



# Windermere Oaks Water Supply Corporation

Committed to Providing Clean, Safe Water for All Our Residents

Dear Members,

I would like to share the status of a couple of recent events that are excellent news for the WOWSC and its Members.

- 1) First, the Allied World Insurance Company (**Allied Insurance**) appeal of the prior WOWSC victory was denied, and Allied Insurance subsequently agreed to pay for all past and future legal expenses for the Board members named in the Dial, Ffrench, Sorgen lawsuit against the WOWSC and its current and past directors, as well as any future legal expenses relating to the defense of the WOWSC in that lawsuit.
- 2) Additionally, in the Ratepayers Appeal of the 2020 WOWSC rate increase (caused by the Allied Insurance's refusal to pay), after hearing the case presented by all parties, the Administrative Law Judges (**ALJs**) issued a Proposal for Decision (**PFD**) to the Public Utility Commission of Texas (**PUC**).

In short, these outcomes (1) demonstrate the reasonableness of the WOWSC board's decisions in each of the several legal proceedings involving the WOWSC over the past 7-8 years; and (2) inch the WOWSC closer to a final resolution in the Ratepayers Appeal, which will *hopefully* translate to a future rate-reduction. With the WOWSC's victory against Allied Insurance, the WOWSC's legal debts will be reduced substantially. Now, the only thing standing in the way to reduced rates is the WOWSC's debts associated with the Ratepayers Appeal, which continue to accrue while the case runs its course. WE CAN STOP THE BLEEDING NOW IF THE RATEPAYER REPRESENTATIVES AGREE TO SETTLE WITH THE WOWSC.

In the Allied Insurance case, the WOWSC received a check for \$678,812.05, broken down as follows:

Category	Amount
Defense for Directors	\$411,616.43
Defense for WOWSC	\$5,000.00
Interest/Penalty	\$262,195.62
<b>Total</b>	<b>\$678,812.05</b>

The interest/penalty was significant because of the hardship Allied Insurance placed on WOWSC water customers in denying payment of what the court found to be covered legal expenses.

Regarding the PUC Rate Appeal, I strongly suggest that you read the ALJ's PFD. This can be found at:

[https://interchange.puc.texas.gov/Documents/50788\\_367\\_1307263.PDF](https://interchange.puc.texas.gov/Documents/50788_367_1307263.PDF)

The ALJs are independent fact finders and legal experts in ratepayer cases, employed by the State of Texas, who routinely hear utility-related cases at the State Office of Administrative Hearings. The ALJs reviewed testimony from the Ratepayer representatives who brought this rate appeal, the PUC staff, the former WOWSC Board members Joe Gimenez and Mike Nelson, and expert witnesses.

Some key comments of these judges quoted directly from the PFD follow:

- “The primary issue in this appeal is whether Windermere’s rates should include certain outside legal expenses relating to three lawsuits stemming from a 2015-2016 sale of corporate land to a then-board member, Dana Martin. To finance the legal expenses while maintaining normal operations, Windermere included \$171,337 in base rates.” *{This was the additional contested revenue needed to cover the deficit caused by growing legal expenses and the primary cause for the rate increase. With the current membership count this represents \$52.68/member/month of the rate increase.}*
- “On remand [of the first PFD in 2022 back to the ALJs, PUC] Staff witness Givens recommended removing an additional \$48,478 to offset Windermere’s revenue requirement with other revenues from late and standby fees, which Windermere failed to do.

...

The ALJs therefore find that Windermere’s rates are not just and reasonable due to its failure to account for other revenues and that its revenue requirement should be adjusted accordingly.” (Note that the ALJs only found the rates were unreasonable with regard to the narrow issue of offsetting the WOWSC’s rates with late and standby fees, but as noted below, the ALJs praised WOWSC’s reasonableness as it navigated defending itself in several expensive legal proceedings).

- “[The following subsequent events] shed light on the reasonableness of the [WOWSC] board’s February 2011, 2020 decision to increase rates... In the Double F Hangar Lawsuit, in May 2021, the court granted summary judgment and dismissed plaintiffs’ claims against seven of the eight directors. With respect to the one remaining former director, Ms. Martin, the jury found she had breached her fiduciary duty to Windermere by engaging in the land transaction, and had acquired the property for \$70,000 less than fair market value.

...

In comparison, plaintiffs spent over \$400,000 in legal fees.” *(WOWSC was dragged into this lawsuit because the board of directors chose to not join the plaintiffs in pursuing their claims, which ultimately resulted in a judgment for only \$70,000. A good decision by the board!)*

- “Additionally, the evidence does not support Staff’s assertion that Windermere was spending ‘without limit or check.’ Although subsequent events show that one former board member—Ms. Martin—breached her fiduciary duty, for that wrong she stands to pay Windermere \$35,000 for the land sale and \$50,000 as reimbursement for legal fees. The evidence does not support that Windermere or any other directors were liable. The ALJs find that, as Windermere argues, the board did what it needed to do to keep the utility afloat in the face of ever-increasing legal fees, reflecting reasonable management of a water and sewer utility.”
- “Subsequent events bear out Windermere's legal strategies at the time it made its rate decision. Windermere prevailed in persuading the Attorney General to change his opinion in the Paxton Lawsuit, prevailed with respect to all but one director in the Double F Hangar Lawsuit, and also prevailed in its suit against Allied World to recover legal defense coverage. Although the outcomes of these suits could not be known at the time the board made its rate decision, they shed light on the reasonableness of Windermere's assessment of its legal position. These outcomes show that Windermere was not maintaining untenable or frivolous positions.”
- “Given its ability to change rates at any time, the motivation that a ratepayer-controlled board would have in reducing rates as soon as possible, and the certainty with which it needed to

ensure recovery, the ALJs find that Windermere's fixed versus variable allocation was reasonable. Accordingly, the ALJs recommend that the Commission allow the corporation to continue collecting rates in accordance with the rate design effective March 2020."

- "[Regarding expenses necessary to litigate the rate appeal] Given the length, complexity, and novel issues presented by this case, the ALJs find \$478,184.04 in rate case expenses to be reasonable and comparable to the rate case expenses awarded in other, arguably less complex, rate appeals. The ALJs therefore recommend that Windermere be authorized to recover \$478,184.04. Because this amount does not account for expenses incurred after January 31, 2023, the ALJs recommend that Windermere file an affidavit or supplemental testimony closer in time to the Commission's consideration of this matter reflecting the current total, or allow Windermere to recovery trailing rate case expenses through a compliance docket."
- "With 271 connections, the currently supported amount of rate case expenses...spread over 42 months, will be approximately \$42 per month per customer...Additionally, Ms. Gilford recommended recovering the rate case expenses through a surcharge that would terminate once Windermere collects the amount awarded. The ALJs agree and recommend that the rate case expenses be recovered through a surcharge until the earlier of 42 months after the surcharge takes effect or full recovery of the final amount awarded."

What's next with the Rate case? The PUC staff, the Ratepayers representatives, and WOWSC can challenge the **PFD's** findings and each other's challenges to those findings. This will cause **more** legal expenses!

To avoid any further rate case expenses, the WOWSC will attempt to settle this case with the Ratepayers and PUC Staff **NOW!**

Let the Ratepayers representatives and the WOWSC Board know how **YOU**, the WOWSC membership, would like to proceed.

A final note on the absurdity of all of this, in light of the insurance case settlement, if the rate change had not been challenged in the first place, and after paying **ALL** legal bills, we would have roughly an additional **\$258,000** in the bank and would be currently working on reducing the rates.

Sincerely,

Richard Schaefer  
WOWSC Board President



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