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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 CORPORATION TO	§	OF
CHANGE WATER AND SEWER	§	
RATES	§	ADMINISTRATIVE HEARINGS

**RATEPAYER REPRESENTATIVES' FINDINGS OF FACTS AND
CONCLUSION OF LAW**

Ratepayers' Representatives ("Ratepayers") files its Findings of Facts and Conclusions of Law in accordance with SOAH Order # 32 and would show that this filing is timely filed.

Respectfully Submitted,

Josie Fuller

Patti Flunker

Jose Fuller and Patti Flunker
Ratepayer Representatives

Certificate of Service

I hereby certify that, unless otherwise ordered by the Presiding Officer, notice of this filing was provided to all parties of record via electronic mail on May 2, 2023.

Respectfully Submitted,

Jose Fuller

Patti Flunker

Jose Fuller and Patti Flunker
Ratepayer Representatives

RATEPAYERS FINDINGS OF FACT

General

1. The WOWSC did not give written notice to its customers of the hearing to be held on December 1 – 3, 2021, on a form prescribed by the Commission.
2. The WOWSC did not present evidence of any notice to its customers of the hearing to be held on December 1-3, 2021.
3. The WOWSC is a Texas corporation organized under Chapter 67, Tex. Water Code, and the Texas Non-Profit Business Corporation Act. Its sole purpose is to provide water supply, sewer service, or both to its members.
4. The WOWSC's governing documents require it to operate consistently with I.R.C. Section 501(c)(12)(A) and related federal regulations, rulings and procedures.
5. The WOWSC's governing documents prohibit it from engaging in activities or using assets in a manner that are not in furtherance of the legitimate business of a water supply cooperative or sewer service cooperative as recognized by Chapter 67 and I.R.C. 501(c)(12)(A).
6. The legitimate business of a water supply cooperative or sewer service cooperative as recognized by Chapter 67 and I.R.C. 501(c)(12)(A) is to operate and maintain member-owned assets to provide those members with water and wastewater service at or near cost.
7. The WOWSC is authorized to receive and use revenues only to the extent necessary (i) to pay the costs to provide water and wastewater services and (ii) to maintain a reasonable reserve fund for system maintenance, operation and replacements. The reserve fund may not exceed the reasonable needs of the WOWSC's legitimate business.
8. Excess revenues (i.e., revenues in excess of costs and any needed additions to reasonable reserves), if any, are overpayments. They belong to the members-customers who overpaid. Accordingly, excess revenues must be annually returned to, or credited to the accounts of, customers who have during the past year transacted business with the WOWSC, in direct proportion to the amount of business so transacted.
9. The implementation of rates or other charges intended or expected to generate excess revenue is not in furtherance of the legitimate business of a water supply cooperative or sewer service cooperative.
10. To receive water or wastewater service within the WOWSC's service area requires, among other things, that the customer acquire and maintain a membership in the company. Refusal or failure to pay rates and other charges demanded by the WOWSC is grounds for discontinuance of utility services and for cancellation of membership.
11. The WOWSC's governing documents provide that the affairs of the company are to be managed by the Board of Directors. The WOWSC's governing documents do not limit the statutory or common law duties of the Directors.

12. The WOWSC's governing documents do not require or permit either indemnification or advancement of defense costs to current or former directors who are made parties to litigation.
13. The WOWSC's governing documents do not authorize the imposition of a surcharge, assessment or other "true up" charge of any kind.
14. The WOWSC's Tariff requires that all services the WOWSC provides that are outside the normal scope of utility operations shall be charged to the recipient based on the cost of providing such service. Outside legal services are outside the normal scope of utility operations.
15. The WOWSC's governing documents require that the Board conduct the activities of the company in compliance with the Texas Open Meetings Act and the Texas Public Information Act.
16. All WOWSC Directors are required to complete training courses concerning compliance with TOMA and TPIA within the time allowed by statute. All applicants for WOWSC Director agree to complete the required training courses within the time allowed.
17. The WOWSC's Bylaws have always required that the Board adopt and maintain a conflict-of-interest policy. The WOWSC's first Conflict-of-Interest policy was adopted in 2019.
18. On December 19, 2015, the Board approved a contract to sell a portion of the WOWSC's surplus airport property to Dana Martin, who was then a sitting director, for \$203,000.00.
19. The notice for the Board's December 19, 2015 meeting did not include any item concerning the sale of surplus property. In December 2016, the WOWSC's general counsel furnished the Board with a lengthy memorandum confirming the Board had violated the Texas Open Meetings Act in connection with the Martin sale in numerous respects.
20. In late 2017, several WOWSC members formed an entity called TOMA Integrity, Inc., which filed suit ("TOMA Suit") in late 2017. The TOMA Suit alleged that the Board had approved the Martin sale in violation of the Texas Open Meetings Act. The TOMA plaintiff sought to void the Board's approval of the land transaction in an effort to recover the WOWSC's land for the benefit of the company. The TOMA Suit pertained to matters arising from the 2016 Martin transaction.
21. The WOWSC's insurer denied coverage and declined to defend or indemnify in the TOMA Suit based on exclusions pertaining to illegal acts and intentional misconduct.
22. The Board engaged attorneys to represent the WOWSC and directed them to oppose the relief requested by the plaintiff by whatever means the attorneys saw fit. The Board obligated the WOWSC to pay all the fees the attorneys billed.
23. By order dated July 28, 2018, the district court ruled that the Board had violated TOMA. The WOWSC did not take exception to that ruling.

