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STATE OFFICE OF ADMINISTRATIVE HEARINGS

RATEPAYERS APPEAL OF THE § **PUBLIC UTILITY COMMISSION**
DECISION BY WINDERMERE OAKS §
WATER SUPPLY CORPORATION TO § **OF TEXAS**
CHANGE WATER AND SEWER RATES §

ORDER

This Order addresses a ratepayer appeal of the February 11, 2020 decision of Windermere Oaks Water Supply Corporation affecting its retail water and sewer rates. The ratepayers filed the appeal under Texas Water Code (TWC) § 13.043(b). On June 29, 2023, the State Office of Administrative Hearings (SOAH) filed a proposal for decision recommending the Commission grant the appeal and fix the rates Windermere’s board should have fixed on February 11, 2020. The SOAH administrative law judges (ALJs) recommended that the Commission make the following determinations: (a) find the appealed rates are not in the public interest; (b) fix new rates using the rate classes, cost allocation, and rate design used to set the appealed rates and an annual revenue requirement of \$527,714; (c) set March 23, 2020 as the effective date for the new rates; (d) order Windermere to refund amounts overcharged under the appealed rates; and (e) allow Windermere to recover \$478,184.04 in rate-case expenses¹ incurred through January 31, 2023 through a 42-month surcharge.

The Commission agrees that the appealed rates are not in the public interest and must be replaced with new rates, but the Commission makes its public-interest determination on broader grounds than those discussed in the proposal for decision. The Commission further agrees that the effective date for the new rates should be March 23, 2020, that Windermere must refund amounts overcharged under the appealed rates, that no changes should be made to the rate classes, and that Windermere may recover \$478,184.04 in rate-case expenses incurred through January 31, 2023. However, the Commission disagrees with and rejects the SOAH ALJs’ recommendations regarding the cost allocation, rate design, and annual revenue requirement for the new rates and the duration of the recovery period for the rate-case expense surcharge. The Commission also

¹ In this Order, the term *rate-case expenses* refers to expenses incurred by Windermere in this proceeding under TWC § 13.043(e).

disagrees with and rejects the SOAH ALJs' interpretation and application of both the evidentiary requirements in TWC § 13.043(e) and the financial-integrity requirement under TWC § 13.043(j).

In accordance with these decisions, the Commission grants the ratepayers' appeal and fixes the rates Windermere's board of directors should have fixed on February 11, 2020. Additionally, in accordance with the Commission's order providing notice of an intent to sever,² the Commission severs all issues related to rate-case expenses incurred by Windermere after January 31, 2023 into Docket No. 56273.³ The Commission therefore adopts the proposal for decision in part and rejects it in part, including findings of fact and conclusions of law, to the extent provided in this Order.

1. Background

Windermere is a water supply and sewer service corporation governed by a five-member board of directors elected by its members.⁴ Each director is a member and customer of the corporation.⁵ As of January 31, 2021, Windermere provided retail water service to approximately 287 customers and retail sewer service to approximately 263 customers in the Windermere Oaks subdivision in Spicewood, Texas.⁶

In January 2020, the Texas Rural Water Association (TRWA) provided Windermere's board with a rate study based on Windermere's 2019 financial statements.⁷ TRWA's rate study recommended a total revenue requirement of \$576,192 that, as observed by the SOAH ALJs,⁸ was not offset by Windermere's non-rate revenues.⁹ TRWA also recommended that Windermere consolidate its water and sewer rates into one set of rates with a minimum monthly charge of \$174.59 and a single gallonage charge of \$3.55 per 1,000 gallons.¹⁰

² Order Providing Notice of Intent to Sever (Feb. 15, 2024).

³ *Rate-Case Expense Issues Severed from Docket No. 50788 (Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 56273 (pending).

⁴ Windermere Oaks Water Supply Corporation (WOWSC) Ex. 2, Direct Testimony of Joe Gimenez, III at 5:22-6:1.

⁵ WOWSC Ex. 2, Direct Testimony of Joe Gimenez, III, Attachment JG-2 at 6.

⁶ WOWSC Ex. 2, Direct Testimony of Joe Gimenez, III at 9:3-6.

⁷ WOWSC Ex. 7, Direct Testimony of Mike Nelson at 7:22-23.

⁸ Proposal for Decision at 37 (June 29, 2023).

⁹ See WOWSC Ex. 7, Attachment MN-2 at 1.

¹⁰ WOWSC Ex. 7, Attachment MN-2 at 2.

At its January 23, 2020 open meeting, Windermere's board approved a budget for 2020.¹¹ The budget showed that Windermere's 2020 revenues would fall \$174,515 short of the amount needed to cover its expenses for the year if the board did not increase rates.¹² The shortfall was attributed to newly budgeted legal expenses of \$250,000.¹³ On February 8, 2020, the board asked TRWA to prepare a new rate study that would allow Windermere to recover \$250,000 in legal expenses.¹⁴

On February 11, 2020, Windermere's board approved the appealed rates effective March 23, 2020. The board approved stepped water rates with a \$90.39 monthly minimum charge and sewer rates with a \$66.41 minimum monthly charge and a fixed gallonage charge of \$3.94 per 1,000 gallons consumed. The next day, on February 12, 2020, TRWA provided Windermere with the new rate study to recover \$250,000 in legal expenses.¹⁵ On April 27, 2020, Windermere's ratepayers filed a timely appeal of the February 11, 2020 decision to increase rates.

II. Discussion

The Commission may change findings of fact or conclusions of law in a proposal for decision if the Commission (a) "determines that the administrative law judge did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions or issued a finding of fact that is not supported by the preponderance of the evidence; or (b) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed."¹⁶ The Commission's changes to the proposal for decision, and the reasons and legal bases for the changes, are provided below.

¹¹ WOWSC Ex. 7 at 8:8-9, Attachment MN-4.

¹² WOWSC Ex. 7 at 8:8-13, Attachment MN-4.

¹³ WOWSC Ex. 7 at 9:6-7, Attachment MN-4.

¹⁴ Ratepayers Ex. 143 at 3.

¹⁵ WOWSC Ex. 2, Direct Testimony of Joe Gimenez III at 11:3-6, Attachment JG-7; *see* Ratepayers Ex. 143 at 3.

¹⁶ Tex. Gov't Code § 2003.049(g)(1)-(2).

A. Appellate Procedure

An appeal under TWC § 13.043 proceeds in two stages: first, the Commission conducts a public-interest inquiry of the appealed rates;¹⁷ then, if necessary, the Commission fixes the rates the governing body of the retail public utility should have fixed in the action from which the appeal was taken.¹⁸ The initial public-interest inquiry is mandatory.¹⁹ The Commission must find the appealed rates are against the public interest before fixing new rates. Rates fixed by the Commission must serve the public interest and preserve the financial integrity of the retail public utility.²⁰

B. Scope of Evidence that May Be Considered

Before addressing the public-interest inquiry itself, the Commission clarifies the scope of evidence that may be considered in this appeal by discussing the evidentiary requirements in TWC § 13.043(e) and the financial-integrity requirement in TWC § 13.043(j). Although the proposal for decision does not directly address the interaction between subsections (e) and (j) of TWC § 13.043, the ALJs appear to conclude that the financial-integrity requirement requires the Commission to preserve a retail public utility's financial integrity at the time of the Commission's order.²¹ In doing so, the ALJs considered information originating after February 11, 2020 that was not known to Windermere's board on February 11, 2020 to evaluate the board's rate-setting decision. The Commission disagrees with this analysis and, as described below, determines that a more appropriate statutory interpretation of TWC § 13.043 (e) and (j) requires the Commission to fix rates that will preserve a retail public utility's financial integrity at the time the appealed rates were set by its governing body.

¹⁷ TWC § 13.043(j).

¹⁸ TWC § 13.043(e).

¹⁹ See TWC § 13.043(j) ("In an appeal under this section, the utility commission shall ensure that every appealed rate is just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers."); see also, *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied) (interpreting TWC § 13.043(j) to expressly require the Commission to find that the appealed rates are not just and reasonable or are unreasonably preferential, prejudicial, or discriminatory before modifying rates so that they are just and reasonable).

²⁰ TWC § 13.043(j).

²¹ See Proposal for Decision at 47–50 (describing the SOAH ALJs' analysis and evaluation of Windermere's financial integrity).

1. TWC § 13.043(e) – Information that may be considered by the Commission

Under TWC § 13.043(e), the Commission may consider “only the information that was available to the governing body [of the retail public utility] at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings.”²² In a previous rate appeal, the Commission clarified that it may consider information originating after the date the governing body made its decision if the information shows, or tends to show, the information that was available to the governing body at the time the governing body set the appealed rates.²³

Windermere’s board of directors set the appealed rates at its February 11, 2020 board meeting.²⁴ The SOAH ALJs considered information originating after February 11, 2020 to determine the information available to the governing body at the time it set the appealed rates.²⁵ The Commission does not take issue with this use of the information. However, the SOAH ALJ also considered information originating after February 11, 2020 to evaluate the board’s decisions.²⁶ The Commission finds that using the information to evaluate the board’s decisions is inconsistent with the requirements of TWC § 13.043(e).

The Commission determines that in this appeal under TWC § 13.043(b), it can consider only information that was available to Windermere’s board on February 11, 2020 and evidence of reasonable rate-case expenses incurred by Windermere in this proceeding.²⁷ The Commission cannot consider information originating after February 11, 2020, unless it (1) shows or tends to show the information that was available to Windermere’s board on February 11, 2020; or (2) is information related to Windermere’s reasonable expenses incurred in this proceeding. Stated differently, the Commission determines that in this appeal, it may consider information originating after February 11, 2020 only to determine (1) whether the information was known to

²² TWC § 13.043(e).

²³ *Ratepayers’ Appeal of the Decision by Bear Creek Special Utility District to Change Rates*, Docket No. 49351, Order on Rehearing, Conclusion of Law No. 7A (Nov. 19, 2021).

²⁴ Direct Testimony of Joe Gimenez, III, WOWSC Ex. 2 at 11:3-6, Attachment JG-7.

²⁵ Proposal for Decision at 32-37.

²⁶ Proposal for Decision at 19-22.

²⁷ TWC § 13.043(e).

Windermere's board at the time it made the appealed decision or (2) the reasonable expenses incurred by Windermere in this proceeding. The Commission adds new conclusion of law 10A to reflect its decision on this issue.

2. TWC § 13.043(j) – The financial-integrity requirement

TWC § 13.043(j) requires the Commission to fix rates “using a methodology that preserves the financial integrity of the retail public utility.”²⁸ In two previous fully litigated appeals under TWC § 13.043(b), the Commission made clear that rates fixed by the Commission must preserve a retail public utility's financial integrity.²⁹ However, in previous rate appeals, the Commission has not directly addressed whether new rates must preserve a retail public utility's current financial integrity (i.e., its financial integrity at the time of the Commission's order) or its financial integrity at the time its governing body set the appealed rates. If new rates are required to preserve a retail public utility's current financial integrity, the Commission would have to consider information that originated after the time the appealed rates were set by the retail public utility's governing body. However, if new rates are required to preserve a retail public utility's financial integrity at the time the appealed rates were set by the retail public utility's governing body, the Commission would be able to stay within TWC § 13.043(e)'s evidentiary scope by considering only the information available to the governing body of a retail public utility at the time the governing body set the appealed rates.

Although the proposal for decision does not directly address the interaction between subsections (e) and (j) of TWC § 13.043, the SOAH ALJs appear to conclude that rates must be fixed at a level that will preserve a retail public utility's financial integrity at the time of the Commission's order.³⁰ Interpreting subsection (j) to require rates that preserve a retail public

²⁸ TWC § 13.043(j).

²⁹ Docket No. 49351, Order on Rehearing, Conclusion of Law No. 11 (“The rates fixed by this Order will preserve the financial integrity of Bear Creek SUD in compliance with TWC § 13.043(j).”); *Appeal of Water and Sewer Rates Charged by the Town of Woodloch CCN Nos. 12312 and 20141*, Docket No. 42862, Order, Conclusion of Law No. 13 (Mar. 7, 2016) (“When setting rates, the Commission must use a ‘methodology that preserves the financial integrity of the retail public utility.’ Tex. Water Code § 13.043(j). Considerations of financial integrity cannot, however, be treated as a trump card that overrides the utility's obligation to comply with the standard requirements for proving [its] water and sewer rates.”).

³⁰ See Proposal for Decision at 47–50 (describing the SOAH ALJs' analysis and evaluation of Windermere's financial integrity).

utility's current financial integrity would necessitate an evaluation of the retail public utility's current financial condition. However, this evaluation would require the Commission to consider information originating after the time the appealed rates were set for a purpose other than those listed in TWC § 13.043(e) (i.e., other than fixing rate-case expenses or determining the information available to the retail public utility's governing body at the time appealed rates were set). A more appropriate statutory interpretation of TWC § 13.043 (e) and (j) would require the Commission to fix rates that will preserve a retail public utility's financial integrity at the time the appealed rates were set by its governing body. This reading would harmonize both subsections, is administratively efficient, and best aligns with the Commission's previous decisions in rate appeals.³¹

The Commission therefore determines that the financial integrity requirement of TWC § 13.043(j) requires the Commission to fix rates that preserve Windermere's financial integrity at the time the appealed rates were set by Windermere's board of directors. The Commission adds new conclusion of law 12A to reflect this decision.

C. Public-Interest Determination

In an appeal under TWC § 13.043, the Commission must find the appealed rates are against the public interest before setting just and reasonable rates.³² In the initial public-interest inquiry, the Commission must ensure the appealed rates conform to all statutory rate standards identified in TWC § 13.043(j).³³ No standard takes precedence over another. The retail public utility bears the burden of proof to show the appealed rates are in the public interest.³⁴ Specifically, the Commission is statutorily obligated to ensure that every appealed rate is just and reasonable; is sufficient, equitable, and consistent in application to each class of customers; and is not

³¹ See, e.g., Docket No. 49351, Order on Rehearing at 7–8 (Nov. 19, 2021) (omitting consideration of information originating after the appealed rates were set when fixing rates that would preserve the financial integrity of Bear Creek Special Utility District).

³² See TWC § 13.043(j) ("In an appeal under this section, the utility commission shall ensure that every appealed rate is just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers."); see also *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied) (interpreting TWC § 13.043(j) to expressly require the Commission to make a finding that the appealed rates are unreasonably preferential, prejudicial, or discriminatory before modifying the rates so that they are just and reasonable.)

³³ *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 335 (Tex. App.—Austin 1994, writ denied).

³⁴ 16 Tex. Admin. Code (TAC) § 24.12.

unreasonably preferential, prejudicial, or discriminatory.³⁵ If the Commission determines either that the appealed rates do not conform to all statutory rate standards identified in TWC § 13.043(j) or that the retail public utility failed to carry its burden of proof to establish such conformance, the Commission must find the appealed rates are not in the public interest and must fix new rates.

The SOAH ALJs recommend that the Commission find the appealed rates are not in the public interest. Specifically, the SOAH ALJs recommend that the Commission find the appealed rates are not just and reasonable because Windermere failed to offset its revenue requirement for the appealed rates to account for late- and standby-fee revenues.³⁶ By failing to adjust its revenue requirement to account for non-rate revenues, Windermere set rates that collect more than its cost of service. Rates designed to collect materially more than a retail public utility's cost of service are not just and reasonable under TWC § 13.043(j).

The Commission agrees with the SOAH ALJs that the appealed rates are not in the public interest but makes its determination on broader grounds. Windermere failed to carry its burden of proof to show the appealed rates conform to all statutory rate standards under TWC § 13.043(j). Windermere failed to provide sufficient evidence to support the revenue requirement or rate design that it used to set the appealed rates. The Commission cannot determine if appealed rates are in the public interest if the retail public utility does not provide evidence that is sufficient for the Commission to determine the revenue requirement or rate design that were used to set the appealed rates.

The SOAH ALJs and Commission Staff put forward competing theories on how the appealed rates were set. The SOAH ALJs take the position that Windermere adopted TRWA's recommended rates without making any changes.³⁷ However, in its initial rate study, TRWA recommended that Windermere increase its monthly minimum charges to \$174.59 and implement a single \$3.55 gallonage charge.³⁸ Those recommendations do not comport with the rates set by Windermere. Commission Staff asserts that Windermere set its rates based on the 2020 budget

³⁵ TWC § 13.043(j).

³⁶ Proposal for Decision at 37.

³⁷ Proposal for Decision at 22–23.

³⁸ See WOWSC Ex. 7, Attachment MN-2.

approved by Windermere's board on January 23, 2020. Windermere stated in a discovery response that it compared TRWA's proposed revenue requirement to its 2020 budget, "identified a \$174,515 shortfall due to [an] increase in legal fees," and "adjusted the TRWA-recommended rates to account for this shortfall" by increasing the included legal fees to \$250,000.³⁹ Commission Staff was not, however, able to produce firm evidence that shows precisely how the board set the appealed rates.

Neither the SOAH ALJs, nor Commission Staff, nor Windermere have been able to explain the method used by Windermere's board to set the appealed rates. Because of this, the Commission is unable to reach basic findings regarding the appealed rates, including whether Windermere employed rate-design principles used to create TRWA's initial rate study or adopted elements of the rates provided in that study. Windermere had the burden of proof to show the appealed rates serve the public interest, and it did not file evidence explaining in clear terms how it set the appealed rates. The Commission cannot determine whether rates are in the public interest when there is insufficient evidence regarding the revenue requirement and rate design used to set the appealed rates. Accordingly, the Commission determines that the appealed rates are neither just and reasonable nor in the public interest under TWC § 13.043(j) and that it must fix new rates under TWC § 13.043(e).

The Commission adds a new section header entitled *Public-Interest Determination* after finding of fact 57. Under this new header, the Commission adds new findings of fact 57A through 57C to provide a comparison of the appealed rates and the rates proposed in TRWA's initial rate study and adds new findings of fact 57D through 57G to reflect the Commission's findings regarding the insufficiency of the evidence Windermere provided about the ratemaking process for the appealed rates. Further, the Commission modifies finding of fact 61, which was based on depreciation figures in TRWA's study, to instead reflect the amount of long-term debt in the revenue requirement approved by this Order. The Commission also adds new conclusions of law 5A and 6A and modifies conclusion of law 6 to better describe the statutory requirements of the initial inquiry in this appeal. The Commission also adds new conclusions of law 10B and 10C to reflect its decisions on this issue.

³⁹ Staff HOM 2 Ex. 24; Staff HOM 2 Ex. 3.

Additionally, the Commission deletes the second sentence of finding of fact 57 and deletes finding of fact 58 because the preponderance of the record evidence does not support a finding that Windermere used the cash-needs method to set the appealed rates. The Commission also deletes finding of fact 67 because the Commission cannot determine from the record evidence what revenue requirement was used to set the appealed rates, much less that Windermere failed to offset its revenue requirement to account for non-rate revenues. For the same reasons, the Commission deletes conclusion of law 17.

D. Fixing New Rates

Having determined that the appealed rates are not in the public interest, the Commission must fix the rates Windermere's board of directors should have fixed on February 11, 2020.⁴⁰

I. Net revenue requirement

The SOAH ALJs recommend that the Commission allow Windermere to recover a net revenue requirement of \$527,714 annually.⁴¹ For the reasons provided below, the Commission rejects the SOAH ALJs' recommended net revenue requirement and authorizes Windermere to recover a net revenue requirement of \$359,378, consisting of a net water-service revenue requirement of \$215,626.80 and a net sewer-service revenue requirement of \$143,751.20. The net revenue requirement includes \$3,000 in legal expenses; \$404,855 in other non-legal operating expenses; and an offset of negative \$48,477 to account for non-rate revenues. The Commission also authorizes Windermere to recover its outstanding 2019 legal debt of \$121,243.17 through a monthly surcharge collected over 12 months beginning from the first billing period after March 23, 2020.

a. Legal expenses

The SOAH ALJs recommend that the Commission allow Windermere to recover \$171,337 in its annual revenue requirement because that is the amount of legal expenses provided in TRWA's initial rate study.⁴² The SOAH ALJs found that this amount, although extraordinary, could not have been avoided and point to Windermere's success in defending a Texas Open

⁴⁰ TWC § 13.043(e); *City of Fort Worth*, 875 S.W.2d at 336.

⁴¹ Proposal for Decision at 37, Finding of Fact No. 68.

⁴² Proposal for Decision at 37; Direct Testimony of Mike Nelson, with attachments, including voluminous attachments, WOWSC Ex. 7, Attachment MN-2 at 1.

Meetings Act lawsuit, its increasing expenses in an *ultra vires* lawsuit, and its receipt of dozens of Public Information Act requests.⁴³ The SOAH ALJs assert it is appropriate to authorize the recovery of extraordinary legal expenses in the revenue requirement because the expenses were actually realized or could have been anticipated with reasonable certainty.⁴⁴ However, the SOAH ALJs reached this conclusion by relying on information not known to Windermere's board on February 11, 2020.⁴⁵ As discussed above, TWC § 13.043(e) expressly limits the Commission to considering information available to a retail public utility's governing board at the time it set the appealed rates.

A retail public utility's governing body must exercise great care to set base rates (i.e., monthly minimum charges and gallonage charges), surcharges, pass-through charges, and fees that collect only reasonable and necessary costs that have been actually realized or can be anticipated with reasonable certainty. Recurring expenses should be recovered through base rates. Large and extraordinary, non-recurring expenses should be deferred and recovered through surcharges over a reasonable period to ensure those expenses are recovered transparently without distorting a retail public utility's annual revenue requirement and base rates.

In 2019, Windermere's board pursued a legal strategy across multiple lawsuits that cost the corporation \$287,821.63 and left it with \$121,243.17 in unpaid legal expenses at the end of the year.⁴⁶ The duration, outcome, and expense of a lawsuit is rarely predictable. The Commission finds that these legal expenses, while actually realized, were extraordinary, non-recurring costs that should not have been included in the annual revenue requirement for recovery through base rates.

