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**SOAH NO. 473-20-4071.WS**

**PUC DOCKET NO. 50788**

RATEPAYERS APPEAL OF THE	§	BEFORE THE STATE OFFICE
DECISION BY THE WINDERMERE	§	
OAKS WATER SUPPLY	§	OF
CORPORATION TO CHANGE WATER	§	
AND SEWER RATES	§	ADMINISTRATIVE HEARINGS

**RATEPAYERS' REPRESENTATIVES OBJECTIONS TO WINDERMERE OAKS  
WATER SUPPLY CORPORATIONS FIRST REQUEST FOR INFORMATION**

COMES NOW, the Ratepayers Representatives of the Windermere Oaks Water Supply Corporation (“Ratepayers”) and files these Objections to Windermere Oaks Water Supply Corporation First Request for Information, pursuant to PUC Procedural Rule 22.144 and would respectfully request that the Objections be allowed as they are within the four days of the Extension Request filed by the Ratepayers on September 21, 2020.

**BACKGROUND**

On September 9, 2020, Windermere Oaks Water Supply Corporation (“WOWSC”) filed and served their first set of requests for information (“RFIs”) on the Ratepayers. On September 21, 2020, the Ratepayers filed their Extension of Time to File their Objection Response to Windermere Oaks First Request for Information to the Ratepayers. The Commissioner’s procedural Rules permit deadlines to be extended upon showing a good cause<sup>1</sup> and as such the Ratepayers in making every effort to comply with the procedural schedule and rules submit their Objections to WOWSC

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<sup>1</sup> 16 Tex. Admin Code § 22.4(b).

First Request for Information. The Ratepayers have communicated in good faith with WOWSC Counsel to clarify some ambiguities with some the WOWSC RFI's.

## **OBJECTIONS**

### **1. WOWSC RFI No. 1-2**

Provide all Public Information Act Requests from Ratepayer Representatives and other WOWSC members to WOWSC regarding WOWSC operations, services, litigation fees, board members, and rates from 2017 to present.

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

The Ratepayers Objects to this Request on the grounds that it can only be required to produce documents to which it has a superior right of possession or control than requestor pursuant to P.U.C. PROC. R. 22.144. Because the WOWSC is already in receipt (or was the author of) all communications between Ratepayers Representatives and other WOWSC members to the WOWSC regarding WOWSC operations, services, litigation fees, board members, and rates from 2017 to present the WOWSC has a superior right of possession or control than the Ratepayers.

Additionally, Ratepayers objects to this Request as disproportional to the needs to this case, as the likely benefit from discovery of the information is very small compared with the burden and expense of producing the information. Tex. R. Civ. P. 192.4.

### **2. WOWSC RFI No. 1-3**

**On Feb. 29, 2020, representatives from Aqua Texas, Inc., Aqua Utilities, Inc., and Aqua Development, Inc. d/b/a Aqua Texas (Aqua Texas) gave a presentation to WOWSC members. Admit or deny that Petitioners advertised and/or promoted via email or social media posting the event to WOWSC members.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

Ratepayers Objects to this Request on grounds of relevance, as it seeks information that will not be helpful to determining any facts at issue in this proceeding. See Tex. R. Civ. P. 192.3(a) (discovery must be "relevant to the subject matter of the pending action."); Tex. R. Evid. 401 (evidence is relevant if it relates to facts that are "of consequence in determining the action"); Tex. R. Evid. 403 (permitting a court to exclude relevant evidence if it will confuse the issues, mislead the jury, or cause prejudice).

### 3. WOWSC RFI No. 1-4

**Provide all correspondence and documents between Petitioners and representative of Aqua Texas representatives between January 1, 2019 and August 26, 2020.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

Ratepayers Objects to this Request on grounds of relevance, as it seeks information that will not be helpful to determining any facts at issue in this proceeding. See Tex. R. Civ. P. 192.3(a) (discovery must be "relevant to the subject matter of the pending action."); Tex. R. Evid. 401 (evidence is relevant if it relates to facts that are "of consequence in determining the action"); Tex. R. Evid. 403 (permitting a court to

exclude relevant evidence if it will confuse the issues, mislead the jury, or cause prejudice).

Additionally, Ratepayers objects to this Request as disproportional to the needs to this case, as the likely benefit from discovery of the information is very small compared with the burden and expense of producing the information Tex. R. Civ. P. 192.4.

#### **4. WOWSC RFI No. 1-6**

**Provide all correspondence between Josie Fuller and Patti Flunker and the named plaintiffs in Cause No. 48929, in the 33rd Judicial District of Burnet County, Texas, Dick Dial, Bruce Sorgen, and Rene Ffrench, regarding WOWSC operations, services, litigation fees, board members, and rates from 2017 to present.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

Ratepayers objects to this Request on grounds of relevance, as it seeks information that will not be helpful to determining any facts at issue in this proceeding. See Tex. R. Civ. P. 192.3(a) (discovery must be "relevant to the subject matter of the pending action."); Tex. R. Evid. 401 (evidence is relevant if it relates to facts that are "of consequence in determining the action"); Tex. R. Evid. 403 (permitting a court to exclude relevant evidence if it will confuse the issues, mislead the jury, or cause prejudice).

Additionally, Ratepayers Objects to this request on the grounds that the information responsive to this request as communication between the Representatives and Ratepayers may contain privileged information. See TEX. R. CIV. P. 192.5(a), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3).

**5. WOWSC RFI No. 1-7**

**Provide all correspondence and documents between Ratepayer Representatives and signatories to the rate protest petition filed in this docket regarding the Petition to Appeal Rates from January 1, 2019 to present.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

Ratepayers Objects to this Request on grounds of relevance, as it seeks information that will not be helpful to determining any facts at issue in this proceeding. See Tex. R. Civ. P. 192.3(a) (discovery must be "relevant to the subject matter of the pending action."); Tex. R. Evid. 401 (evidence is relevant if it relates to facts that are "of consequence in determining the action"), Tex. R. Evid. 403 (permitting a court to exclude relevant evidence if it will confuse the issues, mislead the jury, or cause prejudice).

Additionally, Ratepayers Objects to this Request on the grounds that the information responsive to this request as communication between the Representatives

and Ratepayers may contain privileged information. See TEX. R. CIV. P. 192.5(a), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3).

**6. WOWSC RFI No. 1-8**

**Provide all correspondence and documents between Ratepayer Representatives and signatories to the rate protest petition filed in this docket regarding WOWSC operations, services, litigation fees, Ratepayer Representatives nominations, and rates from 2017 to present.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j). The Ratepayers objects to this question on the grounds that the information responsive to this request as work product and communication between the Representatives and Ratepayers may contain privileged information. See TEX. R. CIV. P. 192.5(a), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3).

Additionally, Ratepayers Objects to this Request on grounds of relevance, as it seeks information that will not be helpful to determining any facts at issue in this proceeding. See Tex. R. Civ. P. 192.3(a) (discovery must be "relevant to the subject matter of the pending action."); Tex. R. Evid. 401 (evidence is relevant if it relates to facts that are "of consequence in determining the action"); Tex. R. Evid. 403 (permitting a court to exclude relevant evidence if it will confuse the issues, mislead the jury, or cause prejudice).

**7. WOWSC RFI No. 1-9**

**Admit or deny that Ratepayer Representatives sent a survey to WOWSC members regarding WOWSC operations, service, and rates. If admission, provide the survey and all drafts of the survey.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

Ratepayers Objects to this Request on grounds of relevance, as it seeks information that will not be helpful to determining any facts at issue in this proceeding. See Tex. R. Civ. P. 192.3(a) (discovery must be "relevant to the subject matter of the pending action."); Tex. R. Evid. 401 (evidence is relevant if it relates to facts that are "of consequence in determining the action"); Tex. R. Evid. 403 (permitting a court to exclude relevant evidence if it will confuse the issues, mislead the jury, or cause prejudice).

**8. WOWSC RFI No. 1-12**

**Provide links and/or video files to all posts by Petitioners on NextDoor, Facebook, YouTube and other social media platforms regarding WOWSC, its Board members, operations, services, and rates from 2017 to present.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

The Ratepayers Objects to this request on the grounds that it can only be required to produce documents to which it is in that person's constructive or actual possession, custody, or control. P.U.C. Procedural Rules §22.141.



Additionally, the Ratepayers Objects to this request on grounds of relevance, as it seeks information that will not be helpful to determining any facts at issue in this proceeding. See Tex. R. Civ. P. 192.3(a) (discovery must be "relevant to the subject matter of the pending action."); Tex. R. Evid. 401 (evidence is relevant if it relates to facts that are "of consequence in determining the action"); Tex. R. Evid. 403 (permitting a court to exclude relevant evidence if it will confuse the issues, mislead the jury, or cause prejudice).

#### **9. WOWSC RFI No. 1-13**

**Provide all correspondence from Ratepayer Representatives to WOWSC Board members from 2016 to present.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

Ratepayers Objects to this Request because it seeks information which is readily available to the requesting party. Specifically, WOWSC's RFI No. 1-13 request states "Provide all correspondence from Ratepayer Representatives to WOWSC Board members from 2016 to present." By definition, the WOWSC is requesting information they received from the Ratepayers and which correspondence they already have in their possession. Pursuant to 16 TAC § 22.142(a)(1)(B), the presiding officer may limit discovery to protect a party from a request to provide information which is readily available to the requesting party. Under Tex. R. Civ. Proc. 192.4, discovery should be limited if it is determined that the discovery sought is unreasonably duplicative, or is

obtainable from some other source that is more convenient, less burdensome, or less expensive. Any correspondence between WOWSC and the Ratepayers clearly involves WOWSC, and such information and correspondence should have been kept by the WOWSC. The information requested is readily available to the requesting party, and it is more convenient, less burdensome, and less expensive for WOWSCs to obtain the information from their own records than having the Ratepayers respond. The Ratepayers should not have to undertake the cost and time of providing documents which the WOWSC already has in their possession.

Additionally, the Ratepayers Objects to this request because their request is broad and vague, and burdens the Ratepayers expending unnecessary time and expense to respond.

#### **10. WOWSC RFI No. 1-14**

**Provide all correspondence and documents between Josie Fuller and Patti Flunker regarding WOWSC operations, services, litigation fees, board operations, board members and rates from 2017 to present.**

One of the issues on appeal is whether WOWSC's water and sewer service rates are "just and reasonable... [and] not unreasonably preferential, prejudicial, or discriminatory" as stated under Texas Water Code Section 13.043(j).

Additionally, Ratepayers Objects to this request on the grounds that the information responsive to this request as communication and work product between the Representatives and may contain privileged information. See TEX. R. CIV. P. 192.5(a), TEX. R. CIV. EVID. 503, 16 TAC §§ 22.144(d)(2) and (3).

Respectfully submitted,

*Josephine Fuller*

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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 via electronic email on September 23, 2020 in accordance with the Order Suspending Rules, issued in Project 50664.

*Josephine Fuller*

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Josephine Fuller, Ratepayer Representative

*Patti Flunker*

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Patti Flunker, Ratepayer Representative