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RATEPAYERS APPEAL OF THE	§	BEFORE THE
DECISION BY WINDERMERE OAKS	§	
WATER SUPPLY CORPORATION TO	§	PUBLIC UTILITY COMMISSION
CHANGE WATER AND SEWER	§	
RATES	§	OF TEXAS

**RATEPAYER REPRESENTATIVES' RESPONSE TO
TRWA'S AMICUS BRIEF**

Ratepayers Representatives ("Ratepayers") file this their Response and Motion to Strike either what appears to be an amicus brief or a letter of support filed by Texas Rural Water Authority ("TRWA") on September 8, 2023, and would show as follows.

I. Introduction

TRWA's amicus brief, while purporting to provide valuable insights to the utility industry, arrives at a rather late juncture in the ongoing proceedings. It's important to highlight that all briefs in this proceeding were required to be submitted by April 25, 2023, in accordance with SOAH Order #31.¹ TRWA's tardy amicus brief should, therefore, be considered a late filing and disregarded. However, if the Commission chooses to allow for the inclusion of this brief, the Ratepayers here submit their response to TRWA's amicus brief, ensuring that all relevant arguments and concerns are addressed.

It is both perplexing and disconcerting that TRWA has once again submitted an amicus brief and or a support letter, albeit with intentions that remain somewhat opaque. This submission appears to disregard the subtle manipulation exercised by Windermere Oaks Water Supply

¹ See SOAH Order No. 31, POST-HEARING BRIEFING SCHEDULE, GUIDELINES.

Corporation (“Windermere”) in portraying TRWA's involvement as a legitimate rate study when, as astutely pointed out by Mr. Nelson, it was primarily a means to experiment with numerical variables.² Equally baffling is TRWA's apparent reticence in addressing how they were exploited in this situation. Not only did TRWA invest substantial time and resources in a rate design exercise that ultimately bore no fruit, but it also seems that Windermere cavalierly disregarded the Circuit Rider program, funded by Texas Commission on Environment Quality and the CEQ and United States Department of Agriculture Rural Development Program,³ designed to assist small rural utilities with financial support—all of which resources were overlooked for undisclosed motives on the part of Windemere. This raises a poignant question: is TRWA genuinely prioritizing the interests of all its members, as it proclaims, or is it primarily safeguarding its own interests?

These concerns of the Ratepayers extend beyond TRWA's involvement in the rate study, which encompassed numerous interactions between TRWA and Windermere prior to the rate adoption but ethical quandaries TRWA appears to have not disclosed, notably the revelation that Lori Cantrell, WOWSC contract billing assistant for Windermere and someone who has sponsored RFI responses in this case is the spouse of TRWA's Circuit Rider, Nathan Cantrell.⁴ Ms. Cantrell's active role in this rate appeal raises questions about TRWA's personal vested interest rather than a purely industry-focused concern.

Interestingly, TRWA asserts that it has diligently monitored this case over the past three years. Assuming this to be accurate, it should follow that TRWA is well aware of Windermere's repeated submission of incomplete responses to RFIs and discrepancies in financial data, including

² See Ratepayers Reply Brief, pgs 10-11.

³ See <https://www.rd.usda.gov/programs-services/water-environmental-programs/circuit-rider-program-technical-assistance-rural-water-systems> and <https://www.trwa.org/page/41>

⁴ See <https://www.trwa.org/page/41> Nathan Cantrell Wastewater Circuit Rider and <https://www.wowsc.org/personnel>

legal expenses incurred and paid.⁵ Without delving into the specific issues and facts of this case, which have been comprehensively briefed by all parties, it is evident that TRWA's stance on the facts in this rate appeal appears skewed, and a potential conflict of interest cannot be dismissed.

