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

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
TO EXCEPTIONS TO THE PROPOSAL FOR DECISION

Dated: August 10, 2023

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION

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Windermere’s exceptions to the Proposal for Decision only highlight the absurdity of its position over the course of this entire docket. As noted in Staff’s exceptions, and as touted on Windermere’s own website, it recently recovered over \$600,000 from its insurance provider, all of which should be allocated to its extraordinary legal expenses.....1

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Even as several of the lawsuits that generated Windermere’s legal expenses have drawn to a close, even as it has received hundreds of thousands of dollars in awards from various lawsuits, Windermere still argues that it needs to recover \$250,000 per year, *indefinitely*, to dedicate to legal expenses. The audacity is staggering. Windermere effectively argues that it should not have to apply offsets from its other revenues to arrive at a revenue requirement to use for setting rates. Windermere’s position is that it is not subject to the most basic ratemaking principles. Staff can only wonder at Windermere’s assumption that it is exempt from the rule that a utility’s total revenue must be considered when setting rates. Windermere argues that the “PFD failed to acknowledge that the recommendation subjects the Corporation to unreliable and inconsistent revenue.” If the Commission does choose to adopt the offset recommended in the PFD, the Commission can rest easy, knowing that Staff, when calculating the offset that it applied to reach its revenue requirement to be used for setting rates, did consider that Windermere’s other revenues can fluctuate. Windermere also states that the ALJs, in deciding to apply Staff’s offset, “merely rely on Commission Staff’s argument that the late and standby fee revenue constitutes 11% of WOWSC’s revenue requirement.” However, Windermere itself provided the numbers that yielded that percentage. The ALJs rely on Staff’s basic addition and division, and doing math is not the same as making an argument. The result of performing a mathematical equation is a fact, not an effort in persuasion.1

More critical, though, is the math that stares Staff, the ALJs, and the Commission in the face. At the time of the second hearing on the merits, Windermere had incurred approximately 1.3 million dollars in external legal debt. Windermere's existing rates, designed to recover \$250,000 per year in legal expenses, have been in effect for approximately 40 months, generating some \$833,333. Combined with the Allied World insurance award of \$678,812, Windermere has now recovered \$1,512,145 to apply to its 1.3-million-dollar external legal debt. Notably, this is higher than the debt that Windermere has incurred. Yet somehow, Windermere expects the Commission to believe that Windermere's very existence depends on a quarter of a million dollars *per year* to remain solvent.2

VI. CONCLUSION2

I. INTRODUCTION

Windermere's exceptions to the Proposal for Decision only highlight the absurdity of its position over the course of this entire docket. As noted in Staff's exceptions, and as touted on Windermere's own website, it recently recovered over \$600,000 from its insurance provider, all of which should be allocated to its extraordinary legal expenses.

III. DISCUSSION

D. Revenue Requirement (PO Issue 7)

4. Analysis

b. Other Revenues

Even as several of the lawsuits that generated Windermere's legal expenses have drawn to a close, even as it has received hundreds of thousands of dollars in awards from various lawsuits, Windermere still argues that it needs to recover \$250,000 per year, *indefinitely*, to dedicate to legal expenses. The audacity is staggering. Windermere effectively argues that it should not have to apply offsets from its other revenues to arrive at a revenue requirement to use for setting rates. Windermere's position is that it is not subject to the most basic ratemaking principles. Staff can only wonder at Windermere's assumption that it is exempt from the rule that a utility's total revenue must be considered when setting rates. Windermere argues that the "PFD failed to acknowledge that the recommendation subjects the Corporation to unreliable and inconsistent revenue."¹ If the Commission does choose to adopt the offset recommended in the PFD,² the Commission can rest easy, knowing that Staff, when calculating the offset that it applied to reach its revenue requirement to be used for setting rates, did consider that Windermere's other revenues can fluctuate. Windermere also states that the ALJs, in deciding to apply Staff's offset, "merely rely on Commission Staff's argument that the late and standby fee revenue constitutes 11% of WOWSC's revenue requirement."³ However, Windermere itself provided the numbers that yielded that percentage.⁴ The ALJs rely on Staff's basic addition and division, and doing math is

¹ *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788, Windermere Oaks Water Supply Corporation Exceptions to the Proposal for Decision at 4 (Aug. 3, 2023).

² Staff reiterates its position that applying an offset of \$48,478 to a revenue requirement of \$576,192 applies an "apples" offset to an "oranges" revenue requirement, resulting in an inapt revenue to be used for setting rates.

³ WOWSC's Exceptions to the PFD at 4.

⁴ Staff HoM 2 Ex. 48.

not the same as making an argument. The result of performing a mathematical equation is a fact, not an effort in persuasion.

More critical, though, is the math that stares Staff, the ALJs, and the Commission in the face. At the time of the second hearing on the merits, Windermere had incurred approximately 1.3 million dollars in external legal debt.⁵ Windermere's existing rates, designed to recover \$250,000 per year in legal expenses, have been in effect for approximately 40 months, generating some \$833,333.⁶ Combined with the Allied World insurance award of \$678,812, Windermere has now recovered \$1,512,145 to apply to its 1.3-million-dollar external legal debt. Notably, this is higher than the debt that Windermere has incurred. Yet somehow, Windermere expects the Commission to believe that Windermere's very existence depends on a quarter of a million dollars *per year* to remain solvent.

VI. CONCLUSION

Windermere's argument that it should not have to apply offsets from its other revenues in order to calculate a revenue requirement for setting rates illustrates, once again, its belief that its rates need only be tenuously related to its actual financial obligations. However, its argument that it cannot reduce its rates, even though it has now recovered more money than it requires to pay the legal expenses related to the external lawsuits defies belief. Staff can only hope that this flag is red enough that the ALJs, as well as the Commissioners, will recognize Windermere's attempts to justify its rates as both inconsistent and incomprehensible.

⁵ See Ratepayers HoM 2 Ex. 144B; Affidavit of Jamie L. Mauldin Related to the Rate Case Expenses of Windermere Oaks Water Supply Corporation at 5 (Jul. 21, 2023).

⁶ Windermere's rates generate approximately \$20,833 per month to dedicate to legal spending. Multiplying that amount by 40 yields Windermere's total revenue for legal spending to date.