



Control Number: 50788



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**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 § OF
CORPORATION TO CHANGE §
WATER AND SEWER RATES § ADMINISTRATIVE HEARINGS**

**COMMISSION STAFF’S RESPONSE TO WINDERMERE OAKS WATER SUPPLY
CORPORATION’S MOTION TO ABATE**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Windermere Oaks Water Supply Corporation’s Motion to Abate. In support, Staff offers the following:

I. BACKGROUND

On April 27, 2020, Josephine Fuller, individually and on behalf of the ratepayers of Windermere Oaks Water Supply Corporation (Petitioners or Ratepayers), filed a petition under Texas Water Code (TWC) § 13.043(b) appealing the decision by Windermere Oaks Water Supply Corporation (Windermere) to change its water and sewer rates. On April 30, 2020, Petitioners filed an amended petition. On May 27, 2020, Windemere filed its response to the petition.

The Office of Policy and Docket Management referred this docket to the State Office of Administrative Hearings (SOAH) on June 23, 2020. SOAH Order No. 2, issued August 17, 2020, adopted the parties’ agreed procedural schedule and set a prehearing conference for August 28, 2020. On August 26, 2020, Petitioners issued their first request for information to Windemere. Since that time, Petitioners and Windermere have been engaged in a discovery dispute that has led to the postponement of mediation originally scheduled October 1, 2020

On September 28, 2020, Windemere filed, and Staff received, a motion to abate this proceeding. Pursuant to 16 Texas Administrative Code (TAC) § 22.78(a), “a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made.” Five working days from September 28, 2020 is October 5, 2020. Therefore, this pleading is timely filed.

II. RESPONSE TO MOTION

Staff respectfully requests that Windemere's motion to abate be denied. Staff cannot support a motion that would abate this proceeding, indefinitely, while awaiting the resolution of external litigation that could take years.

In an appeal under TWC § 13.043(b), the Commission "may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings."¹ Further, the preliminary order issued by the Commission includes the following issue: "What information was available to Windermere Oaks at the time it made its decision to increase the water and sewer utility service rates under TWC § 13.043(e)?"² As stated in the notice to customers provided by Windermere, the rate analysis that served as the basis for the increase in the rates that are the subject of this appeal considered all operating expenses, including \$169,000 in legal fees.³ The record is not yet developed enough for Staff to opine as to whether this \$169,000 is the sole basis for the increase or whether it is appropriate to recover what could be non-recurring legal expenses through rates rather than through a surcharge. In addition, Staff is sensitive to the fact that even if the invoices supporting the \$169,000 in legal fees are not privileged for the purpose of this proceeding, they have been deemed privileged, at least in part, in other proceedings, and disclosure here could have unintended consequences for Windermere even if does not result in a waiver of privilege in the other pending litigation.

Given, the complications regarding Windermere's production of the requested invoices, Staff believes that mediation is likely the most direct, and least costly, path to a resolution in this matter. It might be possible for the mediators to act as the gatekeepers of the invoices and disclose only that information necessary for Staff and Petitioners to understand how the legal fees were incorporated into the revenue requirement resulting in the rates at issue. Staff would respectfully request that the parties at least attempt mediation in this manner before determining that full disclosure of the invoices is the only way forward.. If the ALJ agrees that mediation cannot proceed

¹ TWC § 13.043(e).

² Preliminary Order at 4 (Jul. 16, 2020).

³ Windermere Oaks Water Supply Corporation's Response to Order No. 1 at 2 (May 27, 2020).

until the pending discovery disputes are settled, then Staff respectfully requests that the ALJ issue rulings on those matters, now that the facts surrounding the external litigation are before the court.

III. CONCLUSION

Staff respectfully requests that Windemere's motion to abate be denied and that the parties proceed to mediation without resolution of the pending discovery disputes. In the alternative, Staff requests that the ALJ issue rulings on the discovery disputes that are pending so the case may move forward.

Dated: October 5, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 on October 5, 2020 in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Merritt Lander
Merritt Lander