a docket for the purpose of tracking Windermere's repayment of its existing legal debt, its incurrence of legal debt moving forward, which should not significantly exceed the revenue available to pay such expenses, and its recovery of any appeal case expenses that the Commission finds appropriate.¹¹

In summary, Staff respectfully requests that the Commission take the following steps: (1) adopt Staff's proposed revenue requirement (2) adopt Staff's proposed rates, which properly allocate expenses between base and gallonage rates; and (3) open a compliance docket in which Windermere must file quarterly financial reports that detail the repayment of its existing debt, any new debt incurred, the recovery of appeal case expenses, and the refund of any overcollection, until such time as all legal debt is repaid or cancelled and all proper refunds have been issued.¹²

II. EVALUATING WINDERMERE'S RATES UNDER TWC § 13.043(j) AND 16 TAC § 24.101(i)

Windermere's rates do not satisfy the requirements of TWC § 13.043(j) and 16 TAC § 24.101(i) because those rates are unjust and unreasonable. Under Texas Water Code § 13.043(j)

¹⁰ *Application of LCRA Transmission Services Corp. to Change Rates*, Docket No. 28906, Order at 34.

¹¹ As part of that compliance docket, Staff would file quarterly recommendations on Windermere's progress, including a recommendation on whether any new legal debt would cause Windermere's spending to outstrip its reasonable revenue.

¹² Unless superseded by a subsequent recommendation, Staff incorporates by reference Commission Staff's Initial Brief, filed on December 30, 2022.

and 16 TAC § 24.101(i), the Commission must “ensure that every appealed rate is just and reasonable” and that rates are not “unreasonably preferential, prejudicial, or discriminatory” but are “sufficient, equitable, and consistent in application to each class of customers.” Based on the many and varied premises that Windermere has provided for its rates, it has failed to show that its rates satisfy. As noted in *Town of Woodloch*, “[w]hen setting rates, the Commission must use a ‘methodology that preserves the financial integrity of the retail public utility.’ Considerations of financial integrity cannot, however, be treated as a trump card that overrides the utility’s obligation to comply with the standard requirements for proving its water and sewer rates.”¹³ As noted above, Windermere has other financial resources: it has assets to sell and it has other sources of revenue.

Here, Windermere has stated that its rates are designed to recover \$576,192, of which \$171,337 is earmarked for external legal expenses that were largely incurred to defend the water supply corporation, past board members, and current board members in civil litigation; it has simultaneously stated that its rates are designed to recover \$250,000 in legal and appraisal fees.¹⁴ Unfortunately, expenses continue to accrue.¹⁵ As of March 22, 2023, Windermere reported that it had incurred \$1,654,988.58 in legal expenses from 2019 through early 2023.¹⁶ Staff cannot, in good conscience or in good faith, recommend approval of rate-making policy that allows Windermere’s board of directors carte blanche, which ratepayers must cover indefinitely, for legal expenses.

A. Just and Reasonable Rates

It is not just and reasonable to allow the board of a water supply corporation to, without limit and without check, incur hundreds of thousands of dollars in legal expenses per year and expect ratepayers to back that debt. The question of whether Windermere’s rates are just and reasonable lies at the heart of this appeal, and while evaluating the justness and reasonableness of rates is often a simple issue of numbers, the determination here requires a slightly more nuanced approach. Often, when examining the expenses included in a utility’s rates, the question is whether the cost for a good or a service was reasonable and necessary to provide that good or service to the

¹³ *Appeal of Water and Sewer Rates Charged by the Town of Woodloch CCN Nos. 12312 and 20141*, Docket No. 42862, Order at Conclusion of Law 13 (Mar. 7, 2016).

¹⁴ Windermere Ex. 7 at 16; HoM 2 Staff Ex. 41.

¹⁵ HoM 1 Tr. Day 2 at 268, 5-11 (Gimenez Cross) (Dec. 2, 2021).

¹⁶ HoM 2 Ratepayers Ex. 48.

ratepayers. Here, the question is slightly different. In this docket, the question is whether it was reasonable and necessary to contract for legal services related to external litigation, in the amount of \$1,181,249.50,¹⁷ if at all.

Under 16 TAC § 24.41(b), components of allowable expenses that can be included in just and reasonable rates consist of those incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service. As there is no similar rule governing water supply corporations, this language serves as a useful guideline for evaluating what expenses are appropriately included in Windermere's rates. Generally, expenditures that can be considered unreasonable, unnecessary, or not in the public interest, may include executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.

In its Order on Remand, the Commission required the parties to examine the reasonableness of including the costs of external legal expenses in Windermere's rates. Staff has examined those expenses and recommends that it is not reasonable to include these costs because Windermere has repeatedly provided inconsistent numbers. Even if Windermere had provided consistent numbers, these expenses remain imprudently incurred and should therefore be excluded from the revenue requirement that serves as the basis for Windermere's rates.

B. Not Unreasonably Preferential, Prejudicial, or Discriminatory, but Sufficient, Equitable, and Consistent Rates for Each Class of Customers

Staff reserves the option to address this topic in its reply brief.

III. CALCULATING WINDERMERE'S JUST AND REASONABLE RATES

A. Revenue requirement

In traditional rate-making proceedings, a utility proposes a total revenue requirement that includes the cost of goods sold and expenses. That revenue requirement is then offset, or reduced, by other revenues, resulting in a revenue requirement that is used for setting rates. Here, for example, one would have expected Windermere to represent its total cost of goods sold plus its total expenses, adjusted for known and measurable changes, to arrive at an initial revenue requirement. That amount would have been reduced by other revenues, such as revenue from

¹⁷ See HoM 2 Ratepayers Ex. 48; WOWSC Ex. 26 at 12.

standby fees, to arrive at a revenue requirement used for setting rates. That would be the appropriate amount to recover through base and volumetric rates.

However, Windermere communicated no such appropriately determined revenue requirement to the Commission. Windermere made no mention of other revenues whatsoever. Windermere made no mention of the fact that it had recovered an average of over \$100,000 per year in late fees, standby fees, and equity buy in fees. It was not until January 9, 2023 that Windermere acknowledged that it anticipated recovering \$73,750 from other revenues in 2020.¹⁸ It was a complete surprise to Staff to that Windermere's rates were not designed to recover a revenue requirement of \$576,192; instead, they were designed to recover, in combination with other revenues, \$643,565.¹⁹ Windermere did not allocate \$171,337 of the proposed collected revenues to legal and appraisal costs; it allocated a quarter of a million dollars, per year, to legal and appraisal costs.²⁰ These numbers are based on Windermere's 2020 budget, which was adopted prior to the adoption of the appealed rates.²¹

For the purposes of setting rates, Staff now, after much calculation, proposes a revenue requirement of \$356,377.²² This is a reduction of \$48,478 from the revenue requirement of \$404,855 proposed by Staff leading up to the first Hearing on the Merits.²³ Based on financial information revealed by Windermere during that hearing, and in subsequent discovery responses, it became clear that Windermere had not applied any offsets from its other revenues, such as late fees and standby fees, in calculating its revenue requirement.²⁴ In fact, Windermere stated that such revenues were "minimal" and therefore not included in its rate analysis.²⁵ Realistically,

¹⁸ HoM 2 Staff Ex. 41.

¹⁹ *Id.*

²⁰ *Id.*

²¹ HoM 2 Staff Ex. 26.

²² HoM 2 Staff Ex. 2 at Supplemental Attachment AG-4 at 9.

²³ HoM 2 Staff Ex. 2 at 6.

²⁴ HoM 2 Staff Ex. 9.

²⁵ *Id.*

income from late fees and standby fees averaged \$48,478 from the years 2017-2019; this comprised almost 11% of Windermere's average annual income for those three years.^{26,27}

To reach its rate-setting revenue requirement, Staff subtracted the amount of legal fees included in Windermere's stated annual revenue requirement, along with the combined late fee and standby fee offset of \$48,478. While Staff's calculation was premised on a revenue requirement that Windermere's own statements have demonstrated is inaccurate, Staff's rates remain valid, as they are based on Windermere's 2019 actual expenses, other than legal and appraisal fees, as provided to TRWA and confirmed by Windermere's own 2019 year-end profit and loss statement.²⁸ Effectively, Windermere presented the TRWA rate design as the basis for its rates. That study included \$171,337 for legal and appraisal expenses, as well as dollar amounts for categories like office supplies, accounting, book keeping, etc. Staff, through a comparison with Windermere's 2019 year-end financials, determined that the amounts for the categories other than legal and appraisal were reasonable. Therefore, subtracting \$171,337 from \$576,192 yields a reasonable revenue requirement of \$404,855. Applying the offset of \$48,478, Staff arrived at an amount of \$356,377 to be recovered through base and volumetric rates.

Based on Windermere's 2019 year-end financials, approximately 60% of Windermere's service revenue is generated by water services, with the remaining 40% being generated by wastewater services.²⁹ Applying these percentages to Staff's proposed revenue requirement, Windermere's water and wastewater annual rate-setting revenue requirements equate to \$213,826 and \$142,551, respectively.

B. Rate design and allocation

Staff recommends that the Commission establish a water base rate of \$40.43 and a wastewater base rate of \$29.81. Staff further recommends that the Commission establish the following tiered volumetric rates for water service:

- 0-2,000 gallons: \$4.36 per 1,000 gallons
- 2,001-4,000 gallons: \$5.52 per 1,000 gallons

²⁶ HoM 2 Staff Ex. 2 at Supplemental Attachment AG-4 at 9.

²⁷ See HoM 2 Staff Ex. 48. While Staff's offsets are limited to income that results from customers who receive monthly services or will receive service in the future, Staff would also note that, from 2017 to 2019, the average income from equity buy-in fees was \$76,936.40.

²⁸ See Ratepayers Ex. 36; see WOWSC Ex. 7 Attachment MN-1.

²⁹ Ratepayers Ex. 36 at 1.

- 4,001-8,000 gallons: \$7.76 per 1,000 gallons
- 8,001-15,000 gallons: \$11.84 per 1,000 gallons
- 15,001 or more gallons: \$14.27 per 1,000 gallons

Finally, Staff recommends that the Commission establish a volumetric rate of \$6.55 per 1,000 gallons for wastewater service. Staff's base rates and volumetric charges will allow Windermere to recover \$356,377 per year. Based on Windermere's year end profit and loss statement, its total expenses, less legal and appraisal fees, were \$337,301.³⁰ Given Windermere's substantial other revenues, Staff's proposed rates give Windermere an adequate margin within which to operate, as well as ample funding to recover its debt-service costs. There would also be ample funding to cover what Windermere described as depreciation expense but what Staff would recommend be reserved separately for capital expenditures.

The entirety of non-recurring expenses should not be recovered through base rates.³¹ Staff would argue that these types of expenses that Windermere's members are being forced to bear do not belong in rates at all. For this reason, Staff recommends that the appropriate mechanism for recovery of any unknown, non-recurring legal expenses would be through the use of funds from revenues that are not tied to Windermere's base or volumetric rates, funds recovered from as a result of the Burney County case or the *Allied World* case, the funds obtained through the sale of assets that are not being used in the provision of service, or, if the sale of assets is not feasible or proves inadequate, through the assessment that is required by Windermere's tariff.³²

C. Depreciation Expense

With regard to the depreciation expense included in Windermere's current rates, the Commission should adopt Staff's unopposed recommendation to require Windermere to record the amounts it recovers through annual depreciation expense in a fund held for future plant investment. The annual amount for depreciation expense included in Windermere's request in this docket is \$56,273. Due to the nature of Windermere's unusual request in this docket, which included depreciation expense in a request based on the cash-needs methodology, the Commission should require Windermere to use the revenues it collects from depreciation expense to fund future

³⁰ See Ratepayers Ex. 36.

³¹ HoM 2 Staff Ex. 1 at 10 (referencing the TRWA rate design, which allocated 61.48% of Windermere's revenue requirement to base rates); HoM Tr. Day 2 at 422, 21-24 (Rabon Cross) (Dec. 2, 2021) (noting that the 84.9% allocation ultimately adopted by Windermere is highly unusual).

³² Windermere Ex. 2 at VOLUMINOUS Attachment JG-1 – Tariff at 44-45.

plant investment and to record those revenues in its Capital Expenditure Reserve as customer-contributed capital. This recommendation accords with basic accounting theory, too, as depreciation expense both reflects the history of invested capital and the need for future investment as current fixed asset outlive their useful lives. Staff describes this recommendation as unopposed because Windermere did not respond to the recommendation from Mr. English's direct testimony in its rebuttal testimonies (even though Windermere responded to other aspects of Mr. English's testimony) and because Windermere did not substantively discuss or ask questions about the issue when it briefly arose during the initial hearing on the merits.³³

D. Refunds and surcharges

Finally, should the Commission find that Windermere's current rates are not just and reasonable and have therefore resulted in over-recovery, Staff recommends that the amount over-recovered amount be refunded to customers over the same number of months it was collected. Staff recommends this refund period with an eye toward maintaining the financial integrity of the utility, as required by TWC § 13.043(e) and 16 TAC § 24.101(i). Staff notes that the calculation of this over-recovery would be best addressed in the compliance docket that Staff recommends, as it appears as though Windermere has over-recovered in more categories than just legal and appraisal.³⁴

IV. ALTERNATIVE FINANCIAL RESOURCES AND ALLOCATION OF REVENUE

Windermere has said that it cannot possibly function if the appealed rates do not remain in place. Mike Nelson testified that Windermere would be financially devastated if the rates were rolled back to the pre-increase amount.³⁵ The mere mention of requiring a refund of excess recovery has brought on the financial vapors. The truth is, in 2019, even at its pre-increase rates, even when it paid \$166,583.46 in legal and appraisal fees, Windermere still turned a profit of \$41,158.66.³⁶ Windermere never needed to raise its rates to pay for external legal expenses.

³³ HoM Tr. Day 2 at 461-462 (Filarowicz Cross) (Dec. 2, 2021).

³⁴ HoM 2 Tr. at 779-784 (Gimenez Cross) (Mar. 22, 2023) (while Staff has suggested that Windermere's over-recovery might be allocated to pay down Windermere's existing legal debt, a refund best conforms to standard ratemaking practices).

³⁵ WOWSC Ex. 27 at 7.

³⁶ Ratepayers HoM Ex. 36.

Windermere, as of March 22, 2023, had incurred \$1,654,988.58 in legal expenses.³⁷ Of that amount, some \$473,739.08 were costs of appeal, leaving a remaining balance of \$1,181,249.50. Mr. Gimenez testified that Windermere had prevailed in its lawsuit against its insurance provider, Allied World, entitling Windermere to recovery of approximately \$400,000-\$500,000 in legal fees and interest.³⁸ Windermere is also entitled to recover \$35,000 from Dana Martin, the former Director who purchased property from Windermere, as a result of the *Double F Hanger* lawsuits.³⁹ Windermere anticipates recovering \$50,000 in legal expenses from Dana Martin.⁴⁰ Windermere has recovered, over the time period that the appealed rates have been in effect, \$12,000 in what would be considered allowable legal expenses, i.e., the approximate amount spent in 2017,⁴¹ the year preceding the proliferation of litigation. From the years 2019 through 2022, Windermere's equity buy-in fees totaled \$156,846, none of which has been used in any offset calculation and should therefore be available to pay down Windermere's debt.⁴² Assuming a three-year average, Windermere can anticipate recovering approximately \$35,415 in equity buy-in fees in 2023. If one reduces Windermere's legal fees that are not related to the costs of this appeal by all of those amounts, Windermere's remaining liability is approximately \$491,000. Given Windermere's annual equity buy-in revenue, it could likely negotiate a repayment plan that allows it to operate without exceeding Staff's recommended revenue requirement. That, of course, is contingent on the Board choosing not to incur debts that it cannot afford to pay.

V. RECOVERY OF WINDERMERE'S REASONABLE APPEAL EXPENSES

A. Commission approval of recovery

Staff recommends that Windermere be allowed to recover \$379,000, which was incurred between May 1, 2020 and January 31, 2022⁴³ as the reasonable cost of this appeal. Under TWC § 13.043(e) and 16 TAC § 24.101(e)(2) and (5), the Commission may allow a utility to recover

³⁷ HoM 2 Ratepayers Ex. 48.

³⁸ WOWSC Ex. 26 at 12.

³⁹ HoM 2 Tr. at 776, 10-17 (Gimenez Cross) (Mar. 22, 2023).

⁴⁰ WOWSC Ex. 26 at 12.

⁴¹ WOWSC Ex. 2 at 17.

⁴² HoM 2 Staff Ex. 48; HoM 2 Staff Ex. 58 at 5, 13, 22.

⁴³ HoM 2 Tr. at 864, 10-18 (Givens Cross) (Mar. 22, 2023).

reasonable expenses incurred by the retail public utility in an appeal proceeding. While there are no specific guidelines for determining what constitutes “reasonable expenses” in a rate appeal, 16 TAC § 24.44, which articulates the criteria for review of rate-case expenses, is illustrative.

Under 16 TAC § 24.44(b), a utility must provide evidence that demonstrates the following in order to recover its claimed expenses:

- (1) the nature, extent, and difficulty of the work done by the attorney or other professional in the rate case;
- (2) the time and labor expended by the attorney or other professional;
- (3) the fees or other consideration paid to the attorney or other professional for the services rendered;
- (4) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials;
- (5) the nature and scope of the rate case, including:
 - (A) the size of the utility and number and type of consumers served;
 - (B) the amount of money or value of property or interest at stake;
 - (C) the novelty or complexity of the issues addressed;
 - (D) the amount and complexity of discovery;
 - (E) the occurrence and length of a hearing; and
- (6) the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associated with each issue.

Based on the Direct, First, Second, Third, Fourth, and Fifth Supplemental Testimony of Jamie L. Mauldin, counsel for Windermere, along with the Errata to the Fifth Supplemental Direct Testimony of Jamie L. Mauldin, Staff believes that Windermere has provided the evidence necessary to evaluate the criteria set out on 16 TAC § 24.44(b).

After considering Ms. Mauldin’s testimony, and the entirety of the record, the Commission can then look to 16 TAC § 24.44(c) for guidance, which provides:

The Commission must decide whether and the extent to which the evidence shows that:

- (1) the fees paid, tasks performed, or time spent on a task were extreme or excessive;
- (2) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials were extreme or excessive;
- (3) there was duplication of services or testimony;
- (4) the utility’s proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of commission precedent;
- (5) rate-case expenses as a whole were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section; or
- (6) the utility failed to comply with the requirements for providing sufficient information pursuant to subsection (b) of this section.

Based on Ms. Mauldin's testimony, Staff recommends that the \$379,000 of the amount requested by Windermere is reasonable and should be recovered. Staff recommends that any expenses incurred after January 31, 2022 should be evaluated in Staff's recommended compliance docket so that it may fully evaluate the appropriateness of the recovery of any additional expenses.

B. Appropriate mechanism for recovery

Much as rate-case expenses are recovered through a surcharge, Staff recommends that whatever costs of appeal, if any, the Commission might find are recoverable, should be recovered through a surcharge over the course of five years. Given the financial burden placed on Windermere's ratepayers since March 2020, Staff believes that this extended recovery period will avoid subjecting ratepayers to another substantial jump in their monthly water and wastewater bills. In the alternative, Staff recommends that the amount be recovered through an end-of-year assessment, as provided in Windermere's tariff.⁴⁴

VI. CONCLUSION

For three years, Windermere led Staff, the Ratepayers, and the Commission on a wild goose chase trying to pin down an explanation for a revenue requirement that does not exist. A water supply corporation cannot incur unlimited legal fees and then include those expenses in the calculation of its future rates. Windermere's ratepayers receive no discernible benefit and no improvement in service, only an increase in their monthly water bill. The Board's decision to spend such an extreme amount stems from the Board's failure to understand its fiduciary duties; Windermere's ratepayers should not bear the financial burden associated with the Board's poor decision to sell a piece of property to a former Director for less than market value. For this reason, Staff contends that Windermere's rates should be recalculated to properly allocate recovery of its reduced revenue requirement between fixed and variable rates.

⁴⁴ Windermere Ex. 2 at VOLUMINOUS Attachment JG-1 – Tariff at 44-45.