24. As a result of the WOWSC's "victory" in the TOMA Suit, the WOWSC did not get its land back and former director Martin retained an estimated \$500,000 in value for which she paid nothing.
25. No depositions or other discovery were undertaken in the TOMA Suit. No work was required to be done in the TOMA Suit after the entry of final judgment other than briefing on appeal.
26. In July 2018, members filed suit ("Double F Suit") against Martin's single-asset company Friendship Homes and Hangars and the Burnet County Commissioner's Court seeking injunctive relief to prevent Martin from replatting the property into a number of smaller hangar lots. The Double F Suit involved the 2016 Martin transaction.
27. While both the TOMA Suit and the Double F Suit were pending, the WOWSC Board engaged an appraiser to prepare a forensic appraisal to ascertain whether and to what extent Martin received a benefit at the expense of the company. The forensic appraisal concluded that the property Martin received for \$203,000 had a fair market value of \$700,000 at the time of the transaction.
28. The Board acknowledged during its January 2019 open meeting that this disparity was too large to ignore. They further acknowledged their fiduciary duty to act on the information at hand and move forward to recover the property.
29. The Board authorized its attorneys to prepare and send a letter to Martin outlining her breaches of duty and intentional misconduct. The letter is in evidence as Gimenez Rebuttal Attachment JG-28.
30. Thereafter, new directors were elected. These included Bill Earnest, who was involved in the 2016 transaction. After the new directors joined the Board, no further steps were taken to recover the property from Martin.
31. In May 2019, the plaintiffs in the Double F Suit joined the WOWSC and the former directors involved in the Martin transaction as parties to the lawsuit. They sought no recovery against the company's resources then, and never have. They sought to impose personal liability on the directors for damages to compensate the WOWSC for its loss from the transaction.
32. The WOWSC's insurer denied coverage and declined to defend or indemnify in the Double F Suit based on exclusions pertaining to illegal acts and intentional misconduct.
33. The director parties later filed suit against the WOWSC's insurer to recover insurance benefits to which they claim they are personally entitled. This lawsuit is a matter pertaining to the 2016 Martin transaction. The WOWSC has paid or incurred all of the legal fees for this lawsuit.
34. The Board engaged attorneys to represent the WOWSC and the director parties in the Double F Suit and directed them to oppose the recovery of the property and to prevent the director parties from being held liable for damages by whatever means the

- attorneys saw fit to. The Board obligated the WOWSC to pay all the fees the attorneys billed.
35. There was a mediation in the fall of 2019 between the WOWSC and Martin. The Double F plaintiffs were not notified of the mediation or invited to attend. In October 2019, the Board entered into a settlement with Martin pursuant to which they transferred an additional 0.5 acres of WOWSC land to Martin for no consideration.
 36. In the Double F suit, Former Director Martin was found to have
 37. The WOWSC filed two lawsuits against the Texas Attorney General in an effort to prevent disclosure of company records it was thought might prejudice the director parties' strategic position in the pending lawsuits. These two lawsuits were matters pertaining to the 2016 Martin transaction.
 38. The WOWSC paid or incurred a total of \$260,301.48 for outside legal services for the director parties in 2019 prior to receipt of written undertakings and acknowledgements.
 39. The WOWSC paid or incurred costs to furnish outside legal services to the director parties because they were named as parties in litigation alleging that they breached duties and engaged in illegal, unauthorized and fraudulent conduct in their capacities as directors.
 40. The outside legal costs paid or incurred by the WOWSC provided a benefit to the director parties named in the lawsuits but did not benefit any other WOWSC ratepayers.
 41. The 2020 rates required customers who received no outside legal services to subsidize the cost for outside legal services provided for the director parties.
 42. The 2020 rates were not developed by TRWA.
 43. The "cash needs" methodology is a methodology that will preserve the financial integrity of WOWSC.
 44. PUC Staff's recommended rates were developed using a "cash needs" methodology.
 45. The 2020 rates were not developed using the "cash needs" methodology or any other methodology that includes a revenue requirement.
 46. The WOWSC was not obligated for additional debt service or to maintain any debt service coverage ratio at the time of the 2020 rate increase or at any time thereafter.
 47. The 2020 rates did not include any additional debt service and did not provide any debt service coverage ratio.
 48. At the time the Board approved the rate increase, the WOWSC had adequate cash reserves for capital expenditures and for maintenance contingencies.
 49. The 2020 rates did not include any amount for an addition to reserves.
 50. The 2020 rates did not include any amounts for known or anticipated cash-funded capital projects.

51. The information that was available to the Board at the time it approved the 2020 rate increase was that the WOWSC had no authority under its governing documents to levy a surcharge or to impose an assessment.
52. The WOWSC has never had authority under its governing documents to levy a surcharge or to impose an assessment.
53. PUC Staff Anna Givens adopted Maxine Gilford's testimony. Maxine Gilford testified that the Commission cannot levy a surcharge in this appeal. There was no evidence to the contrary.
54. In late 2019 or early 2020, the Board, Lloyd Gosselink and Enoch Kever agreed to an arrangement whereby the attorneys would continue to provide such legal services as they saw fit to oppose the recovery of the land from Martin and to prevent the director parties from being held liable for damages, the WOWSC would continue to be obligated for the full amount of the legal fees the attorneys billed and the WOWSC would pay each firm a "minimum portion" in the amount of \$10,000 per month against the unpaid legal fees carried forward from 2019 and the legal fees invoiced each month thereafter, until all matters pertaining to the Martin transaction were finally resolved and all balances paid in full. This arrangement was never authorized by vote taken at a properly noticed open Board meeting.
55. The WOWSC has not produce any board minutes authorizing by a board vote to enter into a \$10,000 a month payment agreement with Lloyd Gosselink and with Enoch and Kever nor has the WOWSC produced any and written agreement with these law firms substantiated the the terms of this agreement.
56. The 2020 rate increase was designed to generate \$17,000 - \$18,000 in additional cash flow each month until all matters pertaining to the Martin transaction were finally resolved and all legal fee balances were paid in full for the purpose of funding the arrangement described above.
57. The WOWSC does not have an estimate on when the \$10,000 a month payments will end.
58. The WOWSC's general counsel Lloyd Gosselink was involved in the design and implementation of the 2020 rates. Lloyd Gosselink billed and collected legal fees for the work by its attorneys on the rate increase.
59. As of the end of 2019, the WOWSC was indebted to law firms for at least \$120,000 in unpaid fees for outside legal services for matters pertaining to 2016 Martin transaction. This debt was not authorized by vote taken at a duly noticed open Board meeting and was never reflected in the WOWSC's financial reports.
60. In 2020, the WOWSC became obligated to pay more than \$500,000 in outside legal costs for work done in matters pertaining to the Martin transaction.
61. The WOWSC paid no more than \$120,000 in 2020 against a balance of at least \$620,000 in unpaid outside legal costs. WOWSC remained indebted to the law firms