II. The WSC's Elected Board of Directors is Charged with Exercising Discretion on Legal Expenditures

Ratepayers opt not to engage extensively with TRWA's viewpoint, as repeated assertions from Windermere and now TRWA regarding a supposed "faction" or "subset" of ratepayers responsible for Windermere's challenges warrant scrutiny. A recent compliance filing⁶ pertaining to Windermere's operations as a member-owned and member-controlled water supply corporation raises questions about the legitimacy of this assertion. Additionally, it is worth noting that the majority of members at Windermere's 2023 annual meeting chose not to reelect Joe Gimenez and Mike Nelson to the board, the former President and Vice President and Legal Subcommittee members and who were responsible for decided just and reasonable legal expenditures. Instead the members choose to elect Jeff Walker and Rene Ffrench⁷. Walker most recently filed a complaint with the Public Utility Commission (PUC) on Windermere's election procedures⁸ and Ffrench, the plaintiff in the TOMA Integrity and Double F lawsuits. This shift in leadership underscores the collective voice of the majority of Windermere's members and their desire for a different trajectory.

⁵ See Ratepayers Initial Brief, April 11, 2023

⁶ See PUC Docket 55454, Petition to Determine Violation and Establish Jurisdiction Under Texas Water Code 13.004

⁷ See Exhibit 1 WOWSC Draft Minutes April 14, 2023 Board Meeting

⁸ See PUC Docket 53796 Complaint of Jeff Walker Against Windermere Oaks Water Supply Corporation

III. There is No Authority to Require that a Utility Pay for Budgeted Items Through Loan Proceeds or the Sale of Assets

Windermere undeniably possesses valuable assets that are not directly essential for utility operations. However, Windermere has not provided a coherent rationale for retaining these non-essential assets while simultaneously asserting a financial integrity concern that might necessitate a bankruptcy filing if rates were to be reduced. The absence of a compelling explanation from Windermere raises questions about their priorities and decision-making process, particularly in light of their commitment to ensuring safe and affordable drinking water for ratepayers.

The fact that TRWA has not addressed this issue is notable and raises concerns about their stance. This silence could be interpreted as prioritizing the interests of directors and legal representatives over the welfare of ratepayers who rely on Windermere for dependable and cost-effective access to clean drinking water. The potential implications that Windermere would opt to hold on to a valuable land asset and contemplate bankruptcy rather than sell it to pay down debt is astonishing but more so astonishing the TRWA supports this position of Windermere.

IV. The PUC rate appeal process is unnecessarily long, expensive, and complicated for small WSC(s), cities and districts and should be limited in scope like Class D IOU rate cases.

Ratepayers align with TRWA's perspective concerning the prolonged and complex nature of this ongoing process. It has come to light that Windermere has accumulated substantial legal expenses, notably in the context of defending their rate structure, which as we know includes legal fees incurred through various lawsuits, with Lloyd Gosselink representing them in these matters. It is worth noting that this very law firm that advised Windermere to include legal fees in their rates, thus benefiting from this arrangement, is now the recipient of these legal fees as they have

amassed during the rate appeal process. TRWA's endorsement of this notion would appear to be incongruent with what would be deemed acceptable in the context of a Class D Investor-Owned Utility (IOU) rate increase filing with the PUC.

It is essential to highlight TRWA's significant role in facilitating discussions with Windermere's legal counsel. These discussions ultimately led to Windermere's decision to raise rates, including legal fees, a departure from the provision of assessments outlined in Windermere's tariff. According to the tariff, if a deficit arises at the end of the year, Windermere is mandated to impose assessments on its members to cover the shortfall. The question arises as to whether TRWA is holding Windermere accountable to this mandatory provision within their tariff. One must also ponder why TRWA did not raise this issue with Windermere and their attorneys three years ago when these discussions were presumably taking place, as indicated by the presence of Windermere's legal invoices. It is evident that all parties involved must have concurred in passing these costs on to ratepayers through the rates, possibly due to the certainty of revenue collection.

The prolonged duration of this case could have been substantially reduced if Windermere had been transparent about their rate design and methodology, which remains shrouded in mystery. It is crucial to acknowledge that the PUC holds original jurisdiction over Class D Investor-Owned Utility (IOU) rates. If TRWA is advocating this position for Windermere, we wholeheartedly concur. Under this scenario, Windermere would be obligated to submit a comprehensive rate application for rigorous review and approval by the PUC before implementing any new rates and the process would entail a more thorough examination of their financials. Additionally, one must also consider the perspective of TRWA's numerous members, including water supply corporations, districts, and cities, regarding this position. TRWA, akin to Windermere, seems inclined to selectively apply rules applicable to IOUs when it suits their narrative, rather than adhering to all

relevant regulations governing IOUs. Ratepayers recommend that the solution is simply, Windermere adhere to their tariff and governing documents. It is likely that if this were adhered to Windermere would not find itself in this predicament. Ratepayers also suggest that if TRWA supports this position of applying rules applicable to a Class D IOU maybe they should advocate for the Office of Public Utility Commission (OPUC) to be engaged immediately whenever a challenge arises concerning a water supply corporation (WSC) rate increase. Regrettably, this has not been the case, as Windermere did not inform OPUC of this rate appeal.

V. Conclusion

The TRWA filing should be stricken from the record. TRWA failed to submit and timely Amicus Brief. Additionally, TRWA failed to speak up when they could have made a difference in this matter and should not be heard from now. TRWA fails to address the pivotal issue of rate design, with which it was integrally involved, choosing instead to focus on straw issues that it knows have nothing to do with the decisions before the Commission.

WHEREFORE, Ratepayer Representatives respectfully request that TRWA's brief be stricken from the record and given no consideration in this proceeding, and that the Ratepayers receive such other and further relief, at law or in equity, to which they may show themselves justly entitled.

Respectfully Submitted,

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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 September 13, 2023.

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Spicewood, Texas 78669

2023 - 2024 Board of Directors
Richard Schaefer, President
Dorothy Taylor, Vice President
Rene Ffrench, Secretary/Treasurer
Jeff Anderson, Director
Jeff Walker, Director

DRAFT - MINUTES of the WOWSC Board Meeting held 15 April 2023

1. CALL TO ORDER.

Meeting started promptly at 12:12 PM by Richard Schaeffer as the presiding Director from the 2022 WOWSC Board of Directors (BOD). The Composition of the 2023 WOWSC Board of Directors was determined by the members' votes held during the 2023 WOWSC Annual Members' Meeting at 10 am April 15, 2023. Position 1 is now filled by Mr. Walker who received 98 votes versus Mr. Gimenez who received 75 votes, Position 2 is now filled by Mr. Schaefer who was elected unopposed. Position 3 is now by Mr. Ffrench who received 91 votes versus Mr. Nelson who received 82 votes. Ms. Taylor continues her 2021 Position 5 elected term. Mr. Anderson was Board selected 3/06/23 to fill the 2021 Position 4 term vacated by Mr. Vidrine. Thirty-eight WOWSC customers and two constables were present in the facility with six individuals at the BOD table.

2. ROLL CALL.

Jeff Anderson, Rene Ffrench, Richard Schaeffer, Dorothy Taylor, Jeff Walker were present, establishing a quorum of the board with George Buriss participating as the WOWSC General Manager.

3. OPEN COMMENTS PERIOD: *Comments from citizens and members who wish to speak on agenda or non-agenda items (3-minute limit per person).*¹

Patricia Flunker – Commented with congratulations to all new board members and requested that the new Board consider tabling any big issues to be addressed at this first board meeting to allow the new board members to educate themselves on the depth of the issues to be addressed.

4. OFFICER ELECTION: *Discussion, consideration, and possible action to elect Board Officers, including president, vice-president, and secretary-treasurer to serve from April 2023 until the 2024 Annual Members Meeting, or such time thereafter as permitted by the Windermere Oaks Water Supply Corporation's ("WOWSC") Bylaws.*

Nominations for President were opened by Mr. Schaeffer at 12:17pm: Mr. Schaeffer was nominated by Ms. Taylor and seconded by Mr. Anderson. Mr. Walker was nominated by Mr. Ffrench and seconded by Mr. Walker. The vote for Mr. Schaeffer was called with Mr. Schaeffer receiving 3 votes by Ms. Taylor, Mr. Anderson, and Mr. Schaeffer. The vote for Mr. Walker was called with Mr. Walker receiving 2 votes from Mr. Ffrench and Mr. Walker.

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Nominations for Vice President were then opened by Mr. Schaeffer: Mr. Schaeffer nominated Ms. Taylor and seconded by Mr. Anderson. Mr. Walker nominated by Mr. Ffrench and seconded by Mr. Walker. The vote for Ms. Taylor was called with Ms. Taylor receiving 3 votes by Mr. Schaeffer, Mr. Anderson, and Ms. Taylor. The vote for Mr. Walker was called with Mr. Walker receiving 2 votes from Mr. Ffrench and Mr. Walker.

Nominations for Secretary/Treasurer were then opened by Mr. Schaeffer: Mr. Schaeffer asked Mr. Anderson to serve and Mr. Anderson politely declined. Mr. Ffrench was nominated by Mr. Walker and seconded by Mr. Ffrench. The vote for Mr. Ffrench was called with Mr. Ffrench receiving 5 votes by Mr. Schaeffer, Mr. Anderson, Ms. Taylor, Mr. Walker and Mr. Ffrench.

5. CREDENTIALS COMMITTEE – *Discussion, consideration, and possible action to appoint members of the Credentials Committee comprised of two Board members and one member for the WOWSC's 2024 Directors' Election.*

Discussion for the establishment of the Credentials Committee to serve from April 2023 until the 2024 Annual Members Meeting was opened at 12:22 pm by Mr. Schaeffer and Mr. Schaeffer nominated Mr. Schaeffer and Mr. Walker to the committee. The motion was seconded by Mr. Anderson. The vote for the confirmation of the Credentials Committee was 5 votes in the affirmative by Mr. Schaeffer, Mr. Anderson, Ms. Taylor, Mr. Walker and Mr. Ffrench.

6) RESOLUTION TO UPDATE TARIFF – *Discussion, consideration, and possible action to pass a formal resolution of the Board ratifying the Tariff amendments approved by the Board on February 10, 2023 and March 6, 2023, including (1) updating the form on page 75 of existing Tariff to include language reflecting statutory amendments to the Texas Utilities Code regarding Disclosure of Personal Information; (2) changing WOWSC's address throughout the document to 424 Coventry Road, Spicewood, Texas 78669; (3) replacing the Drought Contingency Plan with the newly approved 2022 Drought Contingency Plan; (4) replacing Emergency Tariff Rate Language; and (5) incorporating the Board's authority to set a monthly surcharge.*

Presentation of the Resolution to Update the WOWSC Tariff was opened at 12:25 pm by Mr. Schaeffer with Mr. Schaeffer reading the 4 pages of the Resolution but not reading the amended elements of the Tariff which were indicated in several places in the text of the Resolution to be attached to the Resolution. A motion was made by Mr. Ffrench to Table the Resolution in order to allow research into all the elements of the Resolution for understanding by the three new members on the BOD. The motion to table the Resolution was seconded by Mr. Walker. A motion to accept the Resolution was made by Ms. Taylor. The motion to accept the Resolution was seconded by Mr. Schaeffer. Discussion of the Resolution was opened by Mr. Schaeffer at 12:34pm. Mr. Ffrench requested a copy of the Resolution to be able to read it. Mr. Walker asked Ms. Taylor to clarify why Ms. Taylor thought that the Resolution was a good idea. Ms. Taylor clarified that emergency plan provisions in the tariff were out of date and that the provisions of the Resolution were discussed at previous meetings. Mr. Walker explained that he wanted the Resolution to be brought to the membership so they could vote on it. Mr. Schaeffer explained that the tariff adjustments would allow the corporation to handle expenses that were unforeseen and that the BOD has to deal with options to keep the water company solvent. It was explained that financial options include surcharges and rate increases when income is lower than expenses like when we get a \$200,000 legal bill that is not in our operational budget and we need to take care of it. Ms. Taylor added her belief that the Resolution action would not change the amount that members are charged. Mr. Walker made the point that his understanding is that the