Windermere's 2020 budget shows that the board anticipated it would incur \$250,000 in legal expenses in 2020.⁴⁷ A retail public utility must be allowed to recover some amount annually

⁴³ Proposal for Decision at 30–31.

⁴⁴ Proposal for Decision at 31.

⁴⁵ Proposal for Decision at 33.

⁴⁶ WOWSC GL Detail – 2019, Ratepayers HOM-2 Ex. 74 at 59–61; *see* Direct Testimony of Mike Nelson with attachments, including voluminous attachments, WOWSC Ex. 7, Workpaper MN-1; Ratepayers HOM-2 Ex. 17, Attachment Ratepayers 3–19.

⁴⁷ WOWSC Ex. 7, Attachment MN-4.

to cover miscellaneous legal costs, such as contract negotiation, business certification, and other similar legal matters. However, Windermere's extraordinary litigation expenses and litigation-related expenses are distinguishable from general legal expenses. Notably, in 2017, before the onset of litigation between Windermere and its ratepayers, Windermere incurred less than \$3,000 in legal expenses.⁴⁸ Given this information, the Commission determines that it was reasonable for Windermere's board on February 11, 2020 to include \$3,000 in general legal expenses in its revenue requirement for recovery through base rates.

This does not mean that Windermere had no other recourse to recover its extraordinary litigation and litigation-related expenses. At the time it set the appealed rates, Windermere's board was aware of the outstanding 2019 legal debt. Under TWC § 13.043(j), the Commission is required to ensure Windermere's financial integrity at the time the appealed rates were set. To preserve Windermere's financial integrity as of February 11, 2020, Windermere must recover its outstanding legal debt from 2019. Because it would be inappropriate to include these extraordinary legal expenses in Windermere's base rates, the board should have allowed Windermere to recover its outstanding legal debt through a monthly surcharge collected from all customers over a 12-month period beginning from the first billing period after March 23, 2020, instead of including the extraordinary legal expenses in base rates. For administrative efficiency, extraordinary legal expenses incurred by Windermere in 2020 and onwards could also have been recovered through 12-month surcharges until the disputes were resolved.

Accordingly, the Commission rejects the SOAH ALJs' recommendation on legal expenses and authorizes Windermere to include \$3,000 in general legal expenses in its revenue requirement. The Commission further authorizes Windermere to collect its outstanding 2019 legal debt of \$121,243.17 through a surcharge to be collected from all customers over a 12-month period beginning from the first billing period after March 23, 2020. Because the assessment period has already passed, the full amount of the surcharge will be applied as an offset to refunds ordered by the Commission in this Order. The Commission adds new findings of fact 64A through 64F and 65A and modifies findings of fact 65 and 68 to reflect its decisions. Finding of fact 66 states that excluding legal expenses from Windermere's revenue requirement would not preserve its

⁴⁸ Direct Testimony of Joe Gimenez, III, WOWSC Ex. 2 at 17:9-14; Proposal for Decision at 36.

financial integrity. The Commission deletes finding of fact 66 because allowing Windermere to recover its outstanding legal expenses through a surcharge, rather than through base rates, will preserve its financial integrity at the time the appealed rates were set while avoiding the issues discussed above.

b. Other operating expenses, long-term debt, and non-rate revenues

The SOAH ALJs did not recommend a specific amount of other non-legal operating expenses. Instead, the SOAH ALJs recommended a net revenue requirement of \$527,714 that includes legal expenses of \$171,337 and a negative \$48,477 offset to account for non-rate revenues.⁴⁹ Commission Staff recommends that the Commission approve net other non-legal operating expenses of \$356,378. This amount includes a \$48,477 negative offset to account for non-rate revenues generated by Windermere's various fees. Commission Staff's recommendation is based on the costs in Windermere's 2019 profit and loss statement⁵⁰ and removes all non-recurring and legal expenses from the revenue requirement.

The Commission determines that Commission Staff's calculation of net other non-legal operating expenses in the amount of \$356,378 is accurate. Accordingly, the Commission authorizes Windermere to include net other non-legal operating expenses of \$356,378 in the revenue requirement. The Commission adds new findings of fact 65B and 65C to reflect its decisions.

2. Cost Allocation and Rate Design

a. Cost allocation

The SOAH ALJs recommended the Commission allocate 60% of Windermere's net annual revenue requirement to water service and 40% of the net annual revenue requirement to sewer service.⁵¹ The Commission agrees with this recommendation. However, the SOAH ALJs also recommended that the Commission find Windermere's existing rate design reasonable and not perform a reallocation of costs to the variable gallonage rates.⁵² This recommendation would keep

⁴⁹ Proposal for Decision at 37.

⁵⁰ See Direct Testimony of Mike Nelson, with attachments, including voluminous attachments, WOWSC Ex. 7, Attachment MN-3 at 1.

⁵¹ Proposal for Decision at 57.

⁵² Proposal for Decision at 57.

Windermere's volumetric rates the same and modify only its monthly minimum charges to account for changes to Windermere's net annual revenue requirement.⁵³ The Commission does not agree with that recommendation.

The SOAH ALJs' recommendation would result in a significant amount of Windermere's variable costs being recovered through its fixed rates and would decouple cost drivers from their appropriate rate components. This decoupling could result in over-recovery during periods of low consumption and under-recovery during periods of high consumption. It could also discourage water conservation. Instead, Windermere's fixed costs (e.g., employee salaries and permitting costs) should be allocated to fixed-rate components (i.e., monthly minimum rates), and its variable costs (e.g., treatment chemicals and waste disposal costs) should be allocated to variable-rate components (i.e., gallonage rates). Allocating fixed costs to fixed rates ensures that non-variable costs are covered regardless of customer demand; allocating variable costs to variable rates ensures that customers pay only for the variable costs required to meet their demand for utility service. Accordingly, the Commission rejects the SOAH ALJs' recommendation to keep Windermere's volumetric charges unchanged. The Commission modifies findings of fact 77 and 78 and adds new finding of fact 77A to reflect its decisions.

b. Rate classes

The SOAH ALJs recommend the Commission make no changes to the rate classes used to design the appealed rates.⁵⁴ The Commission adopts the SOAH ALJs' recommendation.

3. Refunds and surcharges

a. Refunds for over-recovery

The net annual revenue requirement approved by the Commission will collect less revenue than Windermere collected under the appealed rates. The Commission determines that Windermere must refund the difference to its ratepayers through monthly payments administered over a 45-month period.⁵⁵ The total amount of the refund must be offset by the 12-month surcharge for Windermere's outstanding 2019 legal debt. Implementation of the refund will be overseen in

⁵³ See Proposal for Decision at 64, Finding of Fact No. 77 ("The rate increase is applied to the base rate, rather than the volumetric rate, to provide equitable rates for all customers.").

⁵⁴ Proposal for Decision at 18-19.

⁵⁵ See TWC § 13.043(e) (authorizing the Commission to order refunds in an appeal under TWC § 13.043(b)).

the compliance docket for this proceeding, Docket No. 56272.⁵⁶ The Commission adds new findings of fact 78B and 78C to reflect its decisions.

b. Rate-case expenses

The SOAH ALJs recommend that the Commission authorize Windermere to recover \$478,184.04 for rate-case expenses incurred through January 31, 2023.⁵⁷ The SOAH ALJs recommend Windermere be allowed to recover the amount through a surcharge to be assessed over a 42-month period.⁵⁸ The Commission agrees with the SOAH ALJs on the amount of the surcharge but determines the surcharge should be assessed over 45 months to reduce the impact on Windermere's ratepayers. Implementation of the rate-case expense surcharge will be overseen in Docket No. 56272. Accordingly, the Commission modifies findings of fact 82 and 84 to reflect this decision.

