



Control Number: 50788



Item Number: 78

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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
OBJECTION TO RATEPAYERS' PRIVILEGE LOG AND MOTION TO COMPEL
RATEPAYERS TO RESPOND TO REQUEST FOR INFORMATION AS REQUIRED
BY COMMISSION RULES**

COMES NOW, Windermere Oaks Water Supply Corporation (WOWSC) and files this Objection to Ratepayers of Windermere Oaks Water Supply Corporation's (Ratepayers) Privilege Log and Motion to Compel Responses to WOWSC's First Requests for Information (RFI) to Ratepayers.

I. INTRODUCTION

On September 9, 2020, WOWSC filed and served its first RFI, seeking documents and other items in this matter. On September 23, 2020, Ratepayers filed their Objections to WOWSC's First RFI (Ratepayers' Objections),¹ and on September 25, 2020, filed a privilege index in support of Ratepayer's Objections.² On September 30, 2020, WOWSC filed a motion to compel Ratepayers' responses to WOWSC's first RFI.³ On September 30, 2020, the Administrative Law Judge (ALJ) issued Order No. 4 temporarily staying discovery pending ruling on motion to abate⁴ and on October 8, 2020, the ALJ issued Order No. 5 granting in part motion to compel, denying

¹ Ratepayers' Representatives Objections to Windermere Oaks Water Supply Corporation's First Request for Information (September 23, 2020) (Ratepayers' Objections).

² Ratepayers' Representatives Privilege Index in Support of its Objections to Windermere Oaks Water Supply Corporation's First Request for Information (September 25, 2020).

³ WOWSC's Motion to Compel First Requests for Information to Ratepayers (September 30, 2020).

⁴ SOAH Order No. 4-Adopting Protective Order; Temporarily Staying Discovery Pending Ruling on Motion to Abate (September 30, 2020).

motion to abate, and referring to mediation.⁵ On January 21, 2021, the ALJ issued Order No. 6 scheduling a prehearing conference based on the mediators' report from January 19, 2021, stating that no agreement had been reached and that the case should proceed to hearing.⁶ On January 27, 2021, the parties convened for a prehearing conference to discuss a procedural schedule and pending discovery motions. On February 2, 2021, the ALJ issued Order No. 7, therein granting WOWSC's motion to compel as to various specific RFIs, and ordering Ratepayers to revise and maintain a privilege log that complies with Texas Rule of Evidence 193.3.⁷ In response to Order No. 7, Ratepayers filed an amended privilege log on February 10, 2021,⁸ and further responses to WOWSC's first RFI on February 26, 2021.⁹ Nevertheless, Ratepayers' responses to Order No. 7 remain deficient for the reasons stated below.

II. REQUESTS AND RESPONSES

On September 9, 2020, WOWSC filed its first set of requests for information to Ratepayers.

Included in this set of requests were the following inquiries:

WOWSC RFI No. 1-9: Admit or deny that Ratepayer Representatives sent a survey to WOWSC members regarding WOWSC operations, service, and rates. If admission, provide the survey and all drafts of the survey.

WOWSC RFI No. 1-10: If the response to WOWSC 1-9 is "admit," then provide all survey responses and the email and IP addresses from the respondents of the survey.

WOWSC RFI No. 1-13: Provide all correspondence from Ratepayer Representatives to WOWSC Board members from 2016 to present.

⁵ SOAH Order No. 5-Granting in Part Motion to Compel, Denying Motion to Abate, and Referring to Mediation (October 8, 2020).

⁶ SOAH Order No. 6-Abating Procedural Schedule; Requiring Parties to Confer Regarding Procedural Schedule; Setting Prehearing Conference, and Canceling Hearing on the Merits (January 21, 2021).

⁷ SOAH Order No. 7-Memorializing Prehearing Conference; Adopting Amended Procedural Schedule; Setting Hearing on the Merits; and Ruling on Discovery Disputes (February 2, 2021).

⁸ Ratepayers Amended Privilege Log in Response to WOWSC's First Request for Information and SOAH Order No. 7 (February 10, 2021)

⁹ Ratepayers Response to WOWSC's First Request for Information and SOAH Order No. 7 (February 26, 2021).

WOWSC RFI No. 1-14: Provide all correspondence and documents between Josie Fuller and Patti Flunker regarding WOWSC operations, services, litigation fees, board operations, board members and rates from 2017 to present.

Ratepayers' objections included reasons for not responding to each of these requests,¹⁰ and each request was similarly included in WOWSC's motion to compel filed on September 30, 2020.¹¹ In Order No. 7, the ALJ granted WOWSC's motion as to WOWSC's RFI No. 1-9, which is necessarily connected to RFI 1-10.¹² Ratepayers' response simply admits to WOWSC's RFI No. 1-9, and provides the survey results and several anonymously authored comments as responsive documents.¹³ Ratepayers do not even address RFI No. 1-10.

Additionally, in Order No. 7 the ALJ granted WOWSC's motion as to WOWSC's RFI No. 1-14, stating that Ratepayers must respond but may withhold any privileged information subject to future challenge.¹⁴ In response, Ratepayers filed an amended privilege log identifying 17 items being withheld on the basis of being work product as defined in rule 192.5 of the Texas Rules of Civil Procedure.¹⁵ Ratepayers' later response to WOWSC's RFI No. 1-14 included five emails from 2020, stating the rest were being withheld as indicated in the amended privilege log.¹⁶

¹⁰ Ratepayers' Objections (Sept. 23, 2020).

¹¹ WOWSC's Motion to Compel First Requests for Information to Ratepayers (Sept. 30, 2020).

¹² See SOAH Order No. 7 (Feb. 2, 2021).

¹³ Ratepayers' Response to WOWSC's First Request for Information and SOAH Order No. 7 (Feb. 26, 2021).

¹⁴ SOAH Order No. 7 (Feb. 2, 2021).

¹⁵ Ratepayers Amended Privilege Log (Feb. 10, 2021).

¹⁶ Ratepayers' Response to WOWSC's First Request for Information and SOAH Order No. 7 (Feb. 26, 2021).

III. ARGUMENT

Under 16 Texas Administrative Code (TAC) § 22.141(a), parties may obtain discovery regarding any matter that is relevant to the subject matter of the proceeding pursuant to the Texas Rules of Civil Procedure (TRCP). TRCP § 193.1 provides that “when responding to written discovery, a party must make a complete response, based on all information reasonably available.” There is a particular emphasis on completeness, as pursuant to 16 TAC § 22.144(i), parties have a continuing duty to supplement responses if it acquires information that make its prior response incomplete or incorrect, even if the response was complete and correct when made. Furthermore, 16 TAC § 22.144(c)(2)(B) provides that each request for information shall be answered separately, and along with TRCP § 193.1 requires each response to be preceded by the request to which the answer pertains.

A. WOWSC RFI Nos. 1-9 and 1-10

WOWSC RFI No. 1-9 asked Ratepayers to admit or deny if they had issued a survey regarding WOWSC and then if the answer was admit, RFI No. 1-10 asked for all of the survey results along with the email addresses of each respondent. At this time, Ratepayers have only responded to RFI No. 1-9, admitting to issuing the survey and providing the results along with several anonymous comments. Ratepayers have not specifically addressed WOWSC’s RFI No. 1-10 whatsoever. The responsive information provided in response to RFI No. 1-9 is not sufficient, as not only does this response violate 16 TAC § 22.144(c)(2)(B), but more importantly it fails to give WOWSC a full response to the information requested. Accordingly, Ratepayers have failed to adequately respond to WOWSC’s request and the ALJ should compel Ratepayers to provide a full and separate response to RFI No. 1-10 as required by the TRCP and Commission rules.

B. WOWSC RFI No. 1-13

Ratepayers have failed to provide a response to WOWSC's RFI No. 1-13, providing only an objection in their original responses and simply leaving the request unaddressed in response to Order No. 7 filed on February 26, 2021.¹⁷ However, Order No. 7 did not grant Ratepayer's objection to this request.¹⁸ Pursuant to 16 TAC 22.144(c), a party must provide a full written response in answer to each separate request.¹⁹ Accordingly, the ALJ should compel Ratepayers to respond to WOWSC's RFI No. 1-13 as required by Commission rules.

C. WOWSC RFI No. 1-14

This request asked for all documents and correspondence between the two key Ratepayer representatives dating back over a four-year period. Ratepayers' answer consisted of just five emails, with the oldest dating only as far back as July 14, 2020. Even when including the documents referenced in the privilege log, Ratepayers have only identified one email from prior to 2020 in response to this request. Again, this is for a period spanning all the way back from 2017 to present. Given the history of this case, the related lawsuits, and emails WOWSC has in its own possession, the notion that Ratepayers' have provided a complete response and that there is only one piece of responsive information from 2019 and nothing prior is patently unbelievable. WOWSC understands that Ratepayers do not have the benefit of counsel, nevertheless, Order No. 7 expressly states, "though they are not lawyers, they are held by law to the same standard as other parties to this case" and "the ALJ does expect all parties to comply with the discovery rules."²⁰

¹⁷ Ratepayers' Objections (Sept. 23, 2020); Ratepayers' Answers to WOWSC's First Requests for Information (Sept. 28, 2020), and; Ratepayers' Response to WOWSC's First Request for Information and SOAH Order No. 7 (Feb. 26, 2021).

¹⁸ See SOAH Order No. 7 (Feb. 2, 2021).

¹⁹ 16 TAC §§22.144(c)(1) & (c)(2)(B).

²⁰ Order No. 7 (Feb. 2, 2021).

While the rate appeal itself may have only been filed in April of 2020, the test year for the rate increase was 2019, and WOWSC's strongly feels the driving force behind many of the increased expenses incurred that year would be revealed in looking through the requested correspondence. These documents are relevant to WOWSC's case and are things that could very easily be found through the simple use of an e-mail search function. To the extent Ratepayers have failed to provide said correspondence and documents dating back to 2017, they have failed to provide a complete response as required by Commission rules and the TRCP. Accordingly, the ALJs should compel Ratepayers to supplement their response with a complete set of responsive documents, and to otherwise comply with the requirements of the Commission rules and TRCP.

D. Ratepayers' Amended Privilege Log

While Ratepayers filed an updated privilege index on February 10, 2021 as required by Order No. 7, Ratepayers have not sufficiently demonstrated the documents included satisfy the requirements to be afforded protection under the referenced privileges.²¹ Ratepayers amended privilege log identifies 17 different items, claiming each is protected from discovery as work product under rule TRCP § 192.5. However, it appears that each of the referenced items are only between the Ratepayers themselves and do not include attorneys. Accordingly, these items are only "other work product," and are not afforded the same level of protection as "core work product" pursuant to TRCP §§ 192.5(b)(1) & (b)(2). WOWSC has a substantial need of this requested correspondence as it cannot be obtained via other methods and it would very likely help to demonstrate the necessity of the rate increase. Accordingly, the ALJ should find the items in

²¹ Ratepayers' Amended Privilege Log in Response to WOWSC's First Request for Information and SOAH Order No. 7 (February 10, 2021).

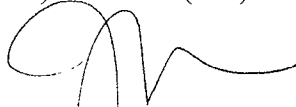
Ratepayer's amended privilege log are discoverable pursuant to TRCP § 192.5(b)(2) and compel Ratepayers' to provide these documents to WOWSC as requested.

IV. CONCLUSION AND PRAYER

For the foregoing reasons, WOWSC requests the Administrative Law Judge to compel Ratepayers to provide responses to WOWSC's RFIs in accordance with Commission rules and Order No. 7.

Respectfully submitted,

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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 March 4, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN