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**SOAH DOCKET NO. 473-20-4071.WS
PUC DOCKET NO. 50788**

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
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On April 27, 2020, Josephine Fuller, individually and on behalf of the ratepayers of Windermere Oaks Water Supply Corporation (Petitioners or Ratepayers), filed a petition under Texas Water Code (TWC) § 13.043(b) appealing the decision by Windermere Oaks Water Supply Corporation (Windermere) to change its water and sewer rates. On April 30, 2020, Petitioners filed an amended petition. On May 27, 2020, Windermere filed its response to the petition.

On April 27, 2023, the State Office of Administrative Hearings (SOAH) administrative law judge filed SOAH Order No. 34, establishing a deadline of May 2, 2023 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file proposed findings of fact and conclusions of law. Therefore, this pleading is timely filed.

I. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The attachment to this pleading contains proposed findings of facts and conclusions of law. Staff respectfully request the entry of a proposal for decision consistent with the attached findings of fact and conclusions of law.

II. CONCLUSION

Staff respectfully requests the entry of a proposal for decision consistent with the attached findings of fact and conclusions of law.

Dated: May 2, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 on May 2, 2023 in accordance with the Second Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander
Merritt Lander

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Findings of Fact

The Commission adopts the following findings of fact.

General and Procedural Findings

1. Windermere Oaks Water Supply Corporation (Windermere or WOWSC) is a nonprofit water supply and sewer service corporation operating under chapters 49 and 67 of the Texas Water Code (TWC).
2. Windermere's water and sewer service certificates of convenience and necessity numbers are 12011 and 20662.
3. Windermere is managed by a member-elected board of directors, where each director must be a resident of the State of Texas, a member of Windermere, and a customer of Windermere.
4. Windermere has five board members and the board of directors elects its officers.
5. On February 1, 2020, the board approved a rate increase that took effect beginning March 23, 2020.
6. On or about February 11, 2020, Windermere sent notice of its rate increase to its customers.
7. On April 27, 2020, certain ratepayers (Ratepayers) timely filed a petition under TWC § 13.043(b) to appeal the decision by the board.
8. The petition was filed within 90 days after the effective date of the rate change.
9. As of the date of the board's decision to increase rates in 2020, Windermere had 271 water connections and 245 sewer connections.

10. Fifty-two ratepayers signed the petition.
11. Greater than 10 percent of Windermere's total active connections at the time of filing signed a petition to contest the rate increase.
12. On May 27, 2020, Windermere filed a response to the petition.
13. No party requested an effective date other than the original one proposed by Windermere.
14. The appealed rates were in effect from March 23, 2020 to the present.
15. Only the base rates for water and sewer service were appealed.
16. On June 23, 2020, by Order No. 3, a Public Utility Commission of Texas (Commission) administrative law judge (ALJ) found the petition administratively complete.
17. On June 23, 2020, the Commission referred the case to the State Office of Administrative Hearings (SOAH), requesting the assignment of an ALJ to conduct a hearing and issue a proposal for decision, if necessary.
18. On July 16, 2020, the Commission issued a Preliminary Order identifying eleven issues to be addressed in the SOAH proceeding.
19. On October 8, 2020, by SOAH Order No. 5, this matter was referred to mediation.
20. On January 19, 2021, a mediator's report stated that the parties did not reach agreement during mediation.
21. No party moved to establish interim rates.
22. On March 10, 2021, Windermere filed direct testimony of George Burriss, Joe Gimenez, Mike Nelson and Jamie Mauldin.
23. On April 7, 2021, Ratepayers filed direct testimony of Daniel Flunker, Pattie Flunker, Bill Stein, and Kathryn E. Allen.
24. On May 5, 2021, Commission staff (Staff) filed direct testimony of Spencer English, Stephen Mendoza, Heidi Graham, and Maxine Gilford. The testimony of Spencer English was subsequently adopted by Mark Filarowicz.
25. On July 7, 2021, the Windermere filed rebuttal testimony of Mike Nelson, Joe Gimenez, and Grant Rabon.

26. On June 7, 2021, Windermere filed the first supplemental direct testimony of Jamie Mauldin.
27. On November 19, 2021, Windermere filed the second supplemental direct testimony of Jamie Mauldin.
28. On November 23, 2021, Staff filed the supplemental direct testimony of Maxine Gilford.
29. On December 1-3, 2021, a hearing on the merits was held before ALJs Christiaan Siano and Daniel Wiseman via Zoom videoconference at which Windermere, Ratepayers, and Staff appeared.
30. On December 6, 2021, SOAH Order No. 15 set a post-hearing briefing schedule.
31. On December 11, 2021, Ratepayers filed a motion for interim relief.
32. On December 20, 2021, SOAH Order No. 16 denied the motion for interim relief.
33. Under SOAH Order No. 15, initial post-hearing briefs were due on December 30, 2021, and reply briefs were due on January 25, 2022.
34. On December 30, 2021, Windermere filed the third supplement direct testimony of Jamie Mauldin.
35. On February 1, 2022, Windermere moved to strike portions of Ratepayers' reply brief and response to Windermere's motion to admit evidence.
36. By SOAH Order No. 17, the motions to strike were denied.
37. By SOAH Order No. 18, the record was reopened and WOWSC Exhibit 22 was admitted into the evidentiary record.
38. On March 31, 2022, the ALJs issued their proposal for decision, which recommended that the Commission dismiss the Ratepayers' appeal and allow Windermere to recover \$345,227.03 in rate case expenses.
39. On May 25, 2022, WOWSC filed its Fourth Supplemental Direct Testimony of Jamie L. Mauldin.

40. On June 30, 2022, the Commission issued its Order Remanding Proceeding rejecting the ALJs' Proposal for Decision and remanding the proceeding back to SOAH to address all the standards prescribed under TWC § 13.043(j)
41. On September 26, 2022, the ALJs issued SOAH Order No. 23 adopting the procedural schedule.
42. On October 28, 2022, WOWSC filed its Supplemental Testimony of Grant Rabon.
43. On December 1, 2022, Ratepayers filed their Supplemental Direct Testimonies of Robert Gaines and Kathryn Allen.
44. On December 19, 2022, WOWSC filed its First Errata to the Rebuttal Testimony of Mike Nelson.
45. On January 6, 2023, the ALJs issued SOAH Order No. 27 granting WOWSC's Motion to Strike Ratepayers' Supplemental Direct Testimonies of Robert Gaines and Kathryn Allen.
46. On January 10, 2023, Commission Staff filed its Supplemental Direct Testimonies of Anna Givens and Stephen J. Mendoza.
47. On January 10, 2023, Commission Staff filed its Motion to Adopt the Testimony of Maxine Gilford.
48. On February 10, 2023, WOWSC filed its Supplemental Rebuttal Testimonies of Joe Gimenez, III and Mike Nelson.
49. On February 10, 2023, WOWSC filed its Fifth Supplemental Direct Testimony of Jamie L. Mauldin.
50. On March 16, 2023, WOWSC filed its Errata to the Fifth Supplemental Direct Testimony of Jamie L. Mauldin.
51. On March 22, 2023, a one-day hearing on the merits was held via Zoom before ALJs Siano and Wiseman and was attended by WOWSC, Ratepayers, and Commission Staff.
52. Under SOAH Order No. 31, the Parties filed initial post-hearing briefs on April 11, 2023, and reply briefs on May 2, 2023.

Evidentiary Record

53. At the first hearing on the merits, the SOAH ALJs admitted the following items into the evidentiary record:

- Ratepayers Exhibits: 2-33, 35-38, 40-44, 46-48, 50-53;
- Staff Exhibits: 1-5; and
- Windermere Exhibits: 1-19.

54. At the second hearing on the merits, the SOAH ALJs admitted the following items into the evidentiary record:

- Ratepayers HOM-2 Exhibits: 74, 81, 119, 121, 128, 129-136, 139-143, 144A, 144B, 145-155;
- Staff HOM-2 Exhibits: 1-49 and 58; and
- Windermere HOM-2 Exhibits: 24-28,30,32-33.

Background

55. Windermere provides water and sewer service.

56. Windermere board's February 1, 2020 rate decision resulted in a monthly base rate of \$90.39 for water service and \$66.41 for sewer service.

57. There is no meter size except for the 5/8" x 3/4" meter.

58. Water and sewer service each have a single base rate applicable to a single meter size.

59. All customers are charged the same rates.

Revenue Requirement and Rate Design

60. The use of the cash needs method was appropriate in this case.

61. The TRWA rate sheet used the cash needs method in its analysis.

62. Windermere's net revenue requirement is \$404,855.

63. The net revenue requirement of \$404,855 is reasonable.

64. A debt service coverage ratio of 1.1 is supported by Staff and is reasonable.

65. The amount paid to Water Management, Inc. for operations is reasonable.

66. The amount paid to Water Management, Inc. that is then paid to Corix for subcontracting operations is reasonable.
67. The inclusion of the outside legal expenses at issue in this proceeding in Windermere's revenue requirement is contrary to public policy.
68. Excluding these outside legal expenses from Windermere's revenue requirement will require Windermere to curb unnecessary financial expenditures.
69. It is appropriate for the Commission to fix rates designed using a revenue requirement of \$404,855.

Rate Design

70. The revenue requirement of \$404,855 is offset by \$48,478 derived from other revenues.
71. The resulting \$356,377 is allocated 61% to water and 39% to wastewater, totaling a water base rate of \$40.43 and a wastewater base rate of \$29.81.
72. The appealed rates are not just and reasonable.
73. It is appropriate for the Commission to fix a water base rate of \$40.43 and a wastewater base rate of \$29.81.
74. It is appropriate to establish water volumetric rates as follows:
 - 0-2,000 gallons: \$4.36 per 1,000 gallons
 - 2,001-4,000 gallons: \$5.52 per 1,000 gallons
 - 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
75. It is appropriate to establish a volumetric rate of \$6.55 per 1,000 gallons for wastewater service.

Rate Case Expenses

76. The rate case expenses of \$379,000, incurred from April 27, 2020 through January 31, 2022 are reasonable.
77. Additional rate case expenses from February 1, 2022 through the remainder of this proceeding are not supported as reasonable and necessary.

78. Staff supports the recovery of \$379,000 rate case expenses in this proceeding.
79. A five-year recovery period for rate case expenses is reasonable.
80. It is appropriate for Windermere to collect \$379,000 in cost of appeal through a surcharge over a 60-month period. The surcharge should continue until the earlier of 60 months after the rider takes effect or \$379,000 is fully recovered.

II. Conclusions of Law

The Commission makes the following conclusions of law:

1. The Commission has authority over this proceeding under TWC § 13.043 and 16 Texas Administrative Code (TAC) § 24.101.
2. Windermere is a nonprofit water supply corporation as defined by TWC § 13.002(24).
3. Windermere is a retail public utility as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
4. SOAH, upon referral, has jurisdiction over this proceeding under Texas Government Code § 2003.049.
5. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act,¹ Texas Government Code Chapter 2001, and Commission rules.
6. The Commission must first find that the retail public utility established rates that were preferential, prejudicial, and discriminatory, before setting just and reasonable rates.²
7. If the Commission finds that the established rates are unreasonably preferential, prejudicial, or discriminatory, it evaluates the rates further and fixes rates that are just and reasonable.
8. The utility bears the burden of proof to establish that the contested rates are not unreasonably preferential, prejudicial, nor discriminatory.³

¹ Tex. Gov't Code §§ 2001.001-.903.

² 16 Tex. Admin. Code § 13.043(j) (TAC); *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).

9. The utility bears the burden of proof to establish that the contested rates are just and reasonable.⁴
10. The Ratepayers' petition was timely filed under TWC § 13.043 and 16 TAC § 24.101(b) and meets the 10% ratepayer-signature threshold established under TWC § 13.043(c) and 16 TAC §§ 24.101(d) and 24.103(b).
11. Under TWC § 13.043(e), the Commission may in an appeal brought under TWC § 13.043(b) consider the information that was available to the governing body of the retail public utility at the time the governing body set the rates appealed; any information that shows, or tends to show, the information that was available to the governing body at the time it set the rates appealed; and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings.
12. The appeal is governed by TWC § 13.043. Such section provides for a *de novo* proceeding in which the Commission fixes rates at the level that those rates should have been.
13. In an appeal under TWC § 13.043, the Commission must use a methodology that preserves the financial integrity of the retail public utility.
14. The rates appealed are unreasonably preferential, prejudicial, and discriminatory.
15. The rates appealed are not just and reasonable.
16. Under TWC § 13.043(e), the Commission shall fix the rates that Windermere should have fixed at the time it made its decision.
17. The rates fixed by this Order are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory in compliance with TWC § 13.043(j).
18. The rates fixed by this Order are sufficient, equitable, and consistent in application to each class of customers under TWC § 13.043(j).
19. Under TWC § 13.043(e), the rates fixed by this Order are effective as of the original effective date of the rates appealed.

³ 16 TAC § 24.12.

⁴ *Id.*

20. The revenue requirement for a utility that uses the cash needs method can include operations and maintenance expenses, debt service requirements, and capital expenditures that are not debt-financed. *Black v. City of Killeen*, 78 S.W.3d 686, 694 (Tex. App.—Austin 2002, pet. denied).
21. Under TWC § 13.043(e), the Commission may allow Windermere to impose surcharges to recover costs of appeal.
22. The Commission may order Windermere to provide refunds under TWC § 13.043(e).
23. Under TWC § 13.043(e), the Commission may require Windermere to file in a compliance docket financial updates showing the status of its legal debt, the issuance of refunds, and the collection of a cost of appeal surcharge.