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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 REPLY BRIEF
ON ISSUES ADDRESSED IN THE SECOND HEARING ON THE MERITS**

Dated: May 2, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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I. INTRODUCTION

Again and again, Windermere Oaks Water Supply Corporation (Windermere) mischaracterizes Commission Staff's position, misrepresenting the impact of adopting of Staff's recommended rates. Windermere claims that Staff's recommendations will wreak financial havoc. This is not true. While Windermere describes Staff's recommendation to remove Windermere's external legal expenses as "arbitrary," it is anything but. Staff has considered the purpose and scope of the expenditures and found that they do not result in an improvement in service to Windermere's customers. There is nothing arbitrary about Staff's position. Rather, Staff's recommendation strikes a balance between adopting rates that properly reflect the cost of service to Windermere's customers, honoring Windermere's existing financial obligations, and ensuring that Windermere does not overextend itself moving forward. Staff, both at hearing and in its initial post-hearing briefing, acknowledged that Windermere must honor its contractual obligations and identified financial resources other than Windermere's base and volumetric rates, that Windermere could tap in order to satisfy its debts and move forward.

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

Windermere emphasizes that Staff's proposed rates will destroy Windermere's financial integrity and that the Commission must, therefore, approve Windermere's existing rates. That simply isn't true, and the argument falls short on several fronts.

First, as Staff has shown, Windermere did not need to raise its base rates in order to cover its legal expenses. It has additional resources and could maintain its financial integrity without indefinitely raising its rates to collect hundreds of thousands of dollars more per year than what it spent in 2019, sans legal expenses.

Second, the argument that the Commission should adopt Windermere's existing rates ignores the fact that Windermere has yet to provide a valid revenue requirement, one that accurately reflects Windermere's costs of service. Providing a budget comprised of amounts that have been adjusted upward from 2019 numbers without justification does not a revenue requirement make. In fact, Windermere also mischaracterizes its own rate design, stating that it budgeted its 2020 legal expenses based on the 2019 legal expenses and the likelihood of continued

litigation.¹ Windermere budgeted its 2020 legal expenses based on handshake deals to pay each of two law firms, Lloyd Gosselink and Enoch Keever, \$10,000 per month.² Windermere has further admitted that it intended to recover the difference between its stated revenue requirement and its budgeted expenses through other revenues. Windermere did not disclose its reliance on these other revenues until this proceeding had been underway for almost three years. The Commission would be remiss in sanctioning such inconsistent work.

Third, while financial integrity is a key consideration when determining Windermere's rates, Staff reiterates that financial integrity is not an absolute defense to financial mismanagement.³ Staff has seen no evidence that Windermere intended to limit its legal debt in any way. Windermere claims that the legal expenses at issue were reasonable and necessary, but stating a thing does not make it so. In the absence of a practical limit, in the absence of concrete justification, Staff can only recommend a revenue requirement that is rooted in fact, i.e., Windermere's 2019 profit and loss statement.

Windermere bears the burden of proof to demonstrate that its rates are just and reasonable. It has failed to do so. Former Board President Joe Gimenez acknowledged that there is no evidence in the record supporting the changes made to the costs presented in the 2019 profit and loss statements to arrive at the 2020 budget.⁴ Windermere's other revenues, along with its base and volumetric rates, are designed to recover the 2020 annual budget. There is not adequate support in the record to support the amounts that comprise the 2020 annual budget. Therefore, Windermere's rates fail.

III. CUSTOMER CHARACTERISTICS AND DISCRIMINATORY RATES

In its initial brief, Windermere argues that, because all customers reside in the same location and receive the same services from the same facilities, all of its customers belong in the

¹ *Ratepayers' Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788, Initial Brief of Windermere Oaks Water Supply Corporation at 2 (Apr. 11, 2023) (Windermere Initial Brief).

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

³ *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).

⁴ HoM 2, Tr. Day 1 at 780-784 (Gimenez Cross) (March 22, 2023).

same class.⁵ It then goes on to describe, though, two distinct types of customers, who place distinctly different demands on Windermere's system. Airport hangar accounts have a higher peak-to-average demand differences than single family residential accounts.⁶ Single family residential accounts have a much higher level of demand.⁷ Windermere summarily dismisses these distinctions, stating that the variances offset each other, explaining that Windermere's inclining block rate design properly allocates recovery between hangar and single family residential accounts. Windermere's own argument undermines its position; while inclining block rates might mitigate the negative impact of improperly defined customer classes, it does not obviate the need for properly defined classes. In other words, just because there is a system in place that largely cures any ills caused by failure to properly identify customer class, that does not mean that Windermere is excused from the responsibility of properly defining its customer classes.

IV. RECOVERY OF WINDERMERE'S REASONABLE APPEAL EXPENSES

Staff affirms its position that Windermere should be allowed to recover only \$379,000 over the course of five years.

V. CONCLUSION

Windermere has not met its burden to show that the appealed rates are just and reasonable. It claims that it had no choice but to cover the legal expenses of all of its directors, arguing that no one would ever serve on its volunteer Board if constantly at risk of being sued. No testimony was submitted affirming this position. It is a hypothetical argument that is the grounds for years and years of unrestrained spending. Staff's revenue requirement is based on Windermere's profit and loss statements—Windermere's real-world, actual costs. Staff respectfully reiterates its request 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

⁵ Windermere Initial Brief at 4.

⁶ *Id.*

⁷ *Id.*

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.