- for the unpaid balance. This debt was not authorized by vote taken at a duly noticed open Board meeting and was not reflected in the WOWSC's financial reports.
62. In 2021, the WOWSC continued to accrue debt to the law firms for unpaid fees invoiced for work on matters pertaining to the 2016 Martin transaction. The current amount of the WOWSC's law firm debt is unknown. This debt was not authorized by vote taken at a duly noticed open Board meeting and was not reflected in the WOWSC's financial reports.
63. Prior to _____ the WOWSC representatives and their lawyers represented in filings and testimony in this appeal that TRWA determined the 2020 rates based on a systemwide revenue requirement of \$576,192 that included \$171,337 in outside legal costs for matters pertaining to the 2016 Martin transaction. That was not true and they were aware it was not true.
64. On ----- 2023 WOWSC representatives and their lawyers represented in filings and testimony in this appeal that the 2020 rates were actually based on a systemwide revenue requirement of \$576,192 that included \$171,337 in outside legal costs for matters pertaining to the 2016 Martin transaction. That was not true and they were aware it was not true.
65. Total incurred legal debt for WOWSC in 2019 was \$279,445.23. Total 2019 expenses reported on 2020 Tax Return \$559,653.
66. Total incurred legal debt for WOWSC in 2020 was \$503,409.95. Total 2020 expenses reported on 2020 Tax Return \$695,878
67. Total incurred legal debt for WOWSC in 2021 was \$563,471.45
68. Total incurred legal debt for WOWSC in 2022 was \$391,307.93
69. Total incurred legal debt for WOWSC from 2019-2022 was \$1,737,634.56
70. The outside legal costs are not costs incident to the operation of the WOWSC's system.
71. The WOWSC has no lost revenues that would be eligible for recovery through a surcharge, even if one were authorized or allowed.
72. The WOWSC has no losses or other expenses that are eligible for recovery through an assessment, even if one were authorized or allowed.
73. Since the 2020 rate increase became effective, the WOWSC has charged each water customer \$44.47 per month more than the PUC Staff's recommended rates.
74. Since the 2020 rate increase became effective, the WOWSC has charged each wastewater customer \$32.54 per month more than the PUC Staff's recommended rates.
75. None of the WOWSC's appeal case expenses provided a benefit to the WOWSC's ratepayers.
76. None of the activities of the WOWSC or its counsel in the appeal proceeding provided a benefit to the WOWSC's ratepayers or were in the ratepayers' best interests.

77. The WOWSC's appeal case expenses are not reasonable and were not prudently incurred.
78. None of the WOWSC's appeal case expenses are eligible to be passed on to the WOWSC's ratepayers in any form.
79. The WOWSC's financial integrity will be maintained if the PUC Staff's recommended rates are implemented as of March 20, 2020.
80. The WOWSC's financial integrity will be maintained if the excess revenue collected since the 2020 rates were implemented is refunded to the ratepayers.
81. The WOWSC will not suffer severe financial harm if the PUC Staff's recommended rates are implemented as of March 20, 2020.
82. The WOWSC will not suffer severe financial harm if the excess revenue collected since the 2020 rates were implemented is refunded to the ratepayers.
83. The WOWSC has not produced a resolution approved by the board a surcharge fee has been included in their tariff.
84. The WOWSC tariff on file with the Public Utility Commission does not contain a rate identify as a surcharge fee.

Procedural Matters

85. On February 1, 2020, the board approved a \$39.44 increase to the monthly minimum water Service Availability Charge and a \$26.29 increase to the monthly minimum sewer Service Availability Charge, which increases took effect March 23, 2020.
86. By Remand Order signed June 30, 2022, the Commission rejected the Proposal for Decision and remanded the proceeding to SOAH to address in the initial inquiry all of the standards prescribed under TWC § 13.043(j), including evaluating whether allowing recovery of all expenses included in the proposed revenue requirement will result in just and reasonable rates and, if appropriate, to address the rate-making issues identified in the Preliminary Order.
87. On September 19, 2022, a prehearing conference on remand was convened.
88. SOAH Order No. 23 memorialized certain matters from the prehearing conference and adopted the parties' proposed procedural schedule.
89. SOAH Order No. 25 admitted Ratepayers Exhibit 19 (the Double F petition) and Ratepayers Offer of Proof No. 1 into evidence.
90. SOAH Order No. 29 set a prehearing conference for March 21, 2023 and a hearing on the merits for March 22, 2023.
91. During the prehearing conference, the ALJs ruled that the hearing would be limited to (i) Windermere's customers' characteristics and whether the appealed rates impact different customers or types of customers differently, (ii) PUC Staff's evidence concerning its recommended revenue requirement and recommended rates, as reflected in its prefiled testimony, and (iii) whether and to what extent Windermere should recover appeal case expenses from its ratepayers.

92. On March 22, 2023, a hearing on the merits was held before ALJs Christiaan Siano and Daniel Wiseman via Zoom videoconference and attended by Windermere, the ratepayers and Commission Staff.
93. At the conclusion of the hearing, the ALJs set a post-hearing briefing schedule pursuant to which initial briefs were due April 11, 2023 and response brief were due April 18, 2023.

Background

94. On December 19, 2015, Windermere's board voted to approve the sale of surplus company property to then-sitting director Dana Martin.
95. In March 2016, Martin's single-purpose entity Friendship Homes & Hangars, LLC took title to the property.
96. In late 2017, TOMA Integrity, Inc. filed suit under the Texas Open Meetings Act seeking declaratory judgment voiding the land sale for violations of the Act in which Martin was alleged to have participated.
97. On July 8, 2019, Double F Hanger Operations, LLC and others filed suit against Friendship Homes & Hangars, LLC and the Burnet County Commissioners Court seeking, *inter alia*, to reverse the land sale and restore the property to the water company.
98. By judgment filed November 14, 2018, the Court declared that Windermere's board violated the Act in connection with its approval of the transaction but concluded that the Act did not authorize the Court to grant a declaratory relief reversing the transaction.
99. On May 14, 2019, in response to Friendship's plea to the jurisdiction the plaintiffs joined Windermere, Martin and the directors who were on the board at the time of the land sale; they sought to reverse the land sale and restore the property to the water company.
100. On October 31, 2019, Windermere's board approved a settlement in which Martin and Friendship fully and completely released the company from all present and future claims and liabilities, known and unknown, related to the land sale.
101. By correction deed approved by Windermere's board in October 2019, Windermere conveyed an additional half-acre of the company's real property to Martin/Friendship for \$2,000.
102. Thereafter, the plaintiffs in the Double F lawsuit amended their pleadings to join the board members who approved the 2019 land transfer; they sought to reverse both land transactions and to restore the land to the water company and they sued the individual director defendants for damages to compensate the company for any loss.

103. The Double F plaintiffs' amended pleadings have consistently stated that they sought no relief vis-à-vis the company itself.
104. The Texas Supreme Court denied petition for review in the TOMA Integrity lawsuit on December 13, 2019.
105. Windermere's cost for outside legal services rendered in 2019 was \$279,445.23.
106. Windermere's 2019 year-end financials reported a total of \$167,826.46 in costs for "Legal/Appraisal" services, of which \$159,172.82 was categorized as "Lawsuit" expense.
107. Windermere owed more than \$121,000 for outside legal services as of the end of 2019; this liability was not reflected in Windermere's financial reports.
108. Windermere owed more than \$121,000 for outside legal services as of the end of 2019; this liability was not included within the board's 2020 budget for "Legal/Appraisal."
109. By order dated February 24, 2020, the Court entered interlocutory summary judgment that the Double F plaintiffs had standing to assert claims for the benefit of the water company seeking to establish personal liability against individual director defendants Joe Gimenez, Mike Nelson, Dorothy Taylor, Bill Earnest, Dana Martin, Pat Mulligan, Mike Madden and Robert Mebane.
110. In November 2019, Windermere's board voted to obligate the company to provide legal services for themselves and the other individual director defendants and to pay whatever amounts the law firms invoiced each month; Directors Joe Gimenez, Mike Nelson, Dorothy Taylor and Bill Earnest each voted in favor of this action in which they had a pecuniary interest.
111. In February 2020, Windermere's board voted to require Windermere's ratepayers to pay increased rates to cover the company's cost to provide themselves and the other individual director defendants with legal services; Directors Joe Gimenez, Mike Nelson and Dorothy Taylor each voted in favor of this action in which they had a pecuniary interest.
112. As of the time of the board's votes in November 2019 and February 2020, Windermere's insurer Allied had denied coverage and had declined to pay defense costs; Allied has not changed its position.
113. As a result of the board's votes in November 2019 and February 2020, Joe Gimenez, Mike Nelson, Dorothy Taylor, Bill Earnest, Dana Martin, Pat Mulligan, Mike Madden and Robert Mebane were furnished with legal services at the company's expense; each of them avoided having to pay out of pocket for legal representation to prevent them from being held personally accountable to the water company.
114. No other Windermere members have received legal services at the company's expense.

115. Windermere's board stated at the time of the rate increase and consistently thereafter that the inordinate number of PIA requests the company received in 2019 and 2020, as well as the lawsuits the company filed against the Texas Attorney General, were directly related to the Double F litigation.
116. In 2020, Windermere's board obligated the company to pay the cost for outside legal services to enable the individual director defendants to pursue a personal recovery from Allied for costs none of them paid or incurred.
117. Windermere's costs for outside legal services and its unpaid legal debt in connection with lawsuits and proceedings arising from the 2016 land sale are itemized in Ratepayers' Exhibit 144A; Windermere's unpaid legal debt has never been reflected on Windermere's balance sheet, profit & loss statement or tax filings.
118. This rate appeal was filed April 27, 2020.
119. In the summer of 2020, the board made arrangements with CoBank for a three-part loan to (i) refinance an existing loan with First United Bank, (ii) to fund several different capital improvements and (iii)
120. In connection with a loan from CoBank in July 2020, Windermere (acting by and through board President Joe Gimenez) warranted and represented to CoBank (i) that the company was not a party to any pending, threatened or contemplated legal proceeding that, if adversely decided, might have a material adverse effect on the financial condition, operations, properties, profits or business of the company, and (ii) that there was no pending or threatened proceeding the objective or result of which is or could be to materially reduce or otherwise materially adversely change any of Windermere's rates or otherwise have a material adverse effect on Windermere's condition, financial or otherwise, operations, properties, or business.¹
121. As a condition precedent to the loan from CoBank, Windermere's counsel Lloyd Gosselink issued an opinion letter stating counsel's belief that the Double F litigation, the Attorney General litigation and the rate appeal would be resolved substantially in the company's favor and opining that none of those proceedings, if adversely decided, could have a material adverse effect on the company's condition, financial or otherwise, existing operations, properties or business, or on the company's ability to perform its obligations under the loan documents.
122. In connection with a subsequent extension of credit by CoBank, on March 24, 2021 Windermere's counsel Lloyd Gosselink issued another opinion letter that omitted reference to the Attorney General litigation and opined that neither the Double F litigation nor the rate appeal, if adversely decided, could have a material adverse effect on the company's condition, financial or otherwise,

¹ Credit Agreement (RX ____) at paragraphs 4.2 and 4.12.

existing operations, properties or business, or on the company's ability to perform its obligations under the loan documents.

PROPOSED CONCLUSIONS OF LAW

1. Ratepayers propose to include the following additional Conclusions of Law:
2. The outside legal costs cannot be passed on to ratepayers other than the director parties in the form of rates, surcharges, assessments or any other charge.
3. The WOWSC's debt to the law firms cannot be passed on to ratepayers other than the director parties in the form of rates, surcharges, assessments or any other charge.
4. The WOWSC has no powers other than those conferred in its governing documents, which are the articles of incorporation and the bylaws.
5. A water supply or sewer service corporation shall file with the utility commission tariffs showing all rates that are subject to the appellate jurisdiction of the utility commission and that are in force at the time for any utility service, product, or commodity offered.²
6. The WOWSC's bylaws constitute a contract between the corporation and its members.
7. The WOWSC was prohibited by its bylaws from collecting, appropriating or accumulating the additional revenue that was generated through the 2020 rate increase.
8. Pursuant to the bylaws, the WOWSC's customers own the additional revenue that was generated through the 2020 rate increase, each in proportion to the business such customer did with the WOWSC during 2020 and 2021.
9. The bylaws require the WOWSC to return to each customer the portion of additional revenue owned by that customer.
10. The bylaws do not confer upon the WOWSC the power to levy surcharges or to impose assessments.
11. The Commission has no authority to impair the parties' rights and obligations under the bylaws.
12. Section G, paragraph 27 of the WOWSC Tariff is mandatory and requires that the outside legal costs be charged to the director parties and to no other customers.
13. The 2020 rate increase was in violation of the WOWSC Tariff, Section G, paragraph 27.
14. In an appeal governed by § 13.043, Texas Water Code, the Commission shall hear the appeal de novo and shall fix the rates the governing body should have fixed.
15. The Commission does not have authority under § 13.043 to set surcharges the Board could not have set.

² TWC 13.136

16. Rates at or below the rates recommended by PUC Staff in this proceeding are just and reasonable and are not unreasonably preferential, prejudicial or discriminatory.
17. The Commission has discretion to disallow recovery of appeal case expenses in their entirety.
18. Rule 24.44 is not applicable in an appeal under § 13.043. The Commission is not required to consider the criteria set forth in Rule 24.44.
19. The Commission is not required to allow recovery of appeal cases expenses even though some or all of those expenses meet the criteria set forth in Rule 24.44.
20. The Commission must disallow recovery of appeal case expenses unless it finds from a preponderance of the evidence that the participation of the company and its attorneys, consultants and others for which the expenses were incurred was reasonable, prudent and benefitted the ratepayers.
21. The Water Code does not require the Commission to fix overall revenues at a level that will preserve the financial integrity of a utility when its fiduciaries have irresponsibly managed its finances.