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Resolution allowed the addition of a surcharge on the members and requested that the Resolution be put to a vote by the membership. Mr. Schaeffer mentioned that the outcome of the PUC Rate Review could be a mandate to put a surcharge on the billing and that cannot be done unless the ability to put a surcharge is in the Tariff. Mr. Ffrench then commented that item 4 on the Resolution allows the future activation of a surcharge and the enactment of that language could be potentially causing perjury to previous corporate statements and documents put on file with the Texas Public Utilities Commission by the corporation which we now represent. Points were made that the Tariff that is referenced as an attachment in several places of the Resolution is not being presented so those instances of that language need to be removed from the Resolution. Mr. Ffrench voiced a Point of Order that since no one there had a copy of the Tariff for discussion of changes, the Resolution as presented is incomplete. Mr. Walker again requested time to understand and the ability to present this action to the membership to include their input for comment and potential action. A vote was called on the Resolution at 12:42pm by Mr. Schaeffer with Ms. Taylor and Mr. Schaeffer voting in favor of the Resolution. Mr. Anderson requested to wait until the next meeting to vote. No vote was taken on the Resolution.

7) EXPENSE REIMBURSEMENT – *Discussion, consideration, and possible action for reimbursement of Joe Gimenez for copies made and distributed to members at the Feb. 10 and the Mar. 6 meetings, in the amounts of \$37.15 and \$43.57, respectively.*

Discussion and authorization vote for the reimbursement for copies made and distributed to members at the Feb. 10 and the Mar. 6 meetings in the amounts of \$37.15 and \$43.57, respectively to Mr. Joe Gimenez. A motion was made by Mr. Schaeffer to reimburse Joe Gimenez as stated and it was seconded by Mr. Walker. The motion passed with four members voting Yes: Mr. Schaeffer, Mr. Walker, Mr. Anderson, and Ms. Taylor. One No vote by Mr. Ffrench.

8) SET NEXT MEETING: *Set date, time, and place for next meeting.*

Discussion of the next Directors' Open Meeting date and time was opened by Mr. Schaeffer at 12:36pm. Mr. Walker made a recommendation that the Windermere Pavilion be the location for the next meeting because it is central and easy to get to from the neighborhood and airport with golf carts. Ms. Taylor explained that weather could be bad so the Community Center is more reliable. Mr. Schaeffer added that moving the meeting location around can be confusing to members who want to attend. By agreement the date time for the next Directors' Open Meeting would be 18 May 2023 at 6 pm. Ms. Taylor took the task of reserving the Spicewood Community Center for the meeting.

9) ADJOURN: *Adjourn*

Discussion of a motion to adjourn was opened by Mr. Schaeffer at 12:38pm. It was seconded by Mr. Anderson. The vote was called by Mr. Schaeffer and the vote was unanimous.

Meeting adjourned at 12:39pm.

To Be Presented for Approval of the WOWSC Board on 18 May 2023

Draft completed by: L. Rene Ffrench – Secretary/Treasurer on 18 April 2023

YouTube Video of the Meeting: Part 1: <https://www.youtube.com/watch?v=xXZajFvepeE>

YouTube Video of the Meeting: Part 2: <https://www.youtube.com/watch?v=TAGeb7qCy8Q>

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