



Filing Receipt

Filing Date - 2023-11-30 08:53:26 PM

Control Number - 50788

Item Number - 398

November 30, 2023

Josie Fuller
Ratepayer Representative
328 Coventry Road
Spicewood, Texas 78669

Kathleen Jackson, Interim Chair
Will McAdams, Commissioner
Lori Cobos, Commissioner
Jimmy Glotfelty, Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, TX 78701

RE: Ratepayer's Appeal of Windermere Oaks Water Supply Corporate Rates, Specifically
Commissioner's Preliminary Order, Issue #9, Rate Appeal Expenses, and Recovery Mechanisms

Dear Chairwoman Jackson and Commissioners,

We, the Ratepayer Representatives, are writing to draw your attention to our concerns regarding Windermere Oaks Water Supply Corporation's (Windermere) actions in recovering rate appeal expenses and the method employed to do so, which seem to disregard the authority of the Public Utility Commission (Commission) as outlined in the Commission Preliminary Order, particularly Issue #9 related to determining reasonable rate appeal expenses and the recovery mechanism.¹

On September 29, 2023, Windermere responded to Ratepayers' Motion to Reopen the Record and Admit Evidence of Windermere's Post-Hearing Receipt of \$678,812.05 in cash from Allied World Specialty Insurance.² In their response, Windermere disclosed that they had made payments to their attorneys at Lloyd Gosselink (Gosselink), totaling \$145,785.20 out of the \$669,927.72 they seek to recover for rate appeal expenses.³ This amount paid to Gosselink represents 25% of their requested rate appeal expenses. Windermere's unilateral decision to compensate Gosselink has resulted in each ratepayer paying approximately \$550 towards rate appeal expenses, likely recouped through Windermere's water and sewer rates, which do not reflect a legitimate cost of service, and which was not funded by Allied Insurance proceeds.⁴ Windermere's move to recover rate case expenses without awaiting the Commission's final

¹ See Commissioner's Preliminary Order, Issue #9, July 16, 2020

² See Windermere's September 29, 2023, Response to Ratepayers Motion to Reopen the Record and Admit Evidence

³ *Id*

⁴ See Exhibit 1, former president Joe Gimenez email regarding rate case expenses should be recovered through surcharges

determination on reasonableness and the appropriate recovery mechanism appears to undermine the Commission's authority to make these crucial decisions. This raises concerns about Windermere prioritizing their own interests over procedural rules, Commission precedent, and the financial well-being of ratepayers.

In an affidavit filed on July 21, 2023, by Jamie L. Mauldin related to the Rate Case Expenses of Windermere Oaks Water Supply Corporation, Ms. Mauldin acknowledges in #15 that Commission approval is required for such expenses.⁵ Notably, she uses the term 'requesting' in reference to rate appeal expenses, which can be interpreted as indicating that these expenses have yet to be compensated or awarded, all while never acknowledging that a substantial amount of rate appeal expenses had been paid to Gosselink.

Windermere's payment of rate appeal expenses to Gosselink before Commission's approval is reminiscent of PUC Docket 42862, *Appeal of the Water and Sewer Rates Charged by the Town of Woodloch*, specifically, their preemptive surcharge to recover rate case expenses. During that appeal, the Town of Woodloch (Woodloch), ironically represented by Gosselink, imposed a surcharge on ratepayers outside the city limits to recover rate appeal expenses during the pendency of the rate appeal and without Commission approval.⁶

Worth noting, Woodloch was recovering their rate appeal expenses through a surcharge, Windermere is recovering their rate appeal expenses through their utility rates, nonetheless the core issue remains the same: both utilities bypassed the Commission's authority to determine the final award of appeal expenses, the extent of recovery, and the proper mechanism, including amount and timeframe. In the Woodloch docket, the Administrative Law Judge's (ALJ) Proposal for Decision supported the Staff's assessment that a surcharge to recover rate case expenses is only appropriate after the Commission determines that the rate case expenses are reasonable.⁷ The ALJ further concluded that a utility did not have the legal authority to impose such surcharges for recovering rate case expenses,⁸ emphasizing the distinction between rate-making decisions and rate appeal expenses, with the latter falling under the Commission's authority.⁹

In the final order in this docket, the Commission upheld the PFD's assessment on preemptive recovery of rate appeal expenses, stating that Woodloch lacked the legal authority to impose a \$35 per-month surcharge to fund rate case expenses.¹⁰ The similarities between Windermere and the Town of Woodloch preemptively recovering rate appeal expenses cannot be ignored, especially considering both utilities engaged the same law firm. While Windermere's recovery is not through surcharges, as stated earlier, the core argument is the same and it is difficult to argue that Windermere's recovery is legitimate, as it lacks oversight or input from the Commission, the ultimate decision-maker.

⁵ See Windermere's July 21, 2023 *Affidavit of Jamie L. Mauldin Related to the Rate Case Expenses of Windermere Oaks Water Supply Corporation*

⁶ See PUC Docket 42862, *Appeal of the Water and Sewer Rates Charged by Town of Woodloch*, ALJ's PFD, October 29, 2015, p. 47 beginning "The surcharge was assessed....."

⁷ *Id.*, p. 48, beginning "For this reason....."

⁸ *Id.*

⁹ *Id.*, p. 48 beginning "In other words....."

¹⁰ See PUC Docket 42862, *Appeal of the Water and Sewer Rates Charged by Town of Woodloch*, Commissioner's Final Order, March 7, 2017, Conclusions of Law, #23 and #24.

Ratepayers are deeply concerned that Windermere and Gosselink have made unilateral determinations about what constitutes reasonable expenses and how to recover them through utility rates without any oversight. The Ratepayers have come to expect that Gosselink looks at the customers of Windermere as a slot machine, simply pulling the lever each time expecting a payout which amounts to a pot of gold, while customers bear the burden of high utility rates that do not accurately reflect a cost of service, particularly ongoing legal expenses and now rate case expenses.

Finally, adding to these concerns, Ratepayers have recently learned of a potential threat of Windermere being placed into receivership. Documents shared with Ratepayers via a public information request indicate that Gosselink is exploring the possibility of receivership for Windermere¹¹ while billing ratepayers for these efforts and receiving compensation for rate case expenses before Commission approval. What exacerbates this situation is the lack of formal communication to corporation members, discussion in open board meetings, or inclusion of this direction of the board to investigate Windermere receivership on any agendas. These discoveries raise serious questions about who authorized Gosselink to initiate this investigation and whether ratepayers will ultimately bear the financial burden. We are deeply worried that these developments suggest ulterior motives on the part of Windermere and Gosselink, potentially draining the corporation resources which could have significant financial consequences for the utility's operations, customer refunds in this rate appeal, and the future of the member-owned and member-controlled water and sewer cooperative.

Considering these serious concerns raised by Ratepayers and past Commission precedents concerning rate case expenses, we believe it is our duty to bring these issues to light. This way, the Commission can have a complete understanding of the situation before issuing a final order in this docket, ensuring the protection of ratepayers from unjust and unreasonable financial hardships.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Josie Fuller", with a stylized, cursive script.

Josie Fuller
Ratepayer Representative

cc: Windermere Oaks Water Supply Corporation
PUC Legal Staff

¹¹ See Exhibit 2, Legal Invoices, highlighting Receivership

From: Joe Gimenez [REDACTED]@gmail.com
Subject: Re: Windermere Oaks WSC - Lloyd Gosselink Invoices - April 2023 (3870-0, 3870-1, 3870-4)
Date: June 08, 2023 at 12:17 PM America/Los Angeles
To: Richard T Schaefer [REDACTED]
Cc: "NELSON, MICHAEL" [REDACTED]@m



Rich,

I doubt that the PUC process will allow wowsc to use any of the insurance funds for the payment of the PUC rate case expenses. They seem like they will be set on putting those fees in a surcharge. Otherwise, the invoices look accurate to work performed.

best regards,
 Joe

On Thu, Jun 8, 2023 at 1:06 PM Richard T Schaefer <[REDACTED]> wrote:

For your approval.
 I have already looked over these.

F.Y.I minus these invoices the following is our current legal balance.
 Tim's email was not getting the invoices from nested/forwarded emails and only saw the approval for payments.

L.G. Toma	175151.75
L.G. Rate	420143.96
L.G. General	179012.69
EK	47554.42

=====
 Total 821862.82

So our insurance check will not cover all our outstanding legal fees.

----- Forwarded message -----

From: Dana Rachal <[REDACTED]>
Date: Mon, Jun 5, 2023 at 1:30 PM
Subject: Windermere Oaks WSC - Lloyd Gosselink Invoices - April 2023 (3870-0, 3870-1, 3870-4)
To: [REDACTED] <[REDACTED]>
Cc: Mike Gershon <[REDACTED]>, Jose de la Fuente <[REDACTED]>, Jamie Mauldin <[REDACTED]>, Billing Bunch <[REDACTED]>

Mr. Schaefer,

Please find attached the Lloyd Gosselink invoices for services rendered through April 2023 for Windermere Oaks Water Supply Corporation. If you have any questions, please do not hesitate to contact me or Mike Gershon.

Thank you.

DANA RACHAL

512-322-5897 Direct

Lloyd Gosselink Rochelle & Townsend, P.C.

816 Congress Ave., Suite 1900, Austin, TX 78701

www.lglawfirm.com | 512-322-5800

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Richard T. Schaefer

E-mail:

[REDACTED]

RTS Services Inc

Web: <http://RTS-Services.com>

1675 Hickory Creek Rd.

Voice: (512) 923-2755

Marble Falls, TX 78654

|

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October 3, 2023

Windermere Oaks Water Supply Corporation
Attn Richard Schaefer
424 Coventry Road
Spicewood, TX 78669

Invoice: 97545128
Client: 3870
Matter: 0
Billing Attorney: MAG

Tax ID # 74-2308445

INVOICE SUMMARY

For professional services and disbursements rendered through September 30, 2023:

RE: General Counsel

Professional Services	\$ 9,696.00
Total Disbursements	<u>\$.00</u>
TOTAL THIS INVOICE	\$ 9,696.00

Lloyd Gosselink Rochelle & Townsend PC
is committed to offering a more secure, and convenient option to pay your bill using:
Visa, MasterCard, Discover, and American Express and eCheck.
A convenience fee applies.

Visit our website to make a payment at: <https://www.lglawfirm.com/client-payment-information>

Lloyd Gosselink Rochelle & Townsend, P.C.

Windermere Oaks Water Supply Corporation
General Counsel
I.D.3870-0-MAG

October 3, 2023
Invoice: 97545128

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description Of Services Rendered	Hours
9/01/23	CCR	Review request for Corporation's water loss audits, draft response regarding same; follow up with R. Shaefer regarding same; field email question from R. Ffrench regarding requests for public information; provide written response regarding Texas Public Information Act provisions.	2.70
9/02/23	CCR	Review request for public information from J. Gimenez; follow up regarding same.	1.50
9/08/23	MAG	Review developments with PUC and TRWA's filing in support of client's position.	.40
9/08/23	JEF	Work on PIA response issues.	.20
9/08/23	RAA	Correspond with co counsel regarding PIA requests concerning PUC Docket No. 50788; work with support staff to produce requested information.	.40
9/12/23	CCR	Review Board President's draft notice and agenda for planned Board meeting; review conflicting board agenda posted by directors Walker and Ffrench; follow up regarding same; work on review of and response to Public Information Act request regarding filed pleadings associated with various litigation matters, and communications of directors.	3.30
9/13/23	MAG	Review and follow up with team regarding response to TRWA brief filed at PUC.	.20
9/13/23	JEF	Review agenda and plan for upcoming meeting.	.30
9/14/23	CCR	Review WOWSC Bylaws regarding registered agent; provide counsel regarding same.	.50
9/15/23	JEF	Prepare for and attend board meeting and advise board on a variety of matters based on questions and discussion at meeting.	1.00
9/15/23	JEF	No Charge - Prepare for and attend board meeting and advise board on a variety of matters based on questions and discussion at meeting.	1.00
9/15/23	CCR	Review responsive documents to request for public information; provide documents regarding same to requestor; prepare for WOWSC Board meeting; attend Board meeting; provide counsel regarding same.	7.00
9/21/23	MAG	Partial meeting with client and team.	.40
9/21/23	JEF	Meet with legal subcommittee to discuss legal issues in general.	.30
9/21/23	JEF	Meet with legal subcommittee to discuss legal issues in general. (N/C)	.50
9/21/23	CCR	Meet with J. Anderson, J. Walker, and J. De la Fuente to discuss range of legal topics confronting the Corporation; follow up regarding same; call with R. Schaefer regarding petition for removal; work with K. Parker regarding implications of WOWSC receivership.	2.00
9/21/23	LCL	30 min project assignment + 1.5 preliminary research water districts litigation for C. Ruiz.	2.00
9/22/23	LCL	Conducted preliminary research water districts litigation for C. Ruiz.	2.00
9/25/23	LCL	Conducted research for water district litigation and drafted a memo for C. Ruiz.	2.50
9/26/23	CCR	Confer with J. Mauldin regarding rate payer's motion to re-open record to admit evidence of insurance payout; coordinate schedules with legal subcommittee to set up call to discuss same; follow up with legal subcommittee regarding legal expenses	1.00

Windermere Oaks Water Supply Corporation
General Counsel
I.D.3870-0-MAG

October 3, 2023
Invoice: 97545128

Date	Atty	Description Of Services Rendered	Hours
		status.	
9/26/23	LCL	Drafted and edited memo on water district litigation WOWSC for C. Ruiz.	2.00
9/27/23	CCR	Call with legal subcommittee to discuss rate case response regarding opening evidentiary record; review memo from K. Parker regarding receivership process.	.50
9/28/23	CCR	Call with J. Anderson regarding question about petitions to remove certain directors, and process required under bylaws; separate call with D. Taylor regarding same; review correspondence, petition, and supporting documents regarding same; review draft pleading responding to rate payer request to re-open record to allow for evidence of payment of insurance proceeds; follow-up regarding same.	2.50
9/29/23	CCR	Field call from Burnet County Attorney's office regarding allegations of Texas Public Information Act non-compliance; follow up regarding same with J. Walker and R. Ffrench; call with R. Schaefer regarding petition to remove directors', including process and review of petition.	3.50

TOTAL PROFESSIONAL SERVICES

\$ 9,696.00

SUMMARY OF PROFESSIONAL SERVICES

Name	Staff Level	Rate	Hours	Amount	N/C Hr	N/C \$
Michael A Gershon	Principal	360.00	1.00	360.00	.00	.00
Jose E de la Fuente	Principal	330.00	2.30	759.00	1.00	330.00
Christian Cole Ruiz	Associate	290.00	24.50	7,105.00	.00	.00
Rick A Arnett	Associate	280.00	.40	112.00	.00	.00
Law Clerk	Law Clerk	160.00	8.50	1,360.00	.00	.00
TOTALS			36.70	\$ 9,696.00	1.00	\$ 330.00

TOTAL THIS INVOICE

\$ 9,696.00