On December 20, 2023, Windermere filed a motion to reopen the record and admit evidence related to rate-case expenses incurred after January 31, 2023. On February 15, 2024, the Commission filed an order providing notice of its intent to sever all issues related to rate-case expenses incurred by Windermere in this appeal after January 31, 2023 into a new docket in its final order in this appeal. The Commission found that severance would serve the interest of efficiency in this proceeding and that the ratepayers' ability to present their case and other parties' ability to respond to the ratepayers' case would not be unduly prejudiced by severance.⁵⁹ Accordingly, the Commission severs all issues related to rate-case expenses incurred by Windermere in this appeal after January 31, 2023 into a new docket.⁶⁰ The Commission adds new findings of fact 84A through 84C and new conclusions of law 21A through 21C to reflect this decision.

⁵⁶ *Compliance Docket for Docket No. 50788 (Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates)*, Docket No. 56272 (pending).

⁵⁷ Proposal for Decision at 56-57.

⁵⁸ Proposal for Decision at 57.

⁵⁹ 16 TAC § 22.34(b).

⁶⁰ *Rate-Case Expense Issues Severed from Docket No. 50788 (Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates)*, Docket No. 56273 (pending).

4. Rates

Because the Commission does not adopt the SOAH ALJs' recommended revenue requirement, the Commission directed Commission Staff to calculate new rates based on its decisions at its December 14, 2023 open meeting. At the meeting, the Commission also directed Commission Staff to determine the amount of any refund resulting from the difference between the new and appealed rates, offset by Windermere's outstanding 2019 legal expenses. Commission Staff filed new rate figures on January 25, 2024. These new rate figures include new water and sewer base-rate schedules, a calculation of the monthly refund amounts to be provided to Windermere's water and sewer customers, and a rate-case expense surcharge for rate-case expenses incurred through January 31, 2023.

The base rates prepared by Commission Staff are based on a total net revenue requirement of \$359,378. This total net revenue requirement includes \$357,973 in operating expenses, \$49,882 in long-term debt, and a negative offset of \$48,477 to account for non-rate revenues. Under the approved cost allocation of 60% to water and 40% to sewer, the net water revenue requirement is \$215,627, and the net sewer revenue requirement is \$163,142. The refund totals \$884,666.62 and will be provided to customers in monthly payments provided over 45 months. The rate-case expense surcharge for expenses incurred through January 31, 2023 is \$478,184.04 and will be collected through monthly payments from customers for a period not longer than 45 months.

Commission Staff's proposed rates are as follows:

WATER SERVICE RATES

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallonage Charge</u>
5/8" x 3/4"	<u>\$40.77</u> (includes 0 gallons)	<u>\$3.93</u> per 1,000 gallons from 0 to 2,000 gallons <u>\$4.97</u> per 1,000 gallons from 2,001 to 4,000 gallons <u>\$6.98</u> per 1,000 gallons from 4,001 to 8,000 gallons <u>\$9.76</u> per 1,000 gallons from 8,001 to 15,000 gallons <u>\$13.42</u> per 1,000 gallons from 15,001+ gallons

SEWER SERVICE RATES

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallonage Charge</u>
5/8" x 3/4"	<u>\$30.06</u> (includes 0 gallons)	<u>\$6.61</u> per 1,000 gallons

MONTHLY REFUNDS

Water

\$43.59 per month

Sewer

\$32.03 per month

RATE-CASE EXPENSE SURCHARGE

\$39.21 per month

The Commission determines that Commission Staff's proposed rates are just and reasonable; are not unreasonably preferential, prejudicial, or discriminatory; are sufficient, equitable, and consistent in application to each class of customers; and will preserve Windermere's financial integrity at the time the appealed rates were set.⁶¹

The Commission adopts Commission Staff's proposed base rates, monthly refunds, and rate-case expense surcharge. The base rates fixed by this Order are effective March 23, 2020, which is the original effective date of the appealed rates. The Commission adds new finding of fact 78A, modifies conclusions of law 13 through 15, and adds new conclusion of law 16A to reflect this decision. The Commission also modifies conclusions of law 13 through 15 for completeness. In addition, the Commission modifies conclusion of law 16 to specify that the rates fixed by this Order will preserve the financial integrity of Windermere at the time the appealed rates were set by Windermere's governing body.

E. Other Changes

In addition to the changes discussed above, the Commission makes the following changes to the proposal for decision.

The Commission modifies finding of fact 8 for accuracy to reflect the statutory language in TWC § 13.043(c) and 16 TAC § 24.103(b) and conclusion of law 8. The Commission also modifies finding of fact 29 for accuracy to correct the number of the relevant SOAH order. The Commission adds new finding of fact 28A to add an event omitted from the procedural history of this proceeding. Additionally, the Commission adds new findings of fact 52A through 52E and 53A to better describe the events leading up to and immediately following the setting of the appealed rates. The Commission modifies finding of fact 79 to update the date through which

⁶¹ TWC § 13.043(j).

Windermere has been incurring rate-case expenses and modifies finding of fact 80 to correct the amount of rate-case expenses requested by Windermere through January 31, 2023.⁶²

The Commission deletes finding of fact 11 because it incorrectly states that the ratepayers appealed only the fixed charges of the appealed rates. The ratepayers appealed both the fixed and variable charges of the appealed rates.⁶³ The Commission deletes finding of fact 60 because it is based on information unavailable to Windermere's board on February 11, 2020, and deletes finding of fact 81 because Commission Staff contested recovery of rate-case expenses in this proceeding.

The Commission modifies conclusion of law 3 for accuracy and completeness, conclusion of law 7 for consistency with statutory language and to apply 16 TAC § 24.12 to the facts of this proceeding, and conclusion of law 19 for accuracy and consistency with the statutory language in TWC § 13.043(e). To establish that notice of the hearings was provided in conformance with statutory requirements, the Commission adds new conclusion of law 4A for completeness.

The Commission also makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, citations, and readability.

III. Findings of Fact

The Commission adopts the following findings of fact.

General and Procedural Findings

1. Windermere Oaks Water Supply Corporation is a non-profit water supply corporation operating under chapter 67 of the Texas Water Code.
2. Windermere's public water system identification number is 0270035.
3. Windermere's water utility and sewer service certificates of convenience and necessity numbers are 12011 and 20662.
4. Windermere is managed by a member-elected board of directors. Each director must be a resident of the State of Texas, a member, and a customer of Windermere.

⁶² See WOWSC Ex. 28 at 4–5 (requesting recovery of \$478,184.04 in rate-case expenses incurred in this proceeding through January 31, 2023).

⁶³ Petition, Ratepayers Ex. 1 at 1–2.

5. Windermere has five board members, and the board of directors elects its officers.
6. Windermere's board of directors made its decision affecting water and sewer rates on February 11, 2020.
7. On April 27, 2020, certain Windermere ratepayers (the ratepayers) filed a petition under TWC § 13.043(b) to appeal Windermere's decision to change rates.
8. More than 10% of Windermere's ratepayers at the time of filing signed the petition to contest the rate increase.
9. The appealed rates became effective on March 23, 2020.
10. No party requested an effective date other than the original one proposed by Windermere.
11. DELETED.
12. In Order No. 3 filed on June 23, 2020, the Commission ALJ found the petition administratively complete.
13. On June 23, 2020, the Commission referred this appeal to SOAH, requesting the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for decision, if necessary.
14. In its referral order, the Commission required the ratepayers and Windermere to file a list of issues by July 1, 2020, and allowed Commission Staff to file its list of issues by that date if desired.
15. On July 16, 2020, the Commission filed a preliminary order including eleven issues to be addressed in the SOAH proceeding.
16. On March 10, 2021, Windermere filed the direct testimonies of George Burris, Joe Gimenez, III, Mike Nelson, and Jamie L. Mauldin.
17. On April 7, 2021, the ratepayers filed the direct testimonies of Danny Flunker, Patricia Flunker, Kathryn Allen, and Bill Stein.
18. On May 5, 2021, Commission Staff filed the direct testimonies of Maxine Gilford, Spencer English, Heidi Graham, and Stephen Mendoza.

19. On June 7, 2021, Windermere filed its rebuttal testimony of Mike Nelson, Joe Gimenez, III, and Grant Rabon.
20. On June 7, 2021, Windermere filed its first supplemental direct testimony of Jamie L. Mauldin.
21. On June 17, 2021, the ratepayers filed the errata testimonies of Danny Flunker, Patricia Flunker, and Bill Stein.
22. On November 19, 2021, Windermere filed its second supplemental direct testimony of Jamie L. Mauldin.
23. On November 23, 2021, Commission Staff filed its first errata to the direct testimony of Spencer English and its supplemental direct testimony of Maxine Gilford.
24. On November 29, 2021, Windermere filed its errata to the direct testimony of Mike Nelson.
25. On December 1, 2021, a three-day hearing on the merits was held via videoconference before SOAH ALJs Christiaan Siano and Daniel Wiseman and was attended by representatives for Windermere, the ratepayers, and Commission Staff.
26. Under SOAH Order No. 15, the parties filed initial post-hearing briefs on December 30, 2021, and reply briefs on January 25, 2022.
27. SOAH Order No. 15 directed Windermere to file an exhibit supporting rate-case expenses in its brief and a motion to reopen the record and admit the exhibit into evidence.
28. On December 30, 2021, Windermere filed a motion to reopen the record and admit evidence supporting rate-case expenses.
- 28A. On December 30, 2021, Windermere filed the third supplemental direct testimony of Jamie L. Mauldin.
29. In SOAH Order No. 18 filed on February 15, 2022, the SOAH ALJs re-opened the evidentiary record and admitted WOWSC exhibit 22 related to Windermere's rate-case expenses.
30. On March 31, 2022, the SOAH ALJs filed a proposal for decision recommending that the Commission dismiss the ratepayers' appeal and allow Windermere to recover \$345,227.03

- in rate-case expenses, plus any trailing expenses incurred after December 31, 2021, through a surcharge over 42 months.
31. On May 25, 2022, Windermere filed its fourth supplemental direct testimony of Jamie L. Mauldin.
 32. On June 15, 2022, the Commission ALJ issued Order No. 4 admitting the fourth supplemental direct testimony of Jamie L. Mauldin into evidence.
 33. On June 30, 2022, the Commission filed an order rejecting the proposal for decision and remanding the proceeding to SOAH to address all the standards prescribed under TWC § 13.043(j).
 34. On October 28, 2022, Windermere filed its supplemental testimony of Grant Rabon.
 35. On December 1, 2022, the ratepayers filed their supplemental direct testimonies of Robert Gaines and Kathryn Allen.
 36. On December 19, 2022, Windermere filed its first errata to the rebuttal testimony of Mike Nelson.
 37. In SOAH Order No. 27 filed on January 6, 2023, the SOAH ALJs granted Windermere's motion to strike the ratepayers' supplemental direct testimonies of Robert Gaines and Kathryn Allen.
 38. On January 10, 2023, Commission Staff filed its supplemental direct testimonies of Anna Givens and Stephen J. Mendoza.
 39. On January 10, 2023, Commission Staff filed a motion for Anna Givens to adopt the testimony of Maxine Gilford, which was granted at the hearing on the merits.
 40. On February 10, 2023, Windermere filed its supplemental rebuttal testimonies of Joe Gimenez, III and Mike Nelson.
 41. On February 10, 2023, Windermere filed its fifth supplemental direct testimony of Jamie L. Mauldin.
 42. On March 16, 2023, Windermere filed its errata to the fifth supplemental direct testimony of Jamie L. Mauldin.

43. On March 22, 2023, a one-day hearing on the merits was held via videoconference before SOAH ALJs Christiaan Siano and Daniel Wiseman and was attended by representatives for Windermere, the ratepayers, and Commission Staff.
44. Under SOAH Order No. 31, the parties filed initial post-hearing briefs on April 11, 2023, and reply briefs on May 2, 2023, on which date the record closed.

Evidentiary Record

45. At the first hearing on the merits, the SOAH ALJs admitted the following items into the evidentiary record:
 - a. Ratepayers Exhibit Nos. 2–33, 35–38, 40–44, 46–48, 50–53;
 - b. Staff Exhibit Nos. 1–5; and
 - c. WOWSC Exhibit Nos. 1–19.
46. At the second hearing on the merits, the SOAH ALJs admitted the following items into the evidentiary record:
 - a. Ratepayers HOM-2 Exhibit Nos. 74, 81, 119, 121, 128–136, 139–143, 144A, 144B, 145–155;
 - b. Staff HOM-2 Exhibit Nos. 1–58; and
 - c. WOWSC HOM-2 Exhibit Nos. 24–28, 30, 32–33.

Background

47. Windermere’s initial Articles of Incorporation were signed on November 9, 1995.
48. Windermere has one class of members, as defined by TWC § 13.002(11), and its purpose is to furnish water and sewer service to these members.
49. All Windermere board members are volunteers and receive no dividends, stock, bonuses, or other compensation.
50. Windermere’s bylaws allow it to pay up to \$5,000 annually to a board director for the provision of business services to the corporation.

51. Windermere has contracted for water management services with Water Management, Inc., owned by George Burris.
52. Windermere does not employ in-house legal counsel, but does use outside counsel for legal matters affecting the corporation.
- 52A. At the end of 2019, Windermere had \$121,243.17 in outstanding legal expenses.
- 52B. In January 2020, the Texas Rural Water Association (TRWA) provided a rate study based on Windermere's 2019 financial statements to Windermere's board (the initial rate study).
- 52C. At its January 23, 2020 open meeting, Windermere's board approved a budget for 2020.
- 52D. The 2020 budget showed Windermere's revenue would fall \$174,515 short of the amount needed to cover its expenses in 2020 if rates were not increased to account for newly budgeted legal expenses of \$250,000.
- 52E. On February 8, 2020, Windermere's board asked TRWA to prepare a new rate study that would allow Windermere to recover \$250,000 in legal expenses.
53. At the Windermere board meeting on February 11, 2020, the board of directors approved a rate increase in consultation with the TRWA recommendations.
- 53A. On February 12, 2020, TRWA provided Windermere with a new rate study that would allow Windermere to recover \$250,000 in legal expenses.
54. At the time of the decision to increase rates, Windermere had 271 water connections and 245 sewer connections.
55. Windermere considered its mounting legal expenses, required maintenance and operation costs, and necessary repairs to the system in its decision to raise rates.
56. Prior to the rate increase, Windermere had a minimum water service availability charge of \$50.95 and a minimum sewer service availability charge of \$40.12.
57. The rate increase was made only to the base rates, resulting in a water-service base charge of \$90.39 per month and a sewer-service base charge of \$66.41 per month.

