



Control Number: 50788



Item Number: 50

Addendum StartPage: 0

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

WINDERMERE OAKS WATER SUPPLY CORPORATION’S OBJECTIONS TO COMMISSION STAFF’S FIRST REQUEST FOR INFORMATION

Windermere Oaks Water Supply Corporation (WOWSC), by and through its attorneys of record, files these Objections to Commission Staff’s (Staff) First Request for Information (RFI) to WOWSC, and would respectfully show as follows:

I. PROCEDURAL HISTORY

Staff served its First RFI to WOWSC on October 16, 2020. Pursuant to 16 Tex. Admin. Code (TAC) §§ 22.144(d) and 22.4(a), these objections are timely filed within 10 calendar days of WOWSC’s receipt of the RFI. Counsel for WOWSC has attempted to confer with Staff to conduct good faith negotiations, but as of the filing deadline have failed to resolve the issues. While WOWSC will continue to negotiate with Staff regarding these and any future objections, WOWSC files these objections for preservation of its legal rights under the established procedures. To the extent any agreement is subsequently reached, WOWSC will withdraw such objection.

II. GENERAL OBJECTIONS

Some responsive documents requested by Staff in their RFI Nos. 1-7 and 1-14 concern information that is currently the subject of an ongoing discovery dispute between WOWSC and Ratepayers of WOWSC (Ratepayers). The dispute between WOWSC and Ratepayers revolves around whether the legal invoices requested in Ratepayers RFI No. 1-9 are discoverable.¹ These same invoices would be responsive to Staff’s RFI Nos. 1-7 and 1-14. The State Office of

¹ See Windermere Oaks Water Supply Corporation’s Objections to Ratepayers’ First Request for Information at 7-15 (September 9, 2020).

Administrative Hearings (SOAH) Administrative Law Judge (ALJ) referred the discovery dispute revolving around these documents to the SOAH mediator, along with the proceeding as a whole.²

Because the dispute over the invoices at issue has been referred to mediation by the SOAH ALJ, WOWSC objects to Staff's RFIs on the same grounds as it did in its objections to Ratepayers' RFI No. 1-9.³ Providing the responsive documents to Staff's RFI would waive the privilege in the ongoing litigation in district court and would irreparably harm WOWSC. As such, WOWSC asserts its continued objections to the production of the unredacted legal invoices in dispute in Ratepayers RFI No. 1-9 and partially responsive to Staff's RFI Nos. 1-7 and 1-14.

III. SPECIFIC OBJECTIONS

WOWSC objects to the following RFIs:

STAFF RFI No. 1-7: Please provide all documentation, such as general ledgers, approved budgets, contracts for services, invoices, etc. supporting the expenses included in the revenue requirement used to calculate the water rates that are the subject of this appeal.

Objections:

WOWSC objects to this request because the entries in the legal invoices supporting the expenses included in the revenue requirement used to calculate the water rates that are subject of this appeal are privileged pursuant to Rule 503 of the Texas Rules of Evidence (TRE 503) and Rule 192.5 of the Texas Rules of Civil Procedure (TRCP 192.5). Specifically, TRE 503, and TRCP 192.5 allow a client to withhold information contained in a legal invoice pursuant to the attorney-client and the work product privileges. Staff requests invoices "supporting the expenses included in the revenue requirement used to calculate the water rates that are subject of this appeal." The responsive documents are the same or similar documents that are the subject of: (1) an ongoing discovery dispute that has been referred to the SOAH mediator in this

² See SOAH Order No. 5 at 5-7 (Oct 8, 2020) ("...the extent to which the requested invoices are discoverable in this proceeding is referred to mediation together with the proceeding as a whole....").

³ See Windermere Oaks Water Supply Corporation's Objections to Ratepayers' First Request for Information at 7-15 (September 9, 2020).

proceeding; (2) Public Information Act (PIA) requests to WOWSC from WOWSC Ratepayers; and (3) ongoing litigation brought by WOWSC Ratepayers regarding alleged violations of the Texas Open Meetings Act by WOWSC. The Attorney General of Texas (AG) has determined these same documents are almost entirely privileged and not required to be disclosed, and has proposed a settlement to WOWSC on those grounds to dispose of the appeal currently pending in Travis County District Court. Requiring WOWSC to provide unredacted attorney invoices in this proceeding would undermine the pending settlement agreement between WOWSC and the AG regarding the PIA requests⁴ for the same legal invoices and substantially impact ongoing litigation in Burnet County District Court adverse to several of the Petitioners in this case.⁵

Please refer to WOWSC's Objections to Ratepayers' RFI No. 1-9 for further background and argument regarding this objection.⁶

Therefore, WOWSC respectfully requests the ALJ relieve WOWSC of responding to Staff's request to the extent that it seeks legal invoices pursuant to the privileges provided by Rule 503 of the Texas Rules of Evidence and Rule 192.5 of the Texas Rules of Civil Procedure, and their disclosure would undermine the AG's opinions and active litigation. WOWSC requests that resolution of this objection to Staff's RFIs also be referred to SOAH mediation since it involves the same documents at issue in the ongoing discovery dispute regarding Ratepayers RFI No. 1-9. Because WOWSC has previously provided a privilege index for the same documents for which it claims privilege here, please refer to WOWSC's privilege index for the documents being withheld pursuant to this objection.⁷

⁴ See Tex. Att'y Gen. Op. No. OR2020-17442 (2020) (attached as Exhibit A); see also Tex. Att'y Gen. Op. No. OR2019-22667 (2019) (attached as Exhibit B).

⁵ *Rene French, et al. v Friendship Homes & Hangars, LLC, et al*, No. 48292, Third Amended Original Petition (33rd Dist. Ct., Burnet County, Tex., Aug. 24, 2020) (attached as Exhibit C).

⁶ See Windermere Oaks Water Supply Corporation's Objections to Ratepayers' First Request for Information at 7-15 (September 9, 2020).

⁷ Windermere Oaks Water Supply Corporation's Privilege Index for Ratepayers' First Request for Information (Sep. 10, 2020).

STAFF RFI No. 1-14: Please provide all documentation, such as general ledgers, approved budgets, contracts for services, invoices, etc. supporting the expenses included in the revenue requirement used to calculate the sewer rates that are the subject of this appeal.

Objections:

WOWSC objects to this request because the entries in the legal invoices supporting the expenses included in the revenue requirement used to calculate the sewer rates that are subject of this appeal are privileged pursuant to Rule 503 of TRE 503 and TRCP 192.5. Specifically, TRE 503, and TRCP 192.5 allow a client to withhold information contained in a legal invoice pursuant to the attorney-client and the work product privileges. Staff requests invoices “supporting the expenses included in the revenue requirement used to calculate the sewer rates that are subject of this appeal.” The responsive documents are the same or similar documents that are the subject of: (1) an ongoing discovery dispute that has been referred to the SOAH mediator in this proceeding; (2) PIA requests to WOWSC from WOWSC Ratepayers; and (3) ongoing litigation brought by WOWSC Ratepayers regarding alleged violations of the Texas Open Meetings Act by WOWSC. The AG has determined these same documents are almost entirely privileged and not required to be disclosed, and has proposed a settlement to WOWSC on those grounds to dispose of the appeal currently pending in Travis County District Court. Requiring WOWSC to provide unredacted attorney invoices in this proceeding would undermine the pending settlement agreement between WOWSC and the AG regarding the PIA requests⁸ for the same legal invoices, and substantially impact ongoing litigation in Burnet County District Court adverse to several of the Petitioners in this case.⁹

Please refer to WOWSC’s Objections to Ratepayers’ RFI No. 1-9 for further background and argument regarding this objection.¹⁰

⁸ See Tex. Att’y Gen. Op. No. OR2020-17442 (2020) (attached as Exhibit A); *see also* Tex. Att’y Gen. Op. No. OR2019-22667 (2019) (attached as Exhibit B).

⁹ *Rene French, et al v Friendship Homes & Hangars, LLC, et al*, No. 48292, Third Amended Original Petition (33rd Dist. Ct., Burnet County, Tex., Aug. 24, 2020) (attached as Exhibit C).

¹⁰ See Windermere Oaks Water Supply Corporation’s Objections to Ratepayers’ First Request for Information at 7-15 (September 9, 2020).

Therefore, WOWSC respectfully requests the ALJ relieve WOWSC of responding to Staff's request to the extent that it seeks legal invoices pursuant to the privileges provided by Rule 503 of the Texas Rules of Evidence and Rule 192.5 of the Texas Rules of Civil Procedure, and their disclosure would undermine the AG's opinions and active litigation. WOWSC requests that resolution of this objection to Staff's RFIs also be referred to SOAH mediation since it involves the same documents at issue in the ongoing discovery dispute regarding Ratepayers RFI No. 1-9. Because WOWSC has previously provided a privilege index for the same documents for which it claims privilege here, please refer to WOWSC's privilege index for the documents being withheld pursuant to this objection.¹¹

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, WOWSC requests these objections be sustained and WOWSC be relieved of responding to these RFIs. WOWSC requests that the resolution of the discovery dispute regarding Staff's requests for information be referred to the SOAH mediator, consistent with SOAH Order No. 5. WOWSC also requests any other relief to which it may show itself justly entitled.

¹¹ Windermere Oaks Water Supply Corporation's Privilege Index for Ratepayers' First Request for Information (Sep. 10, 2020).

Respectfully submitted,

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**ATTORNEYS FOR WINDERMERE OAKS
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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 mail on October 28, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN