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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 REPLY TO
RATEPAYER REPRESENTATIVES’ RESPONSE TO WOWSC’S MOTION TO ADMIT
EXHIBITS PURSUANT TO THE RULE ON OPTIONAL COMPLETENESS**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, Windermere Oaks Water Supply Corporation (WOWSC) and hereby files this Reply to Ratepayer Representatives’ Response to WOWSC’s Motion to Admit Exhibits Pursuant to the Rule on Optional Completeness (Ratepayers’ Response):

I. BACKGROUND

On March 22, 2023, during the hearing on the merits in this docket, Commission Staff offered the following exhibits into evidence: Staff HoM2 Exhibits 4, 14, and 37. Ratepayers also offered the following exhibits into evidence: Ratepayers HOM 2 Exhibits 121, 128, 129, 130, 132, 133, 134, 135, 136, 140, 143, 145, 150, 152, and 155. The Administrative Law Judges (ALJs) subsequently admitted these exhibits into evidence but, importantly, recognized WOWSC’s preservation of the rule of optional completeness.¹

Each of these exhibits are excerpts from WOWSC’s discovery responses. WOWSC did not object to the admission of these exhibits, subject to Texas Rules of Evidence Rule 107—Rule of Optional Completeness.² Accordingly, on April 6, 2023, WOWSC filed its Motion to Admit Exhibits Pursuant to the Rule on Optional Completeness (WOWSC’s Motion).³ Specifically, it offered WOWSC-35 OC through WOWSC-44 OC into the record.⁴ On April 14, 2023, Ratepayer Representatives (Ratepayers) filed Ratepayers’ Response objecting to WOWSC’s Motion.⁵ The

¹ Tr. at 750:9-15.

² Tex. R. Evid. 107.

³ Windermere Oaks Water Supply Corporation’s (WOWSC’s) Motion to Admit Exhibits Pursuant to the Rule on Optional Completeness (Apr. 6, 2023) (WOWSC’s Motion).

⁴ *Id.* at 1.

⁵ Ratepayer Representatives’ Response to WOWSC’s Motion to Admit Exhibits Pursuant to the Rule on

deadline for filing a reply is five business days following the date of receipt.⁶ Accordingly, this Reply is timely filed.

II. REPLY

The Texas Rules of Evidence (TRE) control the admissibility of evidence in a rate case proceeding.⁷ Pursuant to the Rule of Optional Completeness, provided under TRE 107, “if a party introduces a...writing, an adverse party may also introduce any other...writing...that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent.”⁸ TRE 107 “guard[s] against the possibility of confusion, distortion, or false impression that could rise from use of a...writing...out of proper context.”⁹

Evidence provided under TRE 107 need not be ordinarily admissible if it “is used to fully explain a matter opened up by the other party.”¹⁰ However, only parts or items germane to the item previously offered are admissible under TRE 107.¹¹ Moreover, TRE 403 applies to evidence offered to complete previously admitted evidence.¹² As such, a court exclude relevant evidence offered under TRE 107 “if its probative value is *substantially* outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.”¹³ Importantly, however, TRE 403 “favors admissibility of relevant evidence, and the presumption is that relevant evidence will be more probative than prejudicial.”¹⁴

WOWSC-35 OC through WOWSC-44 OC complete excerpts from various WOWSC discovery responses offered in Ratepayers’ and Staff’s exhibits at issue. Therefore, the exhibits are necessarily germane to the item offered by Ratepayers or Staff at hearing. Moreover, because WOWSC-35 OC through WOWSC-44 OC provide the complete discovery responses at issue, the

Optional Completeness (Apr. 14, 2023) (Ratepayers’ Response).

⁶ 16 Tex. Admin. Code (TAC) § 22.78(a).

⁷ 16 TAC § 22.221.

⁸ Tex. R. Evid. 107.

⁹ *Livingston v. State*, 739 S.W.2d 311, 331 (Tex. Crim. App. 1987).

¹⁰ *Parr v. State*, 557 S.W.2d 99, 102 (Tex. Crim. App. 1977).

¹¹ *Sauceda v. State*, 129 S.W.3d 116, 123 (Tex. Crim. App. 2004).

¹² *Id.*

¹³ Tex. R. Evid. 403 (emphasis added).

¹⁴ *Montgomery v. State*, 810 S.W.2d 372, 389 (Tex. Crim. App. 1990).

exhibits are necessary to “guard against... confusion, distortion, or false impression that could rise from use of a... writing... out of proper context.”¹⁵ In fact, in its Initial Brief Ratepayers already relies on several individual emails that, taken out of context, greatly prejudice WOWSC.¹⁶ They also hand pick individual pages from WOWSC’s financial reports that, without the all underlying checks in the record, distort and mischaracterize WOWSC’s financial management.¹⁷ Finally, Ratepayers and Staff excluded from their exhibits several attachments, RFI responses, and supplemental responses referred to in the relevant RFI questions and related discovery responses.¹⁸ This casts WOWSC in a negative light and, importantly, fails to capture the entirety of WOWSC’s discovery responses. WOWSC anticipated this prejudicial behavior and, therefore, preserved its right for Optional Completeness at hearing.¹⁹ Judge Wiseman recognized WOWSC’s preservation and, accordingly, allowed WOWSC to bring up optional completeness in the event Ratepayers or Staff failed to provide complete records as exhibits.²⁰

Ratepayers allege that supplementation under the current circumstances would be “particularly prejudicial.”²¹ What Ratepayers fail to mention is their failure to upload the specific Exhibits they intended to introduce at hearing before March 21, the night before the hearing. WOWSC was unable to fully review each exhibit due to Ratepayers prejudicial delay. Moreover, Ratepayers have still failed to provide SOAH with its properly numbered exhibits, further prejudicing all parties in this proceeding.²² In contrast, WOWSC merely seeks to enter full copies of discovery responses that it initially furnished to Staff and Ratepayers for each parties’ benefit. Without the full discovery response in the record, Ratepayers can—and have—misconstrued email correspondence and financial records to mischaracterize evidence. WOWSC therefore requests

¹⁵ *Livingston*, 739 S.W.2d at 331.

¹⁶ Ratepayers’ Initial Brief at 15-16; *see also* Ratepayers HOM2 Exhibit 135; Ratepayers HOM2 Exhibit 150.

¹⁷ Ratepayers’ Confidential Filing MM Comingled Funds Used to Pay Legal Costs with attachments.

¹⁸ *See, e.g.*, Staff’s HoM 2 Exhibit 4; Staff’s HoM 2 Exhibit 37; Ratepayers HOM2 Exhibit 145.

¹⁹ Tr. at 611:22-24; 702:1; 750:9-12; 773:9-10; 775:2-3.

²⁰ Tr. at 750:13 (providing that “[i]f it turns out later that there’s something missing [from Ratepayers 145 through 150], you can bring that up then”).

²¹ Ratepayers’ Response at 5.

²² SOAH Order No. 32 – Requiring Submission Exhibit (April 11, 2023).

the ALJs to recognize WOWSC's right to Optional Completeness and, accordingly, dismiss Ratepayers' Response.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, WOWSC respectfully requests the Commission overrule Ratepayers' Response and grant WOWSC's Motion to Admit Exhibits Pursuant to the Rule on Optional Completeness. WOWSC also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR WINDERMERE OAKS
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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 April 18, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Jamie L. Mauldin