Public-Interest Determination

57A. TRWA's initial rate study recommended Windermere adopt rates designed to recover a net annual revenue requirement of \$576,192.

57B. In its initial rate study, TRWA recommended the following rates.

UTILITY SERVICE (Consolidated Water and Sewer Service Rates)

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallage Charge</u>
5/8" x 3/4"	<u>\$174.59</u> (Includes 0 gallons)	<u>\$3.55</u> per 1,000 gallons from 0 to 2,000 gallons

57C. The appealed rates are as follows:

WATER SERVICE

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallage Charge</u>
5/8" x 3/4"	<u>\$90.39</u> (Includes 0 gallons)	<u>\$3.55</u> per 1,000 gallons from 0 to 2,000 gallons <u>\$6.50</u> per 1,000 gallons from 2,001 to 4,000 gallons <u>\$9.75</u> per 1,000 gallons from 4,001 to 8,000 gallons <u>\$13.00</u> per 1,000 gallons from 8,001 to 15,000 gallons <u>\$15.00</u> per 1,000 gallons from 15,001+ gallons

SEWER SERVICE

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallage Charge</u>
5/8" x 3/4"	<u>\$66.41</u> (Includes 0 gallons)	<u>\$3.94</u> per 1,000 gallons

57D. Windermere did not provide the revenue requirement and rate design used to set the appealed rates.

57E. There is insufficient evidence to determine the revenue requirement and rate design used to set the appealed rates.

57F. There is insufficient evidence to determine that the appealed rates are just and reasonable; not unreasonably preferential, prejudicial, or discriminatory; and sufficient, equitable, and consistent in application to each class of customers.

57G. It is appropriate for the Commission to fix the rates Windermere's board should have fixed at Windermere's February 11, 2020 open meeting.

Revenue Requirement

58. DELETED.

59. TRWA used the cash-needs method in its analysis.
60. DELETED.
61. The inclusion of long-term debt totaling \$49,882 in Windermere's revenue requirement is reasonable.
62. The amount paid to Water Management, Inc. for operations is reasonable.
63. The amount paid to Water Management, Inc. paid to Corix for subcontracting operations is reasonable.
64. The total Windermere budgeted amount of \$14,160 for insurance is reasonable.
- 64A. It is not appropriate for large and extraordinary, non-recurring expenses to be recovered through a retail public utility's revenue requirement.
- 64B. In 2019, Windermere's board pursued a legal strategy that cost Windermere \$287,821.63 and left the corporation with \$121,243.17 in outstanding legal expenses at the end of 2019.
- 64C. It is reasonable for a retail public utility to recover some amount annually through base rates to cover general legal costs, such as contract negotiation, business certification, and similar legal matters.
- 64D. Windermere's outstanding legal expenses of \$121,243.17 are distinguishable from general legal costs.
- 64E. Windermere's outstanding legal expenses of \$121,243.17, while actually realized, were extraordinary, non-recurring expenses, and it was not appropriate to have included those expenses in Windermere's revenue requirement for recovery through base rates.
- 64F. In 2017, before the onset of the litigation between Windermere and its ratepayers, Windermere incurred less than \$3,000 in legal expenses.
65. The inclusion of \$3,000 in legal expenses in Windermere's revenue requirement is reasonable.
- 65A. It is reasonable for Windermere to recover its outstanding legal expenses of \$121,243.17 through a monthly surcharge collected from all customers over a 12-month period beginning from the first billing period after March 23, 2020.

- 65B. The inclusion of \$404,855 in other non-legal operating expenses in Windermere's revenue requirement is reasonable.
- 65C. It is reasonable to apply a \$48,477 offset to the revenue requirement to account for non-rate revenues recovered by Windermere.
66. DELETED.
67. DELETED.
68. A net revenue requirement of \$359,378 is reasonable.

Rate Design

69. Windermere provides water and sewer service.
70. Windermere serves no meter size except for the 5/8" x 3/4" meter.
71. Water and sewer service each have a single base rate applicable to a single meter size.
72. Windermere has one class of customers.
73. Windermere charges all customers the same rates.
74. Because Windermere's customers reside in substantially similar locations, receive the same service, and impose similar costs on Windermere, the customers have similar characteristics.
75. It is appropriate to charge all Windermere customers the same rates.
76. Windermere has approximately 75 active connections for service at airport hangars, where there is limited use of water.
77. The rate increase is applied to Windermere's fixed and variable rates to provide equitable rates for all customers.
- 77A. It is appropriate to assign Windermere's fixed costs to its fixed-rate components and Windermere's variable costs to its variable-rate components.
78. The revenue requirement of \$359,378 should be allocated 60%, or \$215,626.80, to water service and 40%, or \$143,751.20, to sewer service.

78A. It is appropriate for the Commission to fix the following rates, effective March 23, 2020, which Windermere's board of directors should have fixed on February 11, 2020.

WATER SERVICE

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallage Charge</u>
5/8" x 3/4"	<u>\$40.77</u> (Includes 0 gallons)	<u>\$3.93</u> per 1,000 gallons from 0 to 2,000 gallons <u>\$4.97</u> per 1,000 gallons from 2,001 to 4,000 gallons <u>\$6.98</u> per 1,000 gallons from 4,001 to 8,000 gallons <u>\$9.76</u> per 1,000 gallons from 8,001 to 15,000 gallons <u>\$13.42</u> per 1,000 gallons from 15,001+ gallons

SEWER SERVICE

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallage Charge</u>
5/8" x 3/4"	<u>\$30.06</u> (Includes 0 gallons)	<u>\$6.61</u> per 1,000 gallons

78B. It is appropriate for Windermere to issue and collect on a monthly basis the following refunds over a period of 45 consecutive months or until a net amount of \$884,666.62 has been refunded, whichever occurs first.

MONTHLY REFUNDS

<u>Water</u>	<u>Sewer</u>
<u>\$43.59</u> per month	<u>\$32.03</u> per month

78C. Because the assessment period for Windermere's surcharge for outstanding legal expenses has already passed, it is appropriate to apply the full amount of the surcharge as an offset to the refund.

Rate-Case Expenses

- 79. Windermere incurred rate-case expenses since the initiation of this proceeding, beginning on April 27, 2020, through the date of this Order.
- 80. The rate-case expenses of \$478,184.04 incurred from April 27, 2020, through January 31, 2023 are reasonable.
- 81. DELETED.
- 82. A 45-month recovery period for rate-case expenses is reasonable.
- 83. It is appropriate for Windermere to recover the rate-case expenses through a surcharge.

84. The surcharge should be calculated based on recovering the approved rate-case expenses over a 45-month recovery period, and should continue until the earlier of 45 months after the rider takes effect or the approved amount is fully recovered.
- 84A. On December 20, 2023, Windermere filed a motion to reopen the record and admit evidence related to rate-case expenses incurred after January 31, 2023.
- 84B. On February 15, 2024, the Commission filed an order providing notice of its intent to sever all issues related to rate-case expenses incurred by Windermere in this appeal after January 31, 2023 into a new docket.
- 84C. Severance of all issues related to rate-case expenses incurred by Windermere after January 31, 2023 serves the interest of efficiency and will not unduly prejudice the ratepayers' ability to present their case or the other parties' ability to respond to the ratepayers' case.

IV. Conclusions of Law

The Commission adopts the following conclusions of law.

1. Windermere is a nonprofit water supply corporation under TWC § 13.002(24).
2. Windermere is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(31).
3. The Commission has authority over this proceeding under TWC § 13.043(b)(1) and 16 TAC § 24.101.
4. SOAH has jurisdiction over this proceeding under Texas Government Code § 2003.049.
- 4A. Notice of the hearings was provided in accordance with Texas Government Code §§ 2001.051 through 2001.052 and 16 TAC § 22.55.
5. This docket was processed in accordance with the requirements of the TWC, the Administrative Procedure Act,⁶⁴ and Commission rules.

⁶⁴ Administrative Procedure Act, Tex. Gov't Code §§ 2001.001–903.

- 5A. In an appeal under TWC § 13.043, the initial inquiry of the Commission is whether the appealed rates conform to the statutory rate standards identified in TWC § 13.043(j). *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).
6. The initial inquiry under TWC § 13.043(j) requires the Commission to determine whether the appealed rates are just and reasonable; not unreasonably preferential, prejudicial, or discriminatory; and sufficient, equitable, and consistent in application to each class of customers.
- 6A. The Commission may fix rates under TWC § 13.043(b) only if it determines in its initial inquiry either that the appealed rates do not conform to all statutory rate standards identified in TWC § 13.043(j) or that the retail public utility failed to carry its burden of proof to establish such conformance. *City of Fort Worth*, 875 S.W.2d at 336.
7. Under 16 TAC § 24.12, Windermere bears the burden of proof to establish that the appealed rates are just and reasonable.
8. The ratepayers' petition was timely filed under TWC § 13.043(c) and 16 TAC § 24.101(b) and meets the 10% ratepayer-signature threshold established under TWC § 13.043(c) and 16 TAC § 24.103(b).
9. The Commission hears the appeal de novo.
10. Under TWC § 13.043(e), the Commission may in an appeal brought under TWC § 13.043(b) consider the information that was available to the governing body of the retail public utility at the time the governing body set the rates appealed; any information that shows, or tends to show, the information that was available to the governing body at the time it set the rates appealed; and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings.
- 10A. In an appeal under TWC § 13.043(b), the Commission may not consider information originating after the date the governing body set the appealed rates for any purpose other than determining (a) the information known to the governing body at the time it set the

- appealed rates and (b) the reasonable expenses incurred by the retail public utility in the appeal proceedings under TWC § 13.043(e).
- 10B. Windermere failed to carry its burden of proof to establish that the appealed rates are just and reasonable.
- 10C. Windermere provided insufficient evidence for the Commission to determine that the appealed rates are just and reasonable; not unreasonably preferential, prejudicial, and discriminatory; and sufficient, equitable, and consistent in application to each class of customers under TWC § 13.043(j).
11. Under TWC § 13.043(e), the Commission shall fix the rates that the governing body should have fixed at the time it made its decision.
12. Under TWC § 13.043(j), in an appeal under TWC § 13.043, the Commission must use a methodology that preserves the financial integrity of the retail public utility.
- 12A. The financial-integrity requirement of TWC § 13.043(j) requires the Commission to fix rates that preserve the financial integrity of the retail public utility at the time the appealed rates were set by the retail public utility's governing body.
13. The rates fixed by this Order are just and reasonable under TWC § 13.043(j).
14. The rates fixed by this Order are not unreasonably preferential, prejudicial, or discriminatory under TWC § 13.043(j).
15. The rates fixed by this Order are sufficient, equitable, and consistent in application to each class of customers under TWC § 13.043(j).
16. The rates fixed by this Order will preserve the financial integrity of Windermere at the time the appealed rates were set by its governing body in compliance with TWC § 13.043(j).
- 16A. Under TWC § 13.043(e), the base rates fixed by this Order are effective as of the original effective date of the appealed rates, March 23, 2020.
17. DELETED.
18. Under TWC § 13.043(e), the Commission may allow the recovery of Windermere's reasonable expenses incurred the appeal proceedings.

19. Under TWC § 13.043(e), Windermere may recover its reasonable rate-case expenses through a surcharge.
20. Under TWC § 13.043(e), the Commission may allow Windermere to impose a surcharge to recover lost revenues and rate-case expenses.
21. Under TWC § 13.043(e), the Commission may order refunds of over-collected revenues.
- 21A. The Commission provided prior notice of its intent to sever all issues related to rate-case expenses incurred by Windermere after January 31, 2023 in compliance with 16 TAC § 22.34(b).
- 21B. Severance of all issues related to rate-case expenses incurred by Windermere after January 31, 2023 serves the interest of efficiency in this proceeding under 16 TAC § 22.34(b).
- 21C. Severance of all issues related to rate-case expenses incurred by Windermere after January 31, 2023 will not unduly prejudice the ratepayers' ability to present their case or the other parties' ability to respond to the ratepayers' case in compliance with 16 TAC § 22.34(b).

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission adopts the proposal for decision in part and rejects it in part, including findings of fact and conclusions of law, to the extent provided in this Order.
2. The Commission fixes the following monthly minimum rates and gallonage rates effective March 23, 2020:

WATER SERVICE

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallonage Charge</u>
5/8" x 3/4"	<u>\$40.77</u> (Includes 0 gallons)	<u>\$3.93</u> per 1,000 gallons from 0 to 2,000 gallons <u>\$4.97</u> per 1,000 gallons from 2,001 to 4,000 gallons <u>\$6.98</u> per 1,000 gallons from 4,001 to 8,000 gallons <u>\$9.76</u> per 1,000 gallons from 8,001 to 15,000 gallons <u>\$13.42</u> per 1,000 gallons from 15,001+ gallons

SEWER SERVICE

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallonge Charge</u>
5/8" x 3/4"	<u>\$30.06</u> (Includes 0 gallons)	<u>\$6.61</u> per 1,000 gallons

3. Beginning with the next billing cycle after the date of this Order, Windermere must on a monthly basis issue the following refunds over a period of 45 months or until a net amount of \$884,666.62 has been refunded, whichever occurs first:

MONTHLY REFUNDS

<u>Water</u>	<u>Sewer</u>
<u>\$43.59</u> per month	<u>\$32.03</u> per month

4. The Commission approves a monthly surcharge of \$39.21 per connection to recover the \$478,184.04 in rate-case expenses Windermere incurred in this proceeding through January 31, 2023. Beginning with the next billing cycle after the date of this Order, Windermere may collect the monthly surcharge for 45 months or until \$478,184.04 is collected, whichever occurs first.
5. The refunds and rate-case expense surcharge authorized by this Order must be implemented in Docket No. 56272, *Compliance Docket for Docket No. 50788 (Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates)*.
6. The Commission severs all issues related to rate-case expenses incurred by Windermere after January 31, 2023 into Docket No. 56273, *Rate-Case Expense Issues Severed from Docket No. 50788 (Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates)*.
7. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

Signed at Austin, Texas the 21st day of March 2024.

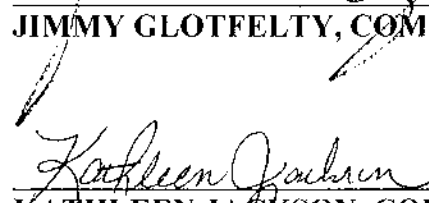
PUBLIC UTILITY COMMISSION OF TEXAS



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER