



Control Number: 50788



Item Number: 51

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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 MOTION TO COMPEL**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Motion to Compel. 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.

On October 16, 2020, Staff filed its first request for information (RFI) to Windemere, and on October 28, 2020 Windemere filed objections to RFI Nos. Staff 1-7 and Staff 1-14. Pursuant to 16 Texas Administrative Code (TAC) § 22.144(e), the party seeking discovery must file a motion to compel within five working days after the objection is received.” Five working days from October 28, 2020 is November 4, 2020. Therefore, this pleading is timely filed.

**II. MOTION TO COMPEL**

Windermere’s objection to RFI Nos. Staff 1-7 and Staff 1-14 should be overruled. Both questions concern invoices for legal expenses incurred by Windermere and Windermere directors, both present and former, that and Windermere is recovering these legal expenses through the water and sewer rates being appealed in this docket. Staff 1-7 and Staff 1-14 request “all documentation, such as general ledgers, approved budgets, contracts for services, invoices, etc. supporting the

expenses included in the revenue requirement” for water and sewer rates, respectively.<sup>1</sup> Windermere’s objections to both RFIs are identical, as well, and Staff’s motion will therefore address both objections as one.

Windermere argues that it should be relieved of its duty to respond to Staff 1-7 and Staff 1-14 to the extent that those RFIs seek “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.”<sup>2</sup> Staff acknowledges that a similar objection by Windermere to Ratepayers’ RFI No. 1-9 has been referred to mediation.<sup>3</sup> However, should the parties fail to resolve this issue through mediation, Staff maintains that full responses to Staff 1-7 and Staff 1-14 are required. As noted in SOAH Order No. 5, “Windermere’s arguments regarding waiver of privilege . . . are less compelling. The Commission’s standard protective order, which has been adopted in this proceeding, expressly prohibits the use of any such confidential information in other proceedings.”<sup>4</sup> Windermere’s argument that it should not be required to respond to Ratepayers’ RFI 1-9 because “disclosure of certain materials sought in discovery may hypothetically affect other matters” was found to be unpersuasive because “the protective order . . . expressly forbids the use of such materials in other matters.”<sup>5</sup>

Without complete responses to Staff 1-7 and Staff 1-14, which include the production of invoices for legal services provided to Windermere, Staff cannot properly evaluate Windermere’s existing revenue requirement and the resulting rates. A de novo review of all information available to Windermere at the time it set the rates that are the subject of this appeal is required under TWC § 13.043(e), and therefore, the legal invoices sought in Staff’s RFIs are not privileged for the purposes of this proceeding. Moreover, withholding this information will prevent Staff from determining if the legal expenses were reasonable and necessary and whether they are recurring costs to be recovered through rates or one-time expenses that are more appropriately recovered via a surcharge. If Staff does not have the information necessary to make these determinations, then it

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<sup>1</sup> Commission Staff’s First Request for Information to Windermere Oaks Water Supply Corporation Question Nos. Staff 1-1 Through 1-25 at 5, 6 (Oct. 16, 2020).

<sup>2</sup> Windermere Oaks Water Supply Corporation’s Objections to Commission Staff’s First Request for Information at 3, 5 (Oct. 28, 2020).

<sup>3</sup> SOAH Order No. 5 at 5 (Oct. 8, 2020).

<sup>4</sup> *Id.* at fn 3.

<sup>5</sup> *Id.* at 6 (addressing Windermere’s Motion to Abate).

will be difficult for Staff to recommend inclusion of these costs in the rates, which is at odds with the task of recommending a rate that protects Windermere's financial integrity.<sup>6</sup>

Review of any legal expenses recovered in rates is a critical element of this proceeding, and, just as Windermere's claim of privilege was an unpersuasive argument for its motion to abate, it is an unpersuasive argument for relieving Windermere of its duty for fully respond to RFIs Staff 1-7 and Staff 1-14. For these reasons, Staff respectfully requests that the administrative law judge issue an order requiring Windermere to provide a full response to Staff 1-7 and Staff 1-14.

### III. CONCLUSION

Staff respectfully requests the entry of an order compelling Windermere to respond to Staff's First RFIs to Windermere.

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<sup>6</sup> See *Ratepayers' Appeal of the Decision by South Central Calhoun County Water Control and Improvement District No. 1 to Change Rates*, Docket No. 47912, Final Order at 1 (May 3, 2019) ("While the Texas Water Code (TWC) is clear to exclude entities such as the district from certain ratemaking requirements, it also makes clear that, in an appeal under TWC § 13.043(b), the Commission is required to hear the appeal de novo and fix the rates the district should have fixed, considering only information that was available to the district at the time the rate increase was made. The rates must also be just and reasonable; not unreasonably preferential, prejudicial, or discriminatory; and sufficient, equitable, and consistent in application to each class of customer. The Commission is also required to use a methodology that preserves the financial integrity of the district.") (footnotes omitted).

Dated: November 4, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**SOAH DOCKET NO. 473-20-4071.WS  
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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 November 4, 2020 in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Merritt Lander  
Merritt Lander