



Filing Receipt

Filing Date - 2023-12-06 03:14:39 PM

Control Number - 50788

Item Number - 399

Ms. Mauldin's Direct Line: (512) 322-5890
Email: jmauldin@lglawfirm.com

December 6, 2023

VIA E-FILING

Kathleen Jackson, Interim Chair
Will McAdams, Commissioner
Lori Cobos, Commissioner
Jimmy Glotfelty, Commissioner
1701 North Congress Avenue
Austin, TX 78711

Re: PUC Docket No. 50788; SOAH Docket No. 473-20-4071, *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*

Dear Chairperson Jackson and Commissioners,

I am filing this letter solely on behalf of Lloyd Gosselink (and not in my capacity as counsel for Windermere Oaks Water Supply Corporation's (WOWSC)) in response to the filing made by Ratepayer Representative Josie Fuller on November 30, 2023. It is outside of the firm's usual practice to file such a letter; however, several allegations and misstatements as to the Firm included in the Ratepayers' letter warrant a response and/or clarification on behalf of the Firm.

Allegation 1: Lloyd Gosselink is unlawfully recovering rate case expenses prior to Commission authorization

Ratepayers have confused rate case expense reimbursement through rates to the utility—which can only be authorized by the Commission—and payment of legal fees owed to attorneys and/or consultants for work performed pursuant to an executed contract.¹ Lloyd Gosselink and the WOWSC's Board of Directors made an oral agreement to allow the utility to pay \$10,000 per month toward all legal fees owed to Lloyd Gosselink.² Lloyd Gosselink has received a total of \$155,785.20 in payments toward legal expenses incurred defending this rate appeal since April 27, 2020 (that is, over the past 3+ years).

As briefed in detail in this proceeding, legal fees are like any other operation and maintenance (O&M) expense that must be paid for services rendered.³ Indeed, legal fees are included in the National Association of Regulatory Utility Commissioners chart of accounts under

¹ 16 Tex. Admin. Code § 24.44.

² Tr. at 198:9-14 (Nelson Cross) (Dec. 1, 2021). This includes representation on litigation matters, General Counsel matters, and this rate appeal.

³ Windermere Oaks Water Supply Corporation's (WOWSC) Initial Brief at 6 (Apr. 11, 2023); WOWSC's Reply Brief at 12-13 (May 2, 2023).

Account 631 and are regularly paid as O&M expenses by all types of utilities. WOWSC's partial payments to Lloyd Gosselink were made in the ordinary course of business and thus are distinguishable from the rate case expense surcharge included on customers' bills prior to Commission authorization in the *Town of Woodloch* docket.

WOWSC is not yet charging a rate case expense surcharge or tacking on additional fees for reimbursement of legal expenses incurred in this docket. A utility is not precluded from paying its attorneys for work performed if the requested rate case expenses are still pending or are disallowed. As you know, the Commission does not regulate private contracts between a utility and its attorneys, but it does have the power to authorize a utility to recover just and reasonable rate case expenses through rates. Ratepayers' letter conflates the principles.

With respect to the statement that Lloyd Gosselink looks at WOWSC's customers as a "slot machine," I will note that Ratepayers have established a pattern of making inflammatory statements about the firm without basis in law or fact, and unsupported by record evidence.⁴ The ALJs in this proceeding have found that Ratepayers have made statements about Lloyd Gosselink brought for the purpose of harassment that "do not comport with the law firm's reputation to the Court or the Utility Bar."⁵ Such behavior is sanctionable, but Lloyd Gosselink still does not seek sanctions against Ratepayers⁶ as it would only increase legal fees. As such, I respectfully request that the Commission ignore these continuing groundless, defamatory, and harassing statements.

Allegation 2: Lloyd Gosselink is improperly researching the possibility of receivership

Lloyd Gosselink, in its capacity as General Counsel, performed research on the receivership process for the utility. Ratepayers allege that Lloyd Gosselink is unilaterally exploring the possibility of receivership and suggests "ulterior motives" on behalf of the firm. Without waiving any attorney/client privilege, this research was performed consistent with the General Counsel's obligations to examine possible outcomes for a utility facing a Division of Compliance and Enforcement inquiry.

Most importantly, this research was billed under the firm's General Counsel matter (3870-0) and not the Rate Appeal matter (3870-4).⁷ WOWSC does not seek the recovery of expenses related to that research in this rate appeal.

Conclusion

Lloyd Gosselink has practiced before this tribunal for almost 40 years and has a strong reputation within the legal community and utility bar. In defending this rate appeal, counsel has

⁴ SOAH Order No. 17 – Ruling on Motions to Strike at 3 (Feb. 8, 2022), attached hereto as Appendix A.

⁵ *Id.*

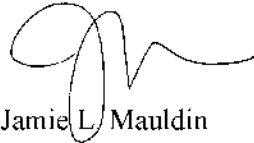
⁶ See WOWSC's Motion to Strike Portions of Ratepayers Reply Brief at 2 (Feb. 1, 2022).

⁷ See Ratepayer Representation Letter to the Commissioners Re: Rate Appeal Expenses at Exhibit 2 (Nov. 30, 2023), compare with Direct Testimony of Jamie L. Mauldin on behalf of WOWSC, Attachment JLM-3 at 1 (Mar. 10, 2021).

acted as directed pursuant to the applicable rules and the Board of Directors' instructions issued consistent with their legal authority.

Therefore, I respectfully ask the Commission to dismiss Ratepayers' baseless accusations. Furthermore, I respectfully urge the Commission to resolve this rate appeal as soon as possible. All parties will benefit from entry of an order on the merits of this proceeding and the cessation of all legal expenses related to this rate appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'JM', with a stylized flourish extending to the right.

Jamie L. Mauldin

JLM/bmg



Filing Receipt

Received - 2022-02-08 11:30:14 AM
Control Number - 50788
ItemNumber - 180

**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**

**SOAH ORDER NO. 17
RULING ON MOTIONS TO STRIKE**

On February 1, 2022, Windermere Oaks Water Supply Corporation (WOWSC) filed a motion to strike portions of Ratepayers’ reply brief and a motion to strike Ratepayers’ Response to WOWSC’s Motion to Admit Evidence (Response)¹ on grounds that they are harassing, brought in bad faith, inflammatory, specious, and abusive. For the same reasons, WOWSC contends that portions of Ratepayers’ reply brief are improper and lack evidentiary support in violation of SOAH Order No. 15. On February 1, 2022, Ratepayers responded, arguing that the contested statements reflect Ratepayers’ sincerely held belief and were not made in bad faith and that there is no legal basis for the requested relief. For the reasons set out below, the motions to strike are DENIED.

The Commission’s sanction rules allow for “striking pleadings or testimony, or both, in whole or in part” for “filing a motion or pleading that was brought in bad faith, for the purposes of harassment, or for any other improper purpose.” 16 Tex. Admin. Code § 22.161(b), (c)(8). Upon a receipt of a motion for sanctions, “a hearing shall be held on the motion.” 16 Tex. Admin. Code § 22.161(e).

A review of the identified portions of the filings shows numerous allegations calling the integrity of WOWSC and its legal counsel into question. Examples include the following implications:

¹ Ratepayer’s Reply Brief (Jan. 25, 2022); Ratepayer’s Response to WOWSC’s Motion to Admit Evidence (Jan. 25, 2022).

1. that WOWSC's attorney has "breached her duties to the tribunal" and performed work "in violation of professional duties;"²
2. that WOWSC's attorneys at Lloyd Gosselink "falsely portrayed otherwise in filings and other materials prepared for this proceeding;"³
3. that "the Board and its lawyers were less than candid in sworn testimony and discovery responses," and concealed the Corporation's ratemaking methodology;⁴
4. that WOWSC's lawyers' "effort to portray the 2020 rates as something they are not is not just unethical," but unduly confused and complicated the proceeding;⁵
5. that WOWSC and its law firm, Lloyd Gosselink, intentionally obfuscated how much WOWSC paid for outside legal expenses;⁶
6. that WOWSC and its lawyers made false representations regarding the ability to fund needed capital expenditures if there were a rate reduction or refund;⁷
7. that "the law firms who participated in a rate fraud to get their invoices paid would be anxious to pursue debt collection efforts against the utility they defrauded;"⁸
8. the lawyers deceived WOWSC's customers beyond "the bounds of zealous advocacy;"⁹
9. that WOWSC and its lawyers have "a vested personal interest" in maintaining the current rates and to that end have been "neither candid or transparent in this proceeding[, and] have sponsored filings, sworn testimony and discovery responses that were, at best, misleading, and in some instances false;"¹⁰

² Ratepayers' Response to WOWSC's Motion to Admit Evidence at 1.

³ Ratepayers' Response to WOWSC's Motion to Admit Evidence at 1.

⁴ Ratepayer's Reply Brief at 18.

⁵ Ratepayer's Reply Brief at 19.

⁶ Ratepayer's Reply Brief at 19-20.

⁷ Ratepayer's Reply Brief at 21.

⁸ Ratepayer's Reply Brief at 32.

⁹ Ratepayer's Reply Brief at 32-33.

¹⁰ Ratepayer's Reply Brief at 34.

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

SOAH ORDER NO. 17

PAGE 3

10. that WOWSC's lawyers' failure to tell WOWSC expert Mr. Rabon "about the litigation or legal costs," was "likely unethical."¹¹

Ratepayer's consolidated response to the motions continues in a similar vein:

11. "Ratepayers have come to understand that this is not the result of inadvertence, but rather of an arrangement that was made before the rate increase for the benefit of certain current and former directors and Lloyd Gosselink;"¹²

12. "Ratepayers allege there has been serious wrongdoing because the evidence suggests there has been serious wrongdoing, in connection with both the rate increase and the handling of this appeal proceeding."¹³

Such statements are inflammatory and without basis in law or fact. The statements are unsupported by record evidence and to the extent they are directed at WOWSC's counsel, do not comport with the law firm's reputation to the Court or the Utility Bar. The ALJs find that WOWSC has made a prima facie showing that the statements are brought for the purpose of harassment. Granting the relief sought, however, requires a hearing that WOWSC specifically declines to pursue (to minimize rate case expenses) and that Ratepayers specifically invoke. WOWSC cites no authority, and the ALJs have found none, that authorize the sanction of striking offensive pleadings without the hearing required by section 22.161(e).

With respect to the reply brief, WOWSC cites SOAH Order No. 15 that allows the ALJ to "consider waived any statement or argument set forth in a brief to the extent that it (1) lacks accurate citations to the evidence and law, or (2) is in a party's reply brief but should have been in its initial brief." This language is insufficient to support the relief requested. However, the ALJs will consider waived those portions of Ratepayers' reply brief that are unsupported by the evidence and law or that should have been in Ratepayers' initial brief. To the extent ratepayer's consolidated

¹¹ Ratepayer's Reply Brief at 34-35.

¹² Ratepayer's Consolidated Response to Motions of Windermere Oaks Water Supply Corporation to Strike Ratepayers' Reply Brief and Response at 2 (Feb. 1, 2022).

¹³ Ratepayer's Consolidated Response to Motions of Windermere Oaks Water Supply Corporation to Strike Ratepayers' Reply Brief and Response at 2 (Feb. 1, 2022).

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

SOAH ORDER NO. 17

PAGE 4

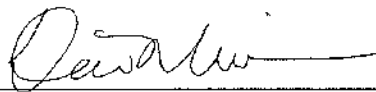
response to WOWSC's motions to strike provides additional citation or explanation not contained in the Ratepayer's reply brief, it will be disregarded.

This ruling is without prejudice to seeking relief in any other forum.

SIGNED February 8, 2022.



CHRISTIAAN SLANO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS