

SOAH DOCKET NO. 473-20-4071.WS

PUC DOCKET NO. 50788

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

HEARING ON THE MERITS

December 1, 2021

(Via Zoom Videoconference)

BE IT REMEMBERED THAT at 9:05 a.m., on
Wednesday, the 1st day of December 2021, the
above-entitled matter came on for hearing at the State
Office of Administrative Hearings, William P. Clements,
Jr. Building, 300 West 15th Street, Austin, Texas,
before CHRISTIAAN SIANO and DANIEL WISEMAN,
Administrative Law Judges, and the following proceedings
were reported by Mary Carol Griffin and Janis Simon,
Certified Shorthand Reporters.

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P R O C E E D I N G S

WEDNESDAY, DECEMBER 1 2021

(9:05 a.m.)

(Exhibit Windermere Nos. 1 through 10
marked)

(Exhibit Ratepayers Nos. 1 through 27
marked)

(Exhibit Staff Nos. 1 through 5 marked)

9 JUDGE SIANO: All right. I call to order
10 SOAH Docket No. 473 dash -- let's see. Ms. Griffin are
11 you recording this?

12 THE REPORTER: I'm not.

13 JUDGE WISEMAN: Judge Siano, I started the
14 Zoom recording.

15 JUDGE SIANO: Okay. So we have a court
16 reporter, and so we'll just rely on the court reporter
17 to transcribe this hearing and that will be the
18 recording of this process.

19 JUDGE WISEMAN: You don't want the Zoom?

20 JUDGE SIANO: No. Okay. So we've got
21 some more attendees here.

22 All right. I'm sorry. I call to order
23 SOAH Docket No. 473-20-4071. That's PUC Docket 50788.
24 This is styled the Ratepayers Appeal of the Decision by
25 Windermere Oaks Water Supply Corporation to Change Water

1 and Sewer Rates.

2 My name is Christiaan Siano, and I am
3 presiding here today with Judge Daniel Wiseman.

4 And today's date is December 1st, 2021.
5 The time is approximately 9:00 a.m.

6 And we'll begin by taking appearances of
7 the Parties and we'll start with the Ratepayer.

8 MS. ALLEN: Good morning. Kathryn Allen
9 here on behalf of the Ratepayers.

10 JUDGE SIANO: Thank you. And for the
11 Water Supply Corporation?

12 (No response)

13 JUDGE SIANO: All right. Is anyone here
14 on behalf of the Water Supply Corporation?

15 MR. BURRIS: George Burriss, General
16 Manager of WOWSC.

17 JUDGE SIANO: Thank you. And what I'm
18 looking for is your legal representatives.

19 MS. MAULDIN: Your Honor, can you hear us?

20 MS. ALLEN: Yes. Thank you. There you
21 are. Now, I can.

22 MS. MAULDIN: Sorry. We were having some
23 technical difficulties this morning.

24 This is Jamie Mauldin and Robyn Katz on
25 behalf of Windermere Oaks Water Supply Corp.

1 JUDGE SIANO: Thank you.

2 MS. MAULDIN: And with me today are all of
3 the witnesses who presented testimony.

4 JUDGE SIANO: Very good. Thank you. On
5 behalf of Commission Staff.

6 MS. LANDER: Good morning. This is
7 Merritt Lander and Rachelle Robles for Commission Staff.
8 And all of our witnesses who submitted testimony, aside
9 from Heidi Graham, are here as well.

10 JUDGE SIANO: All right. Thank you.

11 So the Water Supply Corporation filed
12 objections to the witness and exhibit list. The
13 Ratepayers filed a response.

14 As I see it, I can take argument on that
15 now. But as I see it, those objections are premature
16 and you can raise those at the appropriate time when the
17 exhibit is offered.

18 But if there was anything more to that,
19 then I can hear that now, Ms. Mauldin.

20 MS. MAULDIN: Your Honor, we're fine with
21 waiting on that.

22 JUDGE SIANO: Okay. Both Judge Wiseman
23 and I have reviewed the prefiled testimony, and we are
24 familiar with this case. But if there are any opening
25 statements, we'll hear those now.

1 Ms. Mauldin.

2 MS. MAULDIN: Yes, thank you, Your Honor,
3 Windermere Oaks would like to present a brief opening
4 statement at this time.

5 JUDGE SIANO: Go ahead.

6 OPENING STATEMENT ON BEHALF OF
7 WINDERMERE OAKS WATER SUPPLY CORPORATION

8 MS. MAULDIN: Okay. Thank you, and good
9 morning, Your Honor.

10 The Texas Water Code and the Public
11 Utility Commission's Substantive Rules are very clear
12 about how limited the scope of this appeal brought by
13 the Ratepayers is. The Commission is required to hear
14 the appeal de novo and may only consider the information
15 that was available to the governing body at the time it
16 made its decision to increase the rates. In fixing the
17 rates, the Commission must use a methodology that
18 preserves the financial integrity of the utility.

19 It is undisputed that Windermere Oaks knew
20 that it amassed a large amount of legal fees due to
21 lawsuits filed against it and its directors. Windermere
22 Oaks also knew that those lawsuits were not going to end
23 immediately after the rates were approved and were
24 likely to keep incurring legal fees.

25 Windermere Oaks knew that its legal

1 disputes were ongoing and that they were not in control
2 or able to withdraw the lawsuits filed against it.
3 Indeed, the records shows that Windermere Oaks has
4 continued to incur legal fees with three different law
5 firms. The record also shows that if it hadn't raised
6 rates when it did, it would not have been able to
7 provide water and wastewater service to its members and
8 make minimal payments to the attorneys defending it in
9 district courts.

10 In sum, the legal fees approved in base
11 rates that are the subject of this appeal are recurring
12 costs and should be upheld. Without the rate increase,
13 Windermere Oaks will be unable to pay the attorneys
14 defending them in several cases. The members bringing
15 the lawsuits, multiple PIA requests, and this appeal
16 have insured that these rates are recurring.

17 In sum, Windermere Oaks is here against
18 its will, incurring additional legal fees to defend this
19 rate case. We are very aware that the system has a
20 small number of customers and that these fees create a
21 large impact on the members of the Water Supply Corp.
22 We are also not here to litigate the underlying matters
23 in separate litigation. That is being handled in other
24 forums. We are only here to assess whether the rate
25 increase approved in March of 2020 was reasonable.

1 That's it.

2 As Lead Counsel on this matter, I am here
3 and available, if necessary, but I am turning over the
4 duties of first chair to my co-counsel, Robyn Katz. We
5 are mindful of rate case expenses, and as such, I will
6 often be down the hall but available, if necessary.

7 To sum it up, the evidence shows that
8 Windermere Oaks, the Windermere Oaks board knew and had
9 to pay increasing legal bills caused by certain
10 ratepayers when it approved the rates and that the Water
11 Supply Corp couldn't operate without the increase. This
12 is still true today.

13 The rates approved are just and
14 reasonable, are not unreasonably preferential,
15 prejudicial or discriminatory. Most importantly, the
16 Commission must use the methodology that preserves the
17 financial integrity of the utility. If this appeal is
18 granted and the rate increase is reversed, the utility
19 will be unable to operate and serve its members.

20 Thank you.

21 JUDGE SIANO: Thank you. Let's see.

22 Ms. Allen.

23 (No response)

24 JUDGE SIANO: You're muted. You'll have
25 to unmute yourself.

1 OPENING STATEMENT ON BEHALF OF THE RATEPAYERS

2 MS. ALLEN: Zoom is not my platform, so I
3 apologize ahead of time.

4 Let me say first that the Ratepayers are
5 very grateful for this opportunity to appear before you
6 and to present the facts, as they understand them, and
7 as they believe them to be.

8 The Ratepayers -- from their perspective,
9 what has happened here is really very simple. What to
10 do about it is another matter.

11 What has happened is that there was a land
12 transaction in 2016 that some members believed was
13 unethical, illegal, and otherwise invalid. They
14 exercised their right to challenge that in court, and
15 when they did that, the insurance carrier denied
16 coverage and it said it was not going to provide defense
17 costs for the directors whose conduct was at issue. It
18 said the policy didn't cover illegal acts and
19 intentional misconduct. Whether that's right or wrong
20 is really irrelevant. What we do know is the insurance
21 company was not going to pay the bill.

22 So what happened was that the directors
23 instead used the Ratepayers' money to pay their bill,
24 and they paid the lawyers whatever the lawyers wanted to
25 take all of the steps that were needed to keep them from

1 being held liable, and we've seen the legal bills that
2 are associated with that.

3 There was a point, I think, earlier than
4 the company would like to admit, when the Ratepayers
5 just didn't have enough money to pay all of the
6 director's legal bills and the cost to operate their
7 system. And at a point, the board of directors raised
8 the rates in order to generate revenues to pay their
9 legal bills.

10 The members exercised their right to make
11 a legal challenge to that, and that's what we're here
12 today about. The directors used \$200,000 or more of the
13 Ratepayers' money to defend the rate hike to raise money
14 to pay their legal costs.

15 Now, every single time that those legal
16 costs were paid or incurred, the board made a decision
17 to approve them. The Ratepayers were astonished when in
18 this proceeding the board took the position that it was
19 not in control because, Judges, if the board was not in
20 control of whether and to what extent the Company's
21 resources were going to be spent, then who was? It was
22 the board's job to be in control, and we could not have
23 been more surprised when their position was they didn't
24 exercise any control.

25 Not one of those dollars for legal fees

1 improved the level or the quality of water and
2 wastewater service. Not one of those dollars went to
3 build plants or lines or anything that facilitated the
4 operation of this system. Not one of those dollars went
5 to address customer concerns about billing or metering,
6 not one. All of those dollars went to pay the
7 directors' legal fees on a land transaction that had
8 nothing to do with service.

9 What we believe the evidence will show is
10 that these legal costs are not cost of service. They
11 are not properly includable in ratemaking. They're not
12 chargeable to the ratepayers, but here you are. You've
13 got a system that is owned by the Ratepayers, and so
14 what do we do about it? Well, we've got some ideas
15 about that, but we'll see how the facts come out and do
16 what we can to guide what might be an appropriate
17 solution to get the company out of this mess. Our
18 effort will be to find the people who precipitated this
19 and look for ways that they can be held accountable for
20 what they have caused.

21 Of all of the people on the universe, it
22 was not the Ratepayers -- at least not the Ratepayers
23 who weren't on the board. It was not them who made
24 these decisions. The idea that the board was not in
25 control is specious. For the same reasons that we will

1 show that this rate increase is not just and reasonable.
2 We believe that these ratemaking expenses are not
3 reasonable and therefore are not includable. If they
4 are, then there is no way that the Ratepayers and
5 members of a water supply corporation can ever hold
6 their fiduciaries accountable. These fiduciaries at
7 every turn said --

8 MS. MAULDIN: Your Honor, excuse me. At
9 this point, I'm going to object. I think that this is
10 improper argument. This is an opening statement where,
11 I believe, Ms. Allen has presented what she expects the
12 evidence will show. But instead, she's taking us on a
13 path of testifying herself. And there will be a time
14 for that, but I would object to that, Your Honor.

15 JUDGE SIANO: All right. Yeah, Ms. Allen,
16 this is really just meant for a brief overview, and this
17 will not be considered for purposes of evidence but an
18 overview of your position.

19 MS. ALLEN: Overview given. Understood.

20 JUDGE SIANO: Thank you. All right.
21 Let's see. Is it Ms. Lander, Commission Staff. You're
22 on mute.

23 MS. LANDER: Yes, Your Honor, commission
24 Staff does not need to make an opening statement. But
25 thank you.

1 JUDGE SIANO: All right. Thank you. I do
2 want to -- before we get started -- comment on the
3 scope. As the Parties have alluded to, this is a
4 hearing that -- de novo. For those who are -- may not
5 be familiar with the PUC process, we will not make a
6 decision at the conclusion of this hearing. We will --
7 the Parties will be asked to submit briefs and -- which
8 is a written closing. And -- after that point, we will
9 have 60 days to review the evidence and issue a proposal
10 for decision, which ultimately goes to the Commission
11 for final decision.

12 But what we're doing here is, it is a
13 review de novo, which means that we give no deference to
14 the board's decision. And we are limited to considering
15 the evidence -- the information that was available to
16 the board at the time it made its decision, except as to
17 the extent that some subsequent information tends to
18 shed light on that information. So it is somewhat
19 limited.

20 The Commission's Preliminary Order also
21 sets out the list of issues, and one of them is whether
22 the rates in this matter are unreasonably preferential,
23 prejudicial or discriminatory. Well, the Commission has
24 set this out as a threshold issue, and there are -- this
25 is in Item Issues No. 4 and 5, which means that we get

1 to the remaining issues only after we make a decision on
2 whether the rates are unreasonably preferential,
3 prejudicial, or discriminatory. There's some recent
4 Commission precedent on this issue in PUC Docket 49351,
5 and that's SOAH Docket 473-19-5674 in which the
6 Commission took the position that under 13.043(j) the
7 Commission must find that the rates appealed are
8 unreasonably preferential, prejudicial, or
9 discriminatory before setting just and reasonable rates.

10 In my review of the evidence, I have not
11 seen any evidence on those issues. And if the Parties
12 can direct me to that, that might be helpful. But we
13 have been tasked with addressing that as a threshold
14 issue before we address the remaining issues.

15 If the Parties wish to confer on that, I
16 can allow some time for that, but I would like some
17 guidance from the Parties.

18 MS. MAULDIN: Your Honor, Jamie Mauldin,
19 with Windermere Oaks. We would gladly take about 5 to
20 10 minutes to find cites for you in our testimony where
21 you can find that information, or however you want to
22 handle it. We can do it now, or we can send it to you
23 later.

24 JUDGE SIANO: Ms. Allen.

25 MS. ALLEN: Your Honor, we are also happy

1 to take a few moments to see if there are places that we
2 could refer you to directly or to let you know that we
3 will also be doing some additional briefing, if that's a
4 helpful thing to do.

5 JUDGE SIANO: We can address it in
6 briefing, or we can address it now. I just want the
7 Parties to be aware that the Commission views this as a
8 threshold issue and we will therefore have to be
9 addressing it as such.

10 Ms. Lander.

11 MS. LANDER: Yes, Your Honor. Staff would
12 love to have a few minutes.

13 JUDGE SIANO: Okay. Let's take a
14 10-minute recess. Back in 10 minutes.

15 Going off the record.

16 (Recess: 9:25 a.m. to 9:40 a.m.)

17 JUDGE SIANO: All right. It looks like
18 everyone is back. We can go back on the record.

19 Okay. The parties -- after a short
20 recess, how would the Parties like to proceed?
21 Ms. Mauldin.

22 MS. MAULDIN: Your Honor, we have
23 identified several places in testimony that would
24 support your request, and so I can read it off to you or
25 present it in another way. Your preference.

1 JUDGE SIANO: Let's hear from Staff. Go
2 ahead, Ms. Lander.

3 MS. LANDER: Staff would actually prefer
4 to address this issue in a briefing. I believe that
5 there are several places in testimony that are relevant,
6 but because Bear Creek was decided after the list of
7 issues was filed in our docket and after testimony was
8 filed in our docket, we'd like a little bit of time to
9 gather our thoughts.

10 JUDGE SIANO: Okay. Do you think that
11 additional testimony is necessary?

12 MS. LANDER: It is possible that
13 additional testimony could be necessary, but I think
14 it's also possible to rely on the record at this time.

15 JUDGE SIANO: Okay. Ms. Allen.

16 MS. ALLEN: Your Honor, it's the
17 Ratepayers' -- am I muted? I'm sorry.

18 It's the Ratepayers' position that the
19 company has failed to comply with the provisions of its
20 tariff that require it to levy an assessment in the
21 event that there were an operating deficit. And that
22 that is, as a matter of law, unreasonable, failure to
23 comply with its tariff. In addition to that -- and we
24 rely more than anything on the testimony of Mr. Nelson
25 and Mr. Rabon --

1 JUDGE SIANO: Ms. Allen, I'm not asking
2 for argument right now. I'm asking for -- how would you
3 like to proceed given that the Commission requires --

4 (Simultaneous discussion)

5 MS. ALLEN: I understand.

6 JUDGE SIANO: -- us to address the
7 threshold issues?

8 MS. ALLEN: I'm going to get the hang of
9 this PUC proceeding, and I apologize. I appreciate the
10 guidance.

11 I do not believe -- the Ratepayers do not
12 believe that additional evidence will be required and
13 are prepared to go forward. And if it's helpful, we can
14 supply in writing something that cites specifically to
15 the testimony that we rely on.

16 JUDGE SIANO: You'll have that opportunity
17 in post-hearing briefing.

18 MS. ALLEN: All right.

19 JUDGE SIANO: All right. And thank you,
20 Ms. Mauldin, I do not need cites to that testimony right
21 now. And I'm happy to consider that in post-hearing
22 briefing.

23 It sounds like the consensus is to move
24 forward today. I know that you've all waited a long
25 time, but I did want to alert the Parties to that.

1 Okay. And with that, the Water Supply
2 Corporation has the burden of proof, and so they will go
3 first.

4 Ms. Mauldin, call your first witness.

5 MS. MAULDIN: I'm going to turn it over
6 to --

7 (Simultaneous discussion)

8 JUDGE SIANO: Or how would you like to
9 proceed?

10 MS. MAULDIN: I'm going to turn it over to
11 Ms. Katz. Thank you.

12 JUDGE SIANO: Okay. Ms. Katz.

13 MS. KATZ: Thank you, Your Honor. I
14 apologize for not bringing this up earlier but I wanted
15 to just address some housekeeping matters.

16 JUDGE SIANO: Go ahead.

17 MS. KATZ: Okay. So I believe that the
18 Parties have discussed some time issues with some of our
19 witnesses, and so I just wanted to let you know and make
20 sure that that's okay, that Mr. Nelson is only available
21 this afternoon to testify. And that was circulated --
22 that information was circulated two or three weeks ago
23 among the Parties, and we did not hear any opposition to
24 limiting his testimony to this afternoon.

25 Additionally, Ms. Mauldin is required to

1 be, at this time, at argument -- oral argument tomorrow.
2 And so we would like to have Ms. Mauldin testify today,
3 as well.

4 JUDGE SIANO: Understood. And -- go
5 ahead.

6 MS. KATZ: I'm sorry. Did you want to say
7 anything on that? I have a couple more items I wanted
8 to mention if, Your Honor, will entertain them.

9 JUDGE SIANO: I'd be happy to have
10 Ms. Mauldin testify today. I understand that sometimes
11 rate case expenses can be a moving target, and the
12 Commission has indicated a willingness to accept
13 affidavits, if necessary. But for purposes of this
14 hearing, I'd be happy to take her up as it suits you.

15 MS. KATZ: Thank you.

16 JUDGE SIANO: Go ahead.

17 MS. KATZ: Thank you, Your Honor.

18 Also the Water Supply Corporation would be
19 objecting to friendly cross, if the positions are the
20 same. And that would be a running objection, but, of
21 course, I wanted to present that now just to give
22 everybody a heads-up on that.

23 JUDGE SIANO: Understood.

24 MS. KATZ: And, Your Honor, did you want
25 to take up admission of the evidence at this time with

1 testimony at once or were you wanting us to do that
2 individually as we move through? I don't expect there
3 to be any objections to the testimony being admitted by
4 all the Parties, but I didn't know how you wanted to
5 take that up.

6 JUDGE SIANO: For purposes of efficiency,
7 it's easier to admit it all at once. But that is
8 dependent entirely upon agreement of the Parties. So if
9 there is no objection, Ms. Lander and Ms. Allen, to the
10 admission of the Water Supply Corporation's testimonial
11 evidence at this time, then I understand that that's
12 being offered.

13 MS. LANDER: Staff has no objection.

14 JUDGE SIANO: Ms. Allen? You have to
15 unmute yourself.

16 MS. ALLEN: The Ratepayers do not object
17 to Exhibits 1, 2, 4, 5, 6, 7, 8, or 9.

18 JUDGE SIANO: Okay. So but with respect
19 to Exhibit 3 --

20 MS. ALLEN: I apologize, Your Honor. What
21 I meant to say is, 1 through 9, inclusive, we don't
22 object to with this clarification because you might know
23 or you might not, the Parties themselves did not
24 actually exchange the exhibits. People kind of presumed
25 that the reference would correspond to whatever was

1 filed under the control number.

2 To the extent that Mike Nelson's testimony
3 includes the copies of the legal invoices that were
4 submitted as confidential documents -- WP documents, I
5 believe was what the notation was on them, those are
6 hearsay and we would object to them. His testimony
7 itself does not refer to them, perhaps they don't intend
8 to offer them along with his testimony. His testimony
9 we do not object to, if that makes sense. And that
10 would be 7 for Mr. Nelson.

11 JUDGE SIANO: All right. Let's start with
12 what there's no objection to. And as I understand it --
13 so Exhibits 1 through 9, with the exception of 7, you
14 have no objection?

15 MS. ALLEN: That is correct.

16 JUDGE SIANO: Okay. So Exhibits
17 Windermere's Exhibits 1 through 9, with the exception of
18 7 are admitted.

19 (Exhibit Windermere Nos. 1, 2, 3, 4, 5, 6,
20 8, and 9 admitted)

21 JUDGE SIANO: And then Exhibit 10 is the
22 errata to the testimony of Mike Nelson, and you have an
23 objection to that.

24 MS. ALLEN: We do, Your Honor. It is a --
25 completely different information furnished today, a

1 day-and-a-half before the hearing, than what has been
2 furnished, kind of, from the time this rate increase was
3 adopted to now.

4 JUDGE SIANO: Okay.

5 MS. ALLEN: And we're not prepared for
6 that kind of new information. It's something that would
7 need to have discovery and so we object to it.

8 JUDGE SIANO: Okay. So all we're
9 addressing right now -- I understand your position.
10 Right now the only objection -- the only issue is
11 whether to admit this evidence without having to call
12 the witness. And so I understand that you do have an
13 objection to 7 and 10, and so I will not admit those at
14 this time. And the Water Supply Corporation can offer
15 those at the time that it calls Mr. Nelson.

16 Anything else, Ms. Katz?

17 MS. MAULDIN: Yes, Your Honor. I would
18 just want to say that the workpapers that were included
19 with Mr. Nelson's testimony in March are intended to be
20 admitted with his evidence as is practice -- traditional
21 Commission practice.

22 Additionally, what has been marked as
23 Windermere Oaks Exhibit 10, which is the errata served
24 earlier this week of Mr. Nelson. Again, this is also
25 pretty traditional Commission practice. Mr. Nelson, in

1 preparing for hearing, reviewed his testimony and found
2 an error, and so instead of correcting that error on the
3 stand, we thought it best to provide advanced notice to
4 Parties. And so Ms. Allen will have an opportunity to
5 cross-examine Mr. Nelson on that information. However,
6 that information is actually not any different than what
7 was provided in the attachments and what has been the
8 information all along.

9 JUDGE SIANO: Thank you. Ms. Mauldin,
10 right now, I'm just addressing whether or not to admit
11 this evidence without having to call the witness. And
12 with respect to the workpapers, are those included here
13 in these exhibits? Is that in Exhibit 7?

14 MS. MAULDIN: Yes.

15 JUDGE SIANO: Or is that a separate
16 exhibit number?

17 MS. MAULDIN: It should be included in
18 Exhibit 7 --

19 JUDGE SIANO: Okay. So --

20 MS. MAULDIN: -- under attachments, I
21 believe -- voluminous. Sorry. I don't have it in front
22 of me.

23 JUDGE SIANO: Okay. All right. Well, the
24 Parties have laid out their arguments. I guess we may
25 as well address this now.

1 So Ms. Allen, which part of Exhibit 7 are
2 you objecting to? And you're going to have to be more
3 specific because I have it in front of me.

4 MS. ALLEN: Your Honor -- yes, Your Honor.
5 There are a series of what they are calling workpapers.
6 They're labeled with the prefix "WP". Am I right,
7 Ms. Mauldin, that it's WP?

8 MS. MAULDIN: That's correct.

9 MS. ALLEN: There are documents labeled
10 with the prefix "WP" that's -- I mean, if I need to be
11 more specific than that, I can. But those are attorney
12 fee invoices with narrative that are hearsay.

13 JUDGE SIANO: Okay. And Ms. Mauldin, your
14 response to that is what?

15 MS. MAULDIN: I would argue that those
16 invoices are actually a very integral part of this
17 proceeding and Ratepayers have asked for them. They
18 were provided in discovery to Ratepayers. Ms. Allen
19 actually requested them yesterday via email. So I
20 believe that to the extent Ratepayers are going to argue
21 that those legal invoices and the costs incurred should
22 not be included in rates, they need to be included in
23 the record and were provided to the Parties in 2020, I
24 believe.

25 JUDGE SIANO: Was there a deadline for

1 objections on the schedule? The schedule has changed
2 several times but -- it's not usually --

3 (Simultaneous discussion)

4 MS. ALLEN: Your Honor, there -- my
5 recollection is that there was a deadline for
6 objections; however, Mr. Nelson's direct testimony
7 doesn't actually refer to these documents, which is why
8 I was unsure whether they were intended to be included.
9 And therefore, I did not know until this moment they
10 intended to offer those documents into evidence. I
11 would want to reiterate that I don't object to
12 Mr. Nelson's direct testimony. It is only the hearsay
13 workpapers that shouldn't come into evidence.

14 JUDGE SIANO: Okay. And, Ms. Mauldin,
15 you're saying that his testimony does refer to these
16 documents?

17 MS. MAULDIN: If you'll give me one
18 moment, Your Honor. I'm looking for a citation.

19 JUDGE SIANO: Go ahead.

20 MS. MAULDIN: So, Your Honor, if you look
21 on Mr. Nelson's direct testimony on Page 16, Footnote
22 11, says, "See Workpaper MN-1 for legal invoices."

23 So it is referenced in the testimony and
24 it is listed in the Table of Contents. It's also --
25 it's noted several times in his testimony actually.

1 JUDGE SIANO: I know the Procedural
2 Schedule changed several times, and I'm trying to find
3 the one under which this testimony was filed presumably
4 on March 10th.

5 MS. MAULDIN: And, Your Honor, I
6 apologize. MN-1 is listed as -- Workpaper MN-1 is
7 listed as legal invoices. Workpaper MN-2 are the
8 voluminous 2019 invoices, so there are two attachments
9 as workpapers. And this has also been provided to SOAH
10 on a flash drive as part of Mr. Nelson's direct
11 testimony and exhibits.

12 JUDGE SIANO: All right. With respect to
13 Exhibit 7, the objections are overruled as untimely.

14 And, Ms. Allen, with respect to the
15 errata --

16 MS. ALLEN: Your Honor, the Ratepayers are
17 objecting to the errata -- and I want to pull it up to
18 make sure that I put it correctly -- on the grounds that
19 it is untimely supplementation and constitutes surprise
20 and prejudice, given the changes in the numbers -- hang
21 on one second. I want to find that.

22 So the numbers that were sponsored in the
23 original testimony until yesterday were \$171,337 in
24 legal, accounting, and total contract services. Now,
25 the numbers are \$171,337, \$121,659 and \$55,090, which

1 are significantly different numbers than have ever been
2 sponsored in the past.

3 Whether the new numbers are correct or not
4 correct, I can't have an opinion about. It's going to
5 be a little difficult to cross-examine on new numbers
6 for which there is no explanation and has been no
7 discovery and therefore we object to them on the grounds
8 that this supplementation is untimely. There is no just
9 cause for it, and we are surprised and prejudiced.

10 JUDGE SIANO: Okay. Ms. Mauldin, your
11 response?

12 MS. KATZ: Your Honor, this is Robyn Katz.
13 I apologize. We're flip-flopping a little bit here.

14 Your Honor, I want to address the number
15 of the 116 going to 174 first that Ms. Allen just
16 referenced in the errata. This is a number that
17 actually should not be of any surprise, as we had a
18 discussion about a week ago specifically letting
19 Ms. Allen know about the error in the testimony,
20 correcting the numbers. And, in fact, these numbers --
21 and Ms. Lander was on the call as well -- and these
22 numbers specifically come from evidence that you just
23 admitted.

24 What happened was, these numbers are
25 coming from the workpapers and the attachments that have

1 already been admitted. The problem was there was an
2 error in the actual text. So all we did was correct the
3 text to match what has already been provided through
4 direct testimony. And that's the first response.

5 The response regarding Ms. Allen's
6 objection to the other portion of the errata discussing
7 the professional fees and the numbers being corrected
8 there, that actually comes from a Workpaper MN-1 that we
9 just discussed and has been admitted also that was
10 supplied in previous direct testimony.

11 So these are just corrections of
12 responses, either to discovery or through testimony,
13 that have already been provided. And, you know, I can
14 understand and empathize with Ms. Allen that she just
15 got on the case about a week ago. However, it's my
16 understanding that this has already been provided to the
17 opposing party and therefore should be admitted as such.

18 JUDGE SIANO: All right. And, Ms. Allen,
19 your argument is that this constitutes surprise?

20 MS. ALLEN: Yes, Your Honor. A week or so
21 ago, we certainly did have a conversation about
22 correcting the testimony. The correction that I was
23 alerted to was that Mr. Nelson had said there were 253
24 water meters. In fact, there are 271. I got that. No
25 problem. That was the change in the testimony that I

1 was alerted to, and I'm not complaining about that.

2 But these numbers simply don't add up, and
3 there's no way for me on less than a day's notice to try
4 to figure out why that is. And to undertake the
5 discovery that would be required to reconcile them, this
6 is a very important matter, and I don't believe that the
7 Water Supply Company ought to be able to come in the day
8 before the hearing and correct its numbers to the tune
9 of about \$200,000. Those are the kinds of things this
10 proceeding is about.

11 JUDGE SIANO: I'm sorry. Ms. Katz, is
12 this 121 and this 55,000, are those numbers essentially
13 the components of the 171 -- no, they're not. Those are
14 additional -- in addition to the 171, Ms. Katz?

15 MS. KATZ: Your Honor, I would need a
16 moment to check the workpapers with legal invoices. But
17 these numbers are specifically referring to the
18 workpapers of Mike Nelson, Workpaper MN-1 for legal
19 invoices that were a part of his direct testimony.

20 It was just a miss -- it was a -- it was a
21 clerical error, but this is information that was already
22 provided to Ratepayers.

23 JUDGE SIANO: If the information is
24 already in evidence, then you can refer to it in
25 briefing. But I'm going to sustain that objection.

1 So the errata with respect to -- where did
2 it go. The errata with respect to Page 7, the objection
3 is overruled.

4 With respect to Page 16, the objection is
5 sustained.

6 Was there anything else, Ms. Allen?

7 MS. ALLEN: No, Your Honor.

8 JUDGE SIANO: Okay. So with that,
9 Exhibits 7 and 10 are admitted -- yes, 7 and 10.
10 (Exhibit Windermere Nos. 7 and 10
11 admitted)

12 MS. KATZ: Thank you, Your Honor.

13 One final housekeeping matter that I
14 probably should have taken up first.

15 JUDGE SIANO: Go ahead.

16 MS. KATZ: We would ask -- because of the
17 schedule issues, we would ask that witnesses be taken up
18 for direct and rebuttal at the same time to speed this
19 along, unless there's opposition from the opposing --
20 the additional parties, so they're not up down, up down,
21 up down -- all witnesses.

22 JUDGE SIANO: Certainly more efficient.
23 But are there any objections to that method?

24 It's not uncommon in these types of
25 hearings, Ms. Allen.

1 MS. ALLEN: Your Honor, the Ratepayers
2 have no objection to that, provided that we are not
3 going to be stymied in our cross-examination by
4 objections, such as it's beyond the scope.

5 JUDGE SIANO: Understood.

6 And Ms. Lander?

7 MS. LANDER: Staff has no objections.

8 JUDGE SIANO: Okay. So that is
9 acceptable.

10 Anything else.

11 MS. KATZ: No, your Honor, not from
12 Windermere Oaks.

13 JUDGE SIANO: Okay. How would Windermere
14 Oaks like to proceed, then?

15 MS. KATZ: Windermere Oaks would call our
16 first witness George Burriss to the stand.

17 JUDGE SIANO: George Burriss, where are
18 you? If you would unmute your screen and your audio so
19 we can see you and hear you.

20 Ms. Katz, do you need to -- there you are.

21 Mr. Burriss, please raise your right hand.

22 (Witness sworn)

23 THE WITNESS: I do.

24 JUDGE SIANO: All right. Ms. Katz.

25 MS. KATZ: Thank you, Your Honor.

1 PRESENTATION ON BEHALF OF
2 WINDERMERE OAKS WATER SUPPLY CORPORATION
3 GEORGE BURRISS,
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. KATZ:

7 Q Good morning, Mr. Burriss.

8 A Good morning.

9 Q Do you have a copy of what's been marked as
10 Exhibit Windermere Oaks Supply Corporation 1, which is
11 your testimony, in front of you?

12 A Yes.

13 Q Okay. And is this a true and correct copy of
14 the prefilled testimony that was filed in this case?

15 A Correct.

16 Q And if we were to ask you questions presented
17 in this document to you -- or questions about this
18 document to you, would the answers still be the same as
19 to what's contained in your testimony in front of you?

20 A Yes.

21 MS. KATZ: Okay. So with this exhibit
22 already entered into the record, I'll pass -- Windermere
23 Oaks -- I apologize, Your Honor -- passes the witness
24 for cross-examination.

25 JUDGE SIANO: All right. Ms. Allen.

CROSS-EXAMINATION

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BY MS. ALLEN:

Q Thank you. Mr. Burriss, my name is Kathy Allen, and I'm representing the Ratepayers in this proceeding today. Forgive me in I've forgotten it, but I don't believe you and I have ever met. Have we met?

A No, ma'am.

Q Okay. My understanding is that for the better part of 22 years you have been involved in one capacity or another with the Windermere Oaks Water Supply Company. Do I have that right?

A That's correct.

Q So you have been in some capacity or other with the Company longer than any other witness that the Company has here today. Is that right?

A I believe that's right.

Q In the course of your work with the Company, have you come to have an understanding of the regulatory requirements that are applicable to its operations?

A Not to the extent that -- you know, I'm not an attorney. I'm not a CPA, but I am competent with the ratemaking and budgeting processes. Does that answer your question?

Q I was actually focused more on what I understand is your job at the Company, which is to

1 operate the system. Do I have that right? Is that your
2 primary responsibility?

3 A Yes, that's correct.

4 Q Okay. But apparently you are involved to some
5 extent in connection with ratemaking and budgeting. Is
6 that right?

7 A I do provide information to the board about
8 that, yes.

9 Q What information do you furnish to the board in
10 connection with those activities?

11 A Part of my role is to discharge the billing
12 process and the bookkeeping, and records generated as
13 part of those functions are then provided to the board.

14 Q So are you the one who pulls together cost
15 information or I guess -- yeah, cost information about
16 the system operations?

17 A Correct.

18 Q How about information about legal expenses?
19 Are you the one that pulls that information together?

20 A No.

21 Q Who does that?

22 A Board members. I'm not privy to the legal
23 functions.

24 Q Okay. So if I understand you correctly, it is
25 not your job to review legal invoices when they come

1 into the company. Is that right?

2 A Correct.

3 Q Do you know who does that?

4 A Board members do that. Which board members
5 review which invoices, I couldn't respond to that.

6 Q Fair enough. Is it part of your
7 responsibility, either directly or through Ms. Cantrell
8 or Ms. (Zoom audio distortion) to keep up with the legal
9 expenses that the company has incurred?

10 A Yes.

11 Q How do you do that?

12 A Invoices are presented to me which I then
13 forward to the CPA who functions also as our bookkeeper.
14 They prepare the checks. Then submit the checks to a
15 board member for a signature, and then at the end of the
16 month the CPA provides a profit and loss statement.

17 Q So you do see the invoices?

18 A Yes, I do see them, but I don't review them.

19 Q I'm sorry, Mr. Burriss. I'm having just a
20 little bit of trouble hearing you. I apologize.

21 A I'm sorry. I suffer from allergies so it's a
22 perpetual problem. I'll be as distinct as I can.

23 The legal invoices are approved by a board
24 member then presented to me to -- for it to go through
25 the payment process, so I simply code those invoices,

1 provide them to the CPA, he cuts the check, which I then
2 present to the board for a signature. And then at the
3 end of the month, the CPA provides an accounting of that
4 payment.

5 Q Is there anyone with the Company who endeavors
6 to keep up with what the Company's obligations are for a
7 given -- let's say -- 30-day period and what its
8 revenues are anticipated to be or have been?

9 A Oh, yes.

10 Q Who does that?

11 A Well, the board president, of course, is
12 ultimately responsible, but the budget and the expenses
13 are reviewed daily as payments are made and receipts are
14 deposited. So there are several sets of eyes that are
15 monitoring our budget process.

16 Q Let me -- Mr. Burriss, let me be a little bit
17 clearer with you in what I'm trying to ask, and I'm
18 sorry that I'm not getting to it quicker.

19 What I'm trying to find out is: Is there
20 somebody who monitors the Company's obligations, whether
21 they're actually paid by check or not, to make sure that
22 the Company has not overcommitted itself during any
23 particular period?

24 A Well, more than one person has partial
25 responsibility for that process. And it includes the

1 CPA and me and the treasurer and the board president.

2 Q Can you explain to us how those functions come
3 together so that the board is able to make sure that the
4 Company has not overcommitted itself?

5 A Well, legal invoices go first to the treasurer.
6 And once the treasurer is satisfied with how a payment
7 is to be made, he instructs me to make that payment,
8 which I then code and submit to the CPA who cuts the
9 check.

10 Q If I hear you right -- and I might not. But
11 what I'm hearing you tell me is that you find out about
12 legal expenses after someone has decided they should be
13 paid. Is that right?

14 A Correct.

15 Q You don't find out about legal expenses at the
16 time they're incurred necessarily. Is that right?

17 A Well, legal expenses would be incurred by a
18 direct communication between the board and the law firm.
19 So I only find out about the need to pay a legal invoice
20 after the fact so-to-speak.

21 Q How often is the board furnished with financial
22 information concerning the Company's performance on a
23 monthly basis?

24 A Well, if they were an inordinate expense, they
25 would know before we even incurred that project or

1 embarked on that project that would produce that
2 invoice. But all income and expenses are summarized in
3 a P&L at the end of each month.

4 Q The expenses that are summarized on the P&L are
5 the ones for which checks have been written. Is that
6 right?

7 A That's correct.

8 Q That number does not necessarily include all of
9 the obligations that the Company has incurred during
10 that month. Is that right?

11 A Well, there would be some carryover at the end
12 of the month, usually in a minor degree, if that's the
13 thrust of your question. You know, if I receive an
14 invoice at the end of the month, submit that to
15 accounting for payment, then that may take a day or two
16 for them to cut the check, so the check may actually get
17 signed in the following month.

18 Q I'm really trying to ask you about something a
19 little bit different. Let me use an illustration and
20 see if I can be a little clearer.

21 Let us say that in the month of June, for
22 example, there were 4 legal invoices that came into the
23 Company for legal fees that the Company owed. Are you
24 with me?

25 A So far.

1 Q Okay. And just for the sake of discussion,
2 let's say those invoices total \$60,000. All right?

3 A Uh-huh.

4 Q Let's say that whoever it is who makes those
5 decisions decides one of those needs to have a check
6 with it. Are you with me?

7 A Yes.

8 Q That would then be sent to you. Is that right?

9 A Correct.

10 Q With a notation that says, "Cut the check". Is
11 that right?

12 A Right.

13 Q And the one expense invoice for which the check
14 was cut, that would show up on the financials.

15 Do I have that right?

16 A Well, I'm not sure I understand exactly because
17 as I just said if it were the last day of the month,
18 even though that check would appear on the P&L, it
19 really wouldn't clear the bank for several days.

20 Q Right. But the only obligations of the Company
21 for -- that'll show up on the financials the way the
22 Company keeps them are the ones for which the check is
23 written. Right?

24 A That's correct.

25 Q And with regard to legal expenses, what I'm

1 understanding you to say is that the only folks who ever
2 know how much the Company is obligated for in terms of
3 legal expenses during a given period will be the board.
4 Is that correct?

5 A Well, that's true.

6 Q Okay.

7 JUDGE SIANO: Ms. Allen, I'm sorry to
8 interrupt you, but I'm having a little bit of trouble
9 understanding what this relates to. What does this line
10 of questioning pertain to?

11 MS. ALLEN: What it pertains to is the --
12 the way that the Company keeps track of its legal
13 expenses is -- well, how do I illustrate this? Maybe
14 Mr. Burriss can help us, if you would indulge me a
15 couple three questions. Would that be all right?

16 THE WITNESS: Of course.

17 MS. ALLEN: Judge, would that all right?

18 JUDGE SIANO: Go ahead. That's fine.

19 Q (BY MS. ALLEN) So, Mr. Burriss, tell me this:
20 Take the early months of 2019, for an example, and tell
21 us what was the average net operating income of the
22 system?

23 A I don't remember.

24 Q Do you have an idea with all of your experience
25 of what the average net operating income of the system

1 was in 2018?

2 A No. I know that we were overextended.

3 Q You were overextended in 2018?

4 A Uh-huh.

5 Q For what reason?

6 A The legal expenses.

7 Q In 2018?

8 A Yeah. I can't be exactly accurate about these
9 numbers from three years ago. I generally remember the
10 period, and we saw legal expenses that were beyond the
11 budget that we had prepared the year earlier, but I
12 don't remember the exact numbers. Sorry.

13 MS. ALLEN: So, Your Honor, what I'm
14 trying to do is ascertain the point at which the system
15 became overextended, and there's considerable ambiguity
16 about that. And the records don't provide a great deal
17 of assistance about that. So that's -- and then these
18 new numbers are impossible to reconcile, so that's what
19 I'm working on is, at what point did the system become
20 overextended and then at the time the board made the
21 decision to raise the rates, how overextended was it?

22 MS. KATZ: Your Honor, may I respond?

23 JUDGE SIANO: Go ahead.

24 MS. KATZ: Thank you. It's clear

25 Mr. Burriss already responded to the questions as they

1 relate to legal expense and his knowledge that he does
2 or doesn't have as they relate. And we can continue to
3 go on with Ms. Allen presenting speculative situations
4 or what if this or what if that, but he's made clear
5 that that's not his primary role and perhaps these
6 questions would be better suited for another witness.

7 JUDGE SIANO: Yeah, Ms. Allen, I just want
8 to be efficient with our time.

9 MS. ALLEN: Of course.

10 Q (BY MS. ALLEN) Let me ask this: Mr. Burriss,
11 let me close the loop on that. Was there a time when
12 the expenses from these lawsuits were of such an amount
13 that there was not sufficient money available to operate
14 the system -- operate and maintain the system?

15 A Yes.

16 Q When was that?

17 A Well, it was clear to me in 2018 that we were
18 not going to be solvent if we paid the stream of legal
19 bills that we saw coming. And so, in fact, we consulted
20 with TRWA to help us analyze our rates further, even
21 though we had done an extensive analysis from 2016
22 through 2017 for a rate increase which we adopted in
23 2018. But we called TRWA back in to do a subsequent
24 analysis to take stock of where we were and try to
25 prepare for the future and that was in 2018.

1 Q When in 2018 did that happen?

2 A Oh, by the fall of 2018.

3 Q Who did the analysis?

4 A James Smith.

5 Q What analysis was done?

6 A That was an analysis prepared on the basis of
7 Texas Rural Water Association software. I mean, I
8 provided numbers which James then put into his study.
9 And, you know, he had completed that study -- my
10 recollection is -- by late January or early February of
11 2019.

12 Q What were the results of that study?

13 A That we needed to raise the rates about \$170
14 per ratepayer, that was his recommendation.

15 Q So Mr. Smith told the board that the company
16 needed to raise its rates to \$170 or by?

17 A No. By.

18 Q By. So in June -- I mean -- sorry. In January
19 of 2019 --

20 A I may have that wrong, Ms. Allen. That's
21 right. To -- I think it was 172 or something like that.
22 It was an increase to that number, not by that number.

23 Q So January of 2019 Mr. Smith says, Company, you
24 need to raise your rates to or by \$170. Right?

25 A To 170, yes.

1 Q Okay. To 170?

2 A A minimum charge of 170.

3 Q Okay. And did the Company raise its rates in
4 January of 2019?

5 A Well, they started the discussion on the board
6 in January of -- I don't remember exactly what month
7 that rate went into effect, but they raised it to 156,
8 more or less.

9 Q And that is the rate increase that we're here
10 about today. Right?

11 A That's correct.

12 Q Which was effective in March of 2020. Right?

13 A Yes, I think that's right.

14 Q What steps, if any, were taken by the board
15 during 2019 -- after it received these conclusions from
16 Mr. Smith, what steps were taken by the board to contain
17 expenses pending their consideration of a rate increase?

18 A Well, the impetus for the increase was paying
19 for the lawsuit that had been brought against it, so I
20 can't speak for the board's thought process there. Mine
21 was, it was a matter of coping with the suits. And so
22 we operate -- you have to understand that as a small
23 utility with a limited number of ratepayers, if we
24 produced water for our customers from a well, then on an
25 expense scale of 1 to 10 that might be a 2, but we take

1 water out of Lake Travis. We have a full-blown water
2 treatment plant that's a 9 or a 10 on that scale, and so
3 for us to function at all we are always economizing and
4 minimizing our expenses.

5 Q Mr. Burriss, I don't mean to interrupt you, and
6 I'm happy for you to continue, if the Judges want you
7 to. That's really not what I'm asking.

8 What I'm hearing you tell me is that in
9 January of 2019 a consultant said to the Company, in
10 order for you to keep operating, you need to raise your
11 rates to \$170. Right?

12 A Correct.

13 Q And the company didn't do that until March of
14 2020. Right?

15 A Well, it takes some time to follow the PUC
16 rules to enact a rate increase.

17 Q Mr. Burriss, I'm just trying to establish the
18 timing here.

19 The board did not implement a rate
20 increase until March of 2020. Correct?

21 A Yes.

22 Q In the meantime, the system needed to be
23 operated. Correct?

24 A Right.

25 Q In the meantime, they kept on paying their

1 legal fees. Right?

2 A Well, we did not pay all of them. We worked
3 out an arrangement with the law firm to allow us to pay
4 a minimum portion of those legal fees.

5 Q Let me ask it this way: Every month of that
6 time period between January of 2019 and March of 2020,
7 every single month, there were invoices that came in
8 that reflected amounts that the Company had been
9 committed to pay to lawyers for these lawsuits.
10 Correct?

11 A They were committed to pay for those expenses,
12 yes.

13 Q And those continued to come in every single
14 month during -- after the time that Mr. Smith said
15 you've got to raise your rates to \$170 for the next
16 year. Right?

17 A Right.

18 Q Okay. Were any steps at all taken to curb or
19 contain the legal costs that the company was being
20 committed to pay for during the time period after
21 January 2019?

22 A I can't answer that. The relationship with the
23 law firm and all of its facets are the responsibility of
24 the board, not me. So I can't --

25 Q Fair enough. Fair enough. That's all you've

1 got to tell me is you don't know. It's a fair answer.

2 If I understand it correctly, you were
3 with the Company in some capacity when the Company
4 operated its wastewater treatment plant over in the
5 airport. Is that right?

6 A I'm sorry. I didn't understand that.

7 Q Yes, sir. You were with the Company when it --
8 during the time that it operated its wastewater
9 treatment facility over in the airport property. Is
10 that right?

11 A Yes, that's correct.

12 Q Okay. This was land that was kind of in the
13 middle of the Spicewood Airport along the taxiway that's
14 known as Piper Lane. Right.

15 A Yeah, that's right.

16 MS. KATZ: Your Honor, I'm going to -- I'm
17 going to object at this point to relevance and also
18 referring to the Preliminary Order List of Issues,
19 outside the scope of those issues, this line of
20 questioning.

21 JUDGE SIANO: And, Ms. Katz, you're
22 referring specifically to the land sale issue?

23 MS. KATZ: Yes, Your Honor, and the
24 specifics regarding that litigation that I believe that
25 Ms. Allen is starting to go into.

1 JUDGE SIANO: Response?

2 MS. ALLEN: Your Honor, I think there's
3 6.19 acres of surplus property sitting over there that's
4 owned by the Company --

5 JUDGE SIANO: No, not going -- not going
6 to take it -- just why you think this is relevant.

7 MS. ALLEN: Because this is a witness with
8 personal knowledge of the company's property that's
9 still silting over there, and I'd like to get that
10 knowledge out from somebody who really knows about it.

11 MS. KATZ: Your Honor, again, this is not
12 relevant to any of the issues listed in the Preliminary
13 Order that, Your Honor, mentioned in the beginning of
14 this hearing.

15 JUDGE SIANO: Any relevance appears to be
16 extremely attenuated.

17 I'll sustain the objection.

18 MS. KATZ: Thank you, Your Honor.

19 MS. ALLEN: Your Honor, may I ask at this
20 juncture, just so I do it correctly, when is it that you
21 would like a bill made on things like this?

22 JUDGE SIANO: You want to make an Offer of
23 Proof?

24 MS. ALLEN: Yes. But not -- I don't --
25 not now. Whenever you tell me that it's all right. I

1 just would like to plan for that.

2 JUDGE SIANO: You want to make an Offer of
3 Proof as to what this witness would say or what you
4 had -- that line of testimony would --

5 MS. ALLEN: Yes, Your Honor, I would like
6 to make an Offer of Proof as to the Company's asset in
7 the airport today or -- today, yes.

8 JUDGE SIANO: All right. Are there any
9 time constraints with respect to this witness's
10 availability, Ms. Katz?

11 MS. KATZ: No, Your Honor.

12 JUDGE SIANO: Okay. So we do have some
13 witnesses that are somewhat constrained, so we can take
14 that up -- I want to make sure -- let's see.
15 Ms. Mauldin has a limitation. Right?

16 MS. KATZ: Yes, Your Honor. Ms. Mauldin
17 and Mr. Nelson.

18 JUDGE SIANO: Okay. So where we can fit
19 it in within those parameters, so let's go ahead and
20 finish with this witness and then if we need to bring
21 him back for that or -- well, the Offer of Proof is --
22 you can tell me what you think the evidence would show,
23 and I don't think we need this witness back for that.
24 So we'll fit it in, but you'll need to remind me.

25 Q (BY MS. ALLEN) Okay. Mr. Burriss, there are a

1 series of questions that I need to ask you that you may
2 or may not be allowed to answer so let's give a minute
3 and make sure that it's appropriate.

4 I want you to understand before I ask you
5 that I am not asking you about who was right and who was
6 wrong. I am asking you only about what happened.

7 Are you with me?

8 A Yes.

9 Q Your direct testimony states that you were the
10 one who constructed the new wastewater treatment plant.
11 Is that right?

12 A Correct.

13 Q The new wastewater treatment plant cost the
14 ratepayers what? How much?

15 A \$900,000.

16 Q \$900,000?

17 A Right.

18 Q More than half of that was financed. Correct?

19 A Yes.

20 Q Some portion was paid with reserve monies.
21 Correct?

22 A Correct.

23 Q You were with the Company when the board made
24 the decision to relocate the plant. Correct?

25 A Correct.

1 Q And one of the reasons why the board relocated
2 the plant instead of reconstructing the plant was
3 because the airport property would then be freed up to
4 sell. Correct?

5 A Yes.

6 Q You were with the Company when the board
7 approved the sale of a portion of the surplus property
8 to Ms. Martin. Correct?

9 A Yes.

10 Q You were actually in the room when the board
11 made that decision. Correct?

12 A I think that's correct.

13 MS. KATZ: Your Honor, I'm going to object
14 as to relevance again. This is outside the scope of not
15 only his testimony -- in direct testimony, but also
16 outside the scope of the list of issues in the
17 Preliminary Order.

18 JUDGE SIANO: Well, he doesn't need to
19 have testified to it for it to be subject to
20 cross-examination.

21 But as to relevance, Ms. Allen, I think
22 we're sort of back to where we were a moment ago.

23 MS. ALLEN: Your Honor, I will respect, of
24 course, whatever ruling this panel makes. But it is
25 important, it seems, to the Ratepayers, not that this

1 tribunal try to ascertain who was right or wrong, but to
2 understand the context in which this dispute arose and
3 why it was that members were concerned about it.
4 Someone is going to have to evaluate the reasonableness
5 of the board's response to it and it seems to me that
6 it's going to be awfully difficult to evaluate whether
7 the response was reasonable if you have no information
8 about what happened to precipitate it. That's my only
9 point. I am not trying to ask this tribunal to say who
10 is right and who is wrong. You just need to know what
11 happened.

12 MS. KATZ: Your Honor, this proceeding is
13 focused on the rates only. The reasonableness of the
14 rates, not the -- what happened in a board meeting, not
15 what happened in executive session in a board meeting,
16 not, you know, all this conjecture that Ms. Allen is
17 trying to elicit from Mr. Burriss. This proceeding is
18 very focused on the rates and the reasonableness of the
19 rates themselves.

20 JUDGE SIANO: So --

21 MS. ALLEN: Your Honor -- I'm sorry. Go
22 ahead.

23 JUDGE SIANO: So, Ms. Allen, the
24 evaluation of the rates does not necessarily depend upon
25 the board's decision. It made its decision based on

1 what it did, but it's -- this is a hearing de novo and
2 so we are free to -- if they support the rates, based
3 upon another decision. So it doesn't depend on what the
4 board decided. I think we are getting somewhat beyond
5 the scope discussing the details of these meetings.

6 So I'll give you a little bit of room, but
7 I want you to keep it limited, and I may stop you. Go
8 ahead.

9 Q (BY MS. ALLEN) Mr. Burriss, the transaction
10 that seems to have precipitated all of this was a sale
11 of surplus property of the Company. Is that right.

12 A Yes.

13 Q All I want to get to is: Can you help us to
14 confirm that it didn't have anything to do with the way
15 the wastewater treatment plant was operating or the
16 level of service or whether the Company's system was
17 compliant, didn't have anything to do with any of those
18 issues. Right?

19 A Certainly not. I mean, the reasons for
20 building the new wastewater plant in the first place is
21 because the existing wastewater plant was delapidated
22 and more expensive to maintain and repair than to move
23 the plant and build a new one.

24 Q And I appreciate that, but all I really want to
25 be sure that we understand is this dispute involved the

1 sale of extra land that was not being used for
2 operations. Right?

3 A That's correct.

4 Q And the decision by the directors of the
5 company whether and on what terms to sell it. Correct?

6 A I don't --

7 (Simultaneous discussion)

8 MS. KATZ: Your Honor, I'm going to object
9 again. This is irrelevant. You've ruled on the land
10 and the details regarding the land previously and I
11 would renew my objection.

12 JUDGE SIANO: Sustained.

13 Q (BY MS. ALLEN) You were with the Company in
14 some capacity or other when the TOMA Integrity lawsuit
15 was filed on December 12th of 2017. Right?

16 A Yes.

17 Q Did you learn about that lawsuit around the
18 time that it was filed?

19 MS. KATZ: Your Honor, I'm going to
20 object. I understand this may be premature, but I
21 believe that Ms. Allen is going to go down a line of
22 questioning similar to the line of questioning
23 concerning the sale of land which would be to inquire as
24 to the details of an outside litigation matter, which is
25 not relevant to this case.

1 MS. ALLEN: Your Honor, if I understand
2 Question 8 of the Preliminary Order, the only issue in
3 this case is whether or not these outside legal expenses
4 related to defending these lawsuits are expenses that
5 can be included in the rates. That's No. 8. That is
6 the only issue in the case. I just don't know how on
7 earth to help this panel or the Commission to decide
8 that question unless it understands what those lawsuits
9 were about.

10 MS. MAULDIN: Your Honor?

11 JUDGE SIANO: Go ahead.

12 MS. MAULDIN: Thank you. Your Honor, I
13 would direct you to Order No. 9 where, Your Honor,
14 specifically states regarding an objection that was
15 overruled regarding Ms. Allen's testimony, in fact.
16 However, in Order No. 9, under Section B, it stated that
17 the ALJs agree that the details of prior litigation are
18 not necessarily relevant to the issues in this
19 proceeding.

20 These are the exact matters that we were
21 objecting to.

22 MS. ALLEN: Your Honor, this board is
23 portraying itself as a bystander, as somebody who was
24 minding its own business --

25 (Simultaneous discussion)

1 JUDGE SIANO: Ms. Allen.

2 MS. ALLEN: -- when it was hit by a stray
3 punch, and the panel needs to understand what happened.

4 JUDGE SIANO: So with respect to issue
5 No. 8, we can ask -- we can answer -- I read that to ask
6 whether those legal expenses are included in the rates
7 and what amount. And what, Ms. Allen, you're saying
8 that the details of that litigation bears on the
9 reasonableness of the rates?

10 MS. ALLEN: No, Your Honor. I'm saying
11 that at the minimum, in order to try to answer those
12 questions, we need to know, for example, when did the
13 lawsuit start, so that we can, then, say, okay, what
14 rates, what legal expenses were there after the time
15 this lawsuit started. I don't know how we assess that
16 unless we know when it started.

17 JUDGE SIANO: Okay. And that certainly
18 bears on whether or not that information was available
19 to the board at the time it made its decision. I'll
20 allow you to ask questions regarding the timing of the
21 lawsuits. Go ahead.

22 Q (BY MS. ALLEN) I think that Mr. Burriss had
23 already told me he was with the Company when the lawsuit
24 was filed December 12th of 2017 and that he learned
25 about it at or near that time.

1 But, Mr. Burriss, you want to just make
2 sure that I've got that right?

3 A Well, I learned about it after it was filed.
4 You know, it was a topic of conversation in the
5 community.

6 Q Okay. There was -- and maybe you know this and
7 maybe you don't know this.

8 But do you know whether or not the Company
9 asked one or another of its insurance carriers to pay
10 the expenses associated with that lawsuit?

11 A I know that they inquired of the insurance
12 company to see if they would. I was part of that
13 conversation, but I don't know exactly what ensued at
14 that point. In other words, I didn't continue the
15 discussion with the insurance company.

16 Q Of course not. But you do know because you're
17 the one who watches the financials that the insurance
18 company did not pick up those expenses. Right?

19 A Yes.

20 Q The Company picked up those expenses. Right?

21 A Yes.

22 Q Did you have any involvement with the attorneys
23 in connection with the defense of the TOMA litigation?

24 A Well, when the board was contemplating selling
25 that property, which was a discussion, it was ongoing

1 among the board for two or three years. In fact, we had
2 talked for many years about the long-range plan to put
3 this --

4 MS. ALLEN: Your Honor, I don't mind that
5 Mr. Burriss tells us all about this. It's not what I
6 asked him and I don't want to rankle you over the fact
7 that he's talking about something different. I'm happy
8 for him to do it, but it's not what I asked him.

9 JUDGE SIANO: So, Mr. Burriss, for
10 purposes of efficiency, just answer the question asked.
11 Go ahead.

12 A Could you repeat that question?

13 Q (BY MS. ALLEN) I can, sir. Did you have any
14 involvement with the attorneys concerning the defense or
15 the legal expenses that were incurred in connection with
16 the TOMA litigation?

17 A I only had a conversation with our attorney of
18 long-standing to see if the sale of the property was
19 legal. I was never a part of the conversation with the
20 attorneys in defense of the TOMA lawsuit.

21 Q Okay. So if I understand you correctly, after
22 the TOMA lawsuit was filed, there was a discussion
23 amongst board members about selling the extra property
24 that was still in the airport?

25 JUDGE SIANO: Ms. Allen --

1 MS. ALLEN: Is that correct?

2 A We're talking about two different things now.

3 Q Okay.

4 JUDGE SIANO: Ms. Allen, I feel like we've
5 strayed.

6 You were going to ask some questions
7 regarding the timing of the lawsuits, and I feel like
8 we're --

9 MS. ALLEN: Okay. Fair enough.

10 Q (BY MS. ALLEN) Were you with the Company when
11 Double F Hangars, and other members, filed a lawsuit
12 against Dana Martin's company and the Burnet County
13 Commissioner's Court over this land transaction?

14 A The TOMA suit?

15 Q No, sir. That's exactly why I am trying to
16 build this context. The TOMA lawsuit -- I think you
17 told us -- was filed in December, 2017. Is that right?

18 A Yes.

19 Q There was, then, a lawsuit that was filed by
20 Double F Hangars against Dana Martin's company in the
21 Burnet County Commissioner's Court. Are you familiar
22 with that?

23 A What was the date of that suit?

24 Q It was July of 2018.

25 A Well, to answer your question, I was with the

1 Company then.

2 Q You were with the Company in July 2018?

3 A Yes.

4 Q Did you know about the Double F lawsuit against
5 Dana Martin's company in the Burnet County
6 Commissioner's Court?

7 A Only in a very general hearsay context.

8 Q Okay. Then I'm not going to ask you any
9 further questions about that.

10 Were you with the Company when the board
11 decided that it needed to have a forensic appraisal of
12 the property that was in the airport?

13 A I was with the Company.

14 Q Are you familiar with that decision and action
15 by the board?

16 A No.

17 Q You're not. Did you know that it happened?

18 A Yes.

19 Q You knew that the board engaged the Bolton Firm
20 to conduct a forensic appraisal. Correct?

21 A Yes.

22 Q Did you see the forensic appraisal report of
23 December, 2018?

24 A Bolton Appraisal?

25 Q Yes, sir.

1 MS. KATZ: Your Honor, I'm going to object
2 again. I don't see how this is relevant. Issue No. 8
3 is limited to were Windermere Oaks outside legal
4 expenses related to defending lawsuits included in the
5 rates appeals. That's a yes or no answer. And, if so,
6 what amounts of outside legal expenses was included in
7 the rates appealed. That's a definitive answer that is
8 not being disputed. So I'm not sure what this line of
9 questioning has to do with Preliminary Orders Issue
10 No. 8 that Ms. Allen referred to or the timeline of
11 lawsuits. Because she's talking about an appraisal
12 report at this point.

13 JUDGE SIANO: Ms. Allen.

14 MS. ALLEN: Your Honor, while the TOMA
15 lawsuit was pending and while the company was paying
16 legal expenses, it commissioned a forensic appraisal
17 that I believe the Water Supply Company has put into
18 evidence, and that appraisal -- the results of that
19 appraisal were known to the board at the time that it
20 increased these rates. Whether it ought to be relevant,
21 whether it ought to have impacted decision-making, is
22 something that's for you to decide, not me.

23 My job is to make sure that you know what
24 was known to the board at the time that it made this
25 decision, and that is what I am trying to do.

1 JUDGE SIANO: How would an appraisal
2 affect the reasonableness of the rates?

3 MS. ALLEN: Because the rates depend on
4 the reasonableness of the expenditures of attorneys'
5 fees on these lawsuits. And what this evidence would
6 show is that the board itself in December, 2018,
7 obtained its own appraisal that reflected that, in fact,
8 the Company's property that it lost was worth twice or
9 three times what the director had paid for it. That was
10 information known to the Company at the time that it
11 approved the legal fees that are the basis for these
12 rates.

13 If I understand it right, you're going to
14 be called upon to decide whether these legal fees are
15 just and reasonable, which I think translates into
16 whether they were prudently incurred, and that's
17 separate and apart from whether or not they relate in
18 any way to the provision of water and wastewater service
19 for the customers. So I think that its -- you need to
20 understand what the board knew about the financial
21 impact, recovering this property, versus continuing to
22 spend legal fees to prevent its recovery.

23 You don't know any of this because this
24 record has not been developed. I'm not -- it doesn't
25 matter to me who is right or wrong, what matters to me

1 is what happened.

2 JUDGE SIANO: If this appraisal is in
3 evidence, then you can refer to it in your closing
4 post-hearing briefs.

5 But with respect to this witness and as
6 phrased, I do not see the relevance and I'll sustain the
7 objection.

8 MS. ALLEN: All right.

9 Q (BY MS. ALLEN) Are you familiar with a couple
10 of demand letters that the Company had its attorney
11 prepare and send in early 2020 to Ms. Martin and to an
12 appraiser, Jim Hinton -- not Bolton -- Hinton?

13 A I have never seen that letter. I've heard that
14 there was a letter but it would be second-hand
15 knowledge.

16 Q Okay. Then I'm not going to ask you about
17 things that you don't know about.

18 Are you aware that there was a point in
19 time in the summer of 2019 when members intervened in
20 the Double F lawsuit -- not TOMA -- Double F?

21 A Only second-hand knowledge, nothing direct.

22 Q Did you see the lawsuit papers? Did you see a
23 copy of the lawsuit?

24 A No.

25 Q Okay. Do you recall when the TOMA lawsuit --

1 TOMA -- was concluded?

2 A You may mean after the Supreme Court refused to
3 hear it the second time?

4 Q Whenever you think that the TOMA lawsuit was
5 concluded?

6 A That's my understanding. But, again, that's
7 not a legal opinion, that's just --

8 Q Mr. Burriss, please, please, understand I'm
9 just asking for a time, a time, not a legal opinion. I
10 want to know -- I'm trying to ascertain from somebody
11 who may or may not have knowledge -- if you don't, just
12 tell me.

13 When was the TOMA lawsuit concluded?

14 A My understanding is that it was -- that the
15 conclusion of that suit was at the second refusal of the
16 State Supreme Court to hear it.

17 Q Do you recall the board sending around a
18 newsletter that declared victory?

19 MS. KATZ: Your Honor, I'm going to
20 object. I have no idea how that's relevant to this
21 case.

22 JUDGE SIANO: Sustained.

23 Q (BY MS. ALLEN) Do you recall when it was that
24 the judgment was entered in the TOMA lawsuit?

25 A I don't know. I'm not sure I know how to

1 answer that question. I'm not sure I understand exactly
2 what the thrust of the question is. I saw the decision
3 that the judge rendered after the first hearing in
4 Burnet.

5 Q Okay.

6 A And I was aware of the successive hearings
7 through the appellate courts and up to the Supreme Court
8 that upheld Judge Garrett's opinion.

9 Q Do you know why it was that the company
10 continued to pay legal fees for the TOMA Integrity
11 litigation once it was concluded?

12 MS. KATZ: Your Honor, I'm going to object
13 to speculation.

14 MS. ALLEN: Your Honor, I can't know what
15 he knows without asking him what he knows.

16 JUDGE SIANO: Well, if you know -- perhaps
17 if you -- Ms. Allen, what are you trying to develop
18 here?

19 MS. ALLEN: Your Honor, the -- look, I
20 know you don't want to hear argument from me, but I
21 don't know how to explain myself. The records reflect
22 that the Company continued to spend money in connection
23 with the TOMA litigation after the TOMA litigation was
24 over. I don't understand that. Maybe Mr. Burriss can
25 explain it to me.

1 JUDGE SIANO: Well, why don't you ask him
2 that question?

3 Q (BY MS. ALLEN) Mr. Burriss, the records appear
4 to me to suggest that the company continued to pay legal
5 fees for the TOMA litigation after the TOMA litigation
6 was concluded. Do you have any explanation for that?

7 A Well, I can tell you what I know from my
8 perspective. The board was not able to pay the total,
9 legal invoices as they were received, so they had a
10 payment plan so-to-speak. And so those payments
11 continued long after the invoices had been issued by the
12 law firm.

13 Q Let me ask it this way: The records indicate
14 that the company continued to pay lawyers to perform
15 legal services in connection with the TOMA litigation
16 after the TOMA litigation was concluded --

17 (Simultaneous discussion)

18 MS. KATZ: Your Honor, this has been asked
19 and answered.

20 Q (BY MS. ALLEN) -- do you have any --

21 MS. KATZ: Objection. Asked and answered,
22 several times.

23 MS. ALLEN: Your Honor, there was -- this
24 is not asking about a payment plan. This is asking
25 about invoices for the TOMA litigation that reflected

1 legal services performed. This is not carrying forward
2 a payable. If he knows, we need to know.

3 JUDGE SIANO: So it does not appear to me
4 that he may be the most appropriate witness for this.
5 And in the interest of efficiency, I'm wondering if we
6 might be redirected to another witness that might be
7 able to answer these questions, if that's what you're
8 trying to develop.

9 MS. ALLEN: I want nothing more than to be
10 efficient, but this was the guy I thought who had
11 collected the financial information and so I thought
12 these questions were appropriately directed to him. If
13 he doesn't know, he doesn't know.

14 JUDGE SIANO: Okay. Mr. Burriss, is there
15 another witness that might be more suitable for this
16 line of questioning?

17 THE WITNESS: Well, Your Honor, I've tried
18 to explain that the legal invoices were reviewed and
19 approved by a board member.

20 JUDGE SIANO: I'm just asking whether
21 there's another witness --

22 (Simultaneous discussion)

23 THE WITNESS: Yes.

24 JUDGE SIANO: -- that might better handle
25 these questions. And who is that?

1 THE WITNESS: The treasurer and the
2 president.

3 JUDGE SIANO: So that would be
4 Mr. Gimenez.

5 MS. ALLEN: Mr. Gimenez.

6 JUDGE SIANO: And is that the president?
7 Mr. Gimenez is the president. Correct?

8 THE WITNESS: Correct.

9 JUDGE SIANO: And the treasurer is who?

10 THE WITNESS: Mr. Nelson.

11 JUDGE SIANO: Mr. Nelson.

12 THE WITNESS: Mike Nelson.

13 JUDGE SIANO: Okay. So in the interest of
14 efficiency, Ms. Allen, I suggested that you defer this
15 line of questioning for those witnesses.

16 MS. ALLEN: I will be happy to do so.

17 JUDGE SIANO: Okay.

18 Q (BY MS. ALLEN) Mr. Burriss, there was a
19 discussion, at least insofar as it's reflected in the
20 board minutes, when the board made its decision to raise
21 these rates, there was a discussion about whether or not
22 to levy an assessment under the tariff.

23 Do you recall that?

24 MS. KATZ: Objection, Your Honor. This
25 calls for hearsay and relevance.

1 JUDGE SIANO: Ms. Allen response?

2 MS. ALLEN: Your Honor, our position is
3 that had there actually been an operating deficit, the
4 tariff is mandatory in that regard, and it requires that
5 there be an assessment.

6 JUDGE SIANO: Okay. I'm not -- okay. So
7 the objection is to hearsay, so what's your response to
8 that?

9 MS. ALLEN: Well, I didn't ask him what
10 was said. I can't even get there without asking him if
11 he knows about it.

12 JUDGE SIANO: Okay. So you're --

13 MS. ALLEN: I asked him if he knew about
14 it.

15 JUDGE SIANO: You're responding to the
16 relevancy objection.

17 MS. ALLEN: I know we're going to get
18 there, so I thought I would be efficient.

19 JUDGE SIANO: Okay. Ms. Katz?

20 MS. KATZ: Your Honor, I believe that she
21 was referring to a discussion, so in a sense she was
22 testifying about a discussion that occurred and
23 referring to a discussion, she's eliciting testimony
24 about the results of that discussion and whether or not
25 something heard through a discussion that happened

1 outside of this hearing --

2 JUDGE SIANO: All right. Well --

3 MS. KATZ: -- with other people, of
4 course, speaking during that discussion.

5 JUDGE SIANO: Well, you can renew your
6 objection. But for now, it's overruled.

7 Go ahead, Ms. Allen.

8 Q (BY MS. ALLEN) Mr. Burriss, do you remember
9 what I asked you? Let me just go again. Let me go
10 again.

11 The minutes -- I'll just say this: The
12 Company's minutes reflect there was a discussion in
13 connection with the decision to raise the rates that are
14 on appeal right now. There was a discussion about
15 whether or not to levy an assessment under the tariff.

16 My question to you is: Do you recall that
17 discussion being had?

18 A You know, I was not directly involved in that
19 discussion. That's really not my role to decide how the
20 board would do that.

21 Q I hope not. But you might in your capacity as
22 General Manager have participated.

23 Did you participate in the discussion
24 about whether or not it was appropriate to levy an
25 assessment or raise rates?

1 A No -- well, I don't recall that I was part of
2 that conversation.

3 Q At the end of 2019, did the Company have a
4 deficit between its revenues that it had collected and
5 the costs it had incurred to provide water and
6 wastewater services to its customers?

7 A I would have to refer to the P&L for 2019.

8 Q And we will do that, but so we can have your
9 guidance as the man who operated the system, what would
10 we look at on the P&L to answer that question?

11 A Well, your question was did we have an
12 operating profit, so you would look at the bottom line.

13 Q Is it fair to say that none of the legal
14 expenses that were incurred and included in these rates
15 were used for purposes of operating the water and
16 wastewater system?

17 A Could you repeat that, please?

18 Q Yes, sir. Is it fair to say that the legal
19 expenses that we're here about today that were included
20 in this rate increase, none of those legal expenses --
21 excuse me -- were used for purposes of, for example,
22 making more water flow through the system?

23 A That's correct.

24 Q None of those monies were used for enhancing or
25 maintaining or repairing the wastewater system. Is that

1 right?

2 A That's correct.

3 Q None of those monies were used for capital
4 improvements for the system. Correct?

5 A That's correct.

6 Q None of those monies were used in any way for
7 purposes of enabling the Company to operate its system
8 to provide water and wastewater services. Correct?

9 A That's correct.

10 Q Okay.

11 JUDGE SIANO: Ms. Allen, I'm sorry to
12 interrupt you again. We've been at this for a while.
13 Perhaps the most important person in the room is the
14 reporter, and I want to make sure that she's okay. I
15 suggest we take a 10-minute break and then we can pick
16 back up at this point.

17 MS. ALLEN: Absolutely. So that would
18 bring us back at 11:30.

19 MS. KATZ: 11:22.

20 MS. ALLEN: Whatever time you say. Thank
21 you.

22 JUDGE SIANO: All right.

23 (Recess: 11:12 a.m. to 11:22 a.m.)

24 JUDGE SIANO: All right. Let's go back on
25 the record.

1 Ms. Allen.

2 (No response)

3 THE REPORTER: Ms. Allen is muted.

4 JUDGE SIANO: You're on mute. You're
5 going to have to unmute.

6 MS. ALLEN: I'm sorry.

7 Q (BY MS. ALLEN) Mr. Burriss, before I let you
8 go, I just want to make sure that you and I have
9 communicated about this assessment question and the
10 reason is, because I don't want to find out later that
11 it's really a question that I should have addressed to
12 you and I wasn't clear with you. All right? That's the
13 purpose. I'm not harassing you.

14 So if I can figure out how to do it, I
15 want to show you the tariff provision I'm trying to ask
16 you about and then just see whether you're the guy or
17 you're not the guy. Okay? Let me see if I can get it
18 done here.

19 So, Mr. Burriss, am I actually -- let's
20 see. Now, there. Am I sharing my screen with you to
21 show you Paragraph 11 of Section G of the tariff?

22 A Yes.

23 Q And I'm showing you the one from the tariff
24 dated February 11, 2020. The identical provision was in
25 the prior tariff. Right?

1 A Correct.

2 Q Okay. And I'm just, again, asking you about
3 the things that are in your bailiwick of operations.
4 And I want to focus in on the cost incident to the
5 operation of the system. Okay?

6 MS. KATZ: Your Honor -- would you -- I
7 guess I would just for clarification purposes, for the
8 record, would Ms. Allen please direct everybody to an
9 exhibit that has already been admitted so we can all
10 make sure that we're pointed in the right direction, and
11 if it's not one that's already been admitted, let us
12 know.

13 MS. ALLEN: It is not one that has already
14 been admitted. If anybody wants it admitted, I'm happy
15 for it to be admitted. I'm simply using it as a
16 demonstrative so that this witness can -- this witness
17 and I can be sure that we are on the same page about the
18 question.

19 MS. KATZ: So, then, Your Honor, I would
20 object to this as hearsay. I believe that if Ms. Allen
21 wants to refer to something she would properly be asking
22 Mr. Burriss if he recalls X, Y, and Z, if he can recall
23 it written in a certain document. If he can't recall
24 it, then she would allow him to have a moment to review
25 that document, and it wouldn't necessarily be a part of

1 the record.

2 JUDGE SIANO: Well, I --

3 MS. ALLEN: Your Honor, if I were offering
4 it into evidence, I would think all that would be well
5 taken, but I'm not.

6 JUDGE SIANO: Okay. So far, what I've
7 heard, it's not objectionable, and overruled. If
8 something else develops, then you can lodge another
9 objection.

10 MS. KATZ: Thank you, Your Honor. I would
11 object to hearsay because she's quoting a document.
12 Everything in that document is hearsay.

13 JUDGE SIANO: She may be quoting the
14 document she's asking with -- regarding his familiarity
15 with it, and so your -- it's overruled.

16 Go ahead, Ms. Allen.

17 Q (BY MS. ALLEN) So Mr. Burriss, I just want to
18 make sure that you and I know what we're talking about
19 here, and I'm focusing in on costs incident to the
20 operation of the Corporation's system. You're with me
21 so far. Right?

22 A Yes.

23 Q Okay. At the end of 2019, from your knowledge
24 and perspective as the General Manager who handled the
25 operations of the system, was the -- was the total

1 amount derived from the collection of the water or
2 wastewater charges insufficient for the payment of all
3 costs incident to the operation of the system?

4 A As I said, my recollection is that it was about
5 a break-even year.

6 Q Okay. And then just to close the loop on it so
7 that nobody says, "Gee, you should have talked with
8 Mr. Burriss about that," when the board was considering
9 the rate increase, did anyone inquire of you, "Gee,
10 Mr. Burriss, are the revenues from charges for service
11 sufficient or not to cover the costs incident to the
12 operation of the Corporation's system"?

13 MS. KATZ: Objection, Your Honor.
14 Question calls for hearsay. Did anybody state to you X,
15 Y, and Z.

16 JUDGE SIANO: Overruled. Answer the
17 question, Mr. Burriss.

18 A Yes, there was a discussion that I had with
19 James Smith with Texas Rural Water about the issue of
20 assessments versus a rate increase. And the
21 understanding that I had was that we had about a
22 break-even year in 2019, but we could see that 2020 was
23 going to be a disaster, so far as the budget was
24 concerned. And the consensus was that the assessment is
25 something that would take place at the end of 2020. We

1 would already be insolvent by that point. So it was the
2 recommendation of Texas Rural Water that we proceed with
3 a rate increase, rather than waiting until the end of
4 the following year and calculating an assessment.

5 Q (BY MS. ALLEN) Okay. Did you furnish any
6 information that was an amount of costs incident to the
7 operation of the Corporation's system in connection with
8 the decision about the rate increase?

9 A Yes.

10 Q What information did you furnish about the
11 costs incident to the operation of the corporation's
12 system?

13 A I supplied legal expenses that were anticipated
14 which would be in addition to the test year for the rate
15 increase of 2018. And, of course, I supplied to
16 Mr. Smith all of our financial information --

17 (Simultaneous discussion)

18 Q (BY MS. ALLEN) Did you supply -- I'm sorry. I
19 didn't mean to interrupt you. You finish.

20 A Well, I supplied information for every year.

21 Q Did you supply to Mr. Smith the information
22 about the amount of legal costs that the Company had
23 become obligated to pay in 2019 but had not paid?

24 A Yes.

25 Q What information did you furnish?

1 A I don't recall the exact number. My
2 recollection is that we owed 171,000 at that point.

3 Q The Company owed 171,000 at the end of 2019.
4 Do I have that right?

5 A Yes. And my recollection -- and, you know, I
6 would need to refer to our financial reports but --

7 Q Okay. Now --

8 (Simultaneous discussion)

9 A -- but actually, the conversation was we would
10 need 250,000 by the end of 2020.

11 Q (BY MS. ALLEN) Was there anyone, other than
12 you, who furnished information concerning anticipated
13 legal expenses?

14 A Well, I provided all of the financial reports
15 that were prepared by our CPA, if that's what you're
16 asking me.

17 Q No, sir. What I'm really wanting to know is,
18 where -- what were the sources of information that were
19 known to the board at the time that they approved this
20 rate increase from which they obtained information
21 concerning anticipated legal costs. I hear that you are
22 one of them.

23 A Well, all of the financial information
24 originated with the CPA, and I simply gathered that and
25 presented it to the board.

1 Q To the best of your knowledge, was the board
2 furnished with any other information concerning
3 anticipated legal costs, besides what you've shared with
4 us?

5 A I'm sure there were.

6 Q Well, do you know?

7 A No, I don't know.

8 Q Have you ever seen any record --
9 contemporaneous record suggesting that the board was
10 furnished with any other information concerning
11 anticipated legal costs?

12 A All of the legal invoices were presented to the
13 board, and then the board instructed me as to what part
14 of those invoices to pay, which I then relayed that
15 information to the CPA and he prepared the checks.

16 Q All right. You're not aware of any other
17 information that the board had at the time that it
18 approved the rate increase, other than what you've
19 shared with us. Is that fair to say?

20 A Well, I wouldn't have any way of knowing
21 about --

22 (Simultaneous discussion)

23 Q (BY MS. ALLEN) Yes, sir. You would know what
24 you're aware of?

25 A Yes, that's correct. I only know what I'm

1 aware of.

2 Q Is it fair to say that you're not aware of any
3 other information that the board had before it at the
4 time that it decided to raise these rates concerning
5 anticipated legal costs, other than what you've shared
6 with us?

7 A Yes, I wouldn't know about anything other than
8 what they had shared with me.

9 Q Okay. I have one last question.
10 Mr. Burriss -- well, one last topic.

11 Do you remember that there was a
12 newsletter that went out from the board that notified
13 people about this rate increase?

14 MS. KATZ: Your Honor, I'm going to object
15 to relevance right here regarding notification in a
16 newsletter.

17 JUDGE SIANO: Well, if it's notice -- are
18 we talking about notice of a rate increase?

19 MS. ALLEN: Your Honor, there was a
20 newsletter that went out to the community notifying the
21 community about this rate increase, and I'm looking at
22 it. I want to know whether Mr. Burriss is familiar with
23 it, so I'll know whether I can ask him about it.

24 MS. MAULDIN: Okay. I'll withdraw that
25 objection, Your Honor.

1 JUDGE SIANO: Go ahead.

2 Mr. Burriss, go ahead.

3 A I do remember that we issued the proper notices
4 and -- but I don't remember the details and what was in
5 that message.

6 Q (BY MS. ALLEN) That's fair enough. That's a
7 perfectly fair answer. Let me see if I can refresh your
8 memory there. Hold on.

9 Mr. Burriss, I'm hoping that you can now
10 see the January 28, 2020 newsletter. Can you see it?

11 A Sure.

12 Q Did you have anything to do with the
13 preparation of this newsletter, by the way? Do you need
14 to see the whole thing? I'm happy to scroll it down, if
15 you like.

16 A No, that's fine.

17 Q You're familiar with this. Correct?

18 A Yes.

19 Q Okay. And you can look at any part of it that
20 you'd like. My question just concerns the part that I
21 highlighted and it says, "Our legal bills are absorbing
22 available funds for the operation, maintenance, and
23 necessary upgrades to your water system."

24 Do you see that?

25 A Yes.

1 Q Was that true?

2 A Absolutely.

3 Q By how much?

4 A I couldn't answer that. I would have to go
5 back to the financial reports to be accurate.

6 Q Did anyone on the board ever provide you with
7 an explanation about why it was that their legal bills
8 were absorbing available funds for the operation,
9 maintenance, and necessary upgrades to the water system?

10 A No.

11 Q Through today, has anybody furnished you an
12 explanation of how that happened?

13 A No.

14 MS. ALLEN: Your Honor, I pass the
15 witness.

16 JUDGE SIANO: Okay. I do have one
17 question for this witness.

18 How many different meter sizes does the
19 system have?

20 THE WITNESS: One.

21 JUDGE SIANO: Thank you. Let's see.
22 Ms. -- I guess it goes to Staff now.

23 Ms. Lander.

24 MS. LANDER: Staff has waived this
25 witness. Thank you.

1 JUDGE SIANO: Okay. All right. Thank
2 you.

3 Redirect, Ms. Katz.

4 MS. KATZ: No redirect, Your Honor.

5 JUDGE SIANO: All right.

6 MS. ALLEN: Your Honor, it would take
7 about 45 seconds, I think, to put this little snippet
8 about the other surplus property on the record in a
9 bill. Could we just get that over with?

10 JUDGE SIANO: I'm fine with that. Are you
11 anticipating examining this witness for that purpose or
12 are you just going to tell me what you think the
13 examination would develop?

14 MS. ALLEN: Typically, I would just ask
15 the witness, instead of trying to presume I knew what he
16 would say. But I'll do it any way you like.

17 JUDGE SIANO: Well, I'm not going to
18 compel this witness to testify what you think he would
19 say. So --

20 MS. ALLEN: You've got a point.

21 JUDGE SIANO: -- if you want to state --
22 and let's see. This should probably be set all in a
23 separate part of the record.

24 Ms. Griffin, are you able to -- if we do
25 an Offer of Proof -- take that up on a different --

1 segment that out on the record?

2 THE REPORTER: Yes, we do separate that
3 out and put it into a completely separate document.

4 JUDGE SIANO: Okay. Ms. Katz, do you have
5 any thoughts on how this should go? We'll do this now,
6 if you think it can be done quickly, Ms. Allen.

7 MS. KATZ: Your Honor, I'm --

8 (Simultaneous discussion)

9 MS. ALLEN: I think so, Your Honor. I'm
10 ready to go.

11 JUDGE SIANO: Okay. One moment. I want
12 to hear from Ms. Katz.

13 MS. KATZ: I don't necessarily have any
14 thoughts on which way it should go. I would agree with
15 Your Honor in that I would appreciate Ms. Allen letting
16 you know what she anticipates or thinks the witness
17 would say versus asking the witness himself, what -- if
18 he agrees that he might say some form of testimony on
19 the stand or elicit some sort of testimony through
20 asking those questions to him.

21 However, I would still renew my objection
22 regarding this specific topic as being irrelevant to
23 this proceeding.

24 JUDGE SIANO: Okay. Well, she's about
25 to -- I'm sorry. Ms. Allen, I'm familiar with an offer

1 of proof or -- perhaps it's Commission nomenclature
2 here, but is that the same thing?

3 MS. ALLEN: Yes, Your Honor. And I'm
4 happy to tell you exactly what I think he's going to
5 say, but I don't --

6 (Simultaneous discussion)

7 JUDGE SIANO: Okay. Go ahead.

8 MS. ALLEN: -- like I said, I wouldn't
9 presume to put words in his mouth. What I think he's
10 going to say is that at the time --

11 JUDGE SIANO: Whoa, whoa, whoa, we're not
12 ready for this yet. We're just setting it up.

13 MS. ALLEN: Sorry.

14 JUDGE SIANO: All right. So, Ms. Griffin,
15 are you ready for this Offer of Proof.

16 THE REPORTER: I am.

17 (The following pages, 86 through 92, are
18 Ratepayers Offer of Proof.)

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1 PRESENTATION ON BEHALF OF
2 WINDERMERE OAKS WATER SUPPLY CORPORATION (CONTINUED)

3 JUDGE SIANO: And we'll go back on the
4 record.

5 Ms. Allen, I asked a question, and before
6 we leave this witness, I want to give you a chance to
7 ask any further questions based on my question.

8 Did you have any that relates to the meter
9 sizes?

10 (No response)

11 JUDGE SIANO: I asked this witness what
12 meter sizes this system had. Do you have any questions
13 based on my question?

14 MS. ALLEN: Your Honor, may I ask the
15 witness, does the system have any master meters?

16 JUDGE SIANO: Go ahead.

17 A We have several actually.

18 Q (BY MS. ALLEN) Where are those?

19 A Well, we have a roll (Zoom audio distortion)
20 water system. We have meters in the treatment plant
21 that track the processes of the treatment plants and we
22 have a master meter where the water leaves the plant and
23 enters the distribution system.

24 Q So who uses those master meters?

25 A We use them for internal control to track our

1 water loss.

2 Q Just one moment, Mr. Burriss, I need to make
3 sure -- are there any -- is there any sharing of meters
4 on the system?

5 A No.

6 MS. ALLEN: All right. Your Honor, thank
7 you for that opportunity. I appreciate it.

8 Thank you, Mr. Burriss.

9 JUDGE SIANO: Sure.

10 Ms. Katz, any redirect --

11 MS. KATZ: No, Your Honor.

12 JUDGE SIANO: -- based on that?

13 MS. KATZ: No, Your Honor.

14 JUDGE SIANO: Thank you. Mr. Burriss,
15 you're excused.

16 THE WITNESS: Thank you, Your Honor.

17 JUDGE SIANO: All right. We're coming up
18 at 12:00. At some point we'll take a lunch break, but I
19 don't want to interfere with any efficiencies that might
20 be had or time constraints.

21 Ms. Katz, did you want to take up
22 Ms. Mauldin now or after lunch?

23 MS. KATZ: Yes, Your Honor. I'm assuming
24 this shouldn't take long, but you never know. But I
25 would love to get her started now, if that's possible.

1 JUDGE SIANO: I'm fine with that.

2 Okay. Go ahead and call your witness.

3 MS. KATZ: Thank you, Your Honor.

4 At this time Windermere Oaks calls Jamie
5 Mauldin to the stand.

6 JUDGE SIANO: Ms. Mauldin, please raise
7 your right hand.

8 (Witness sworn)

9 THE WITNESS: I do.

10 JUDGE SIANO: All right. Proceed.

11 JAMIE MAULDIN,

12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. KATZ:

15 Q Good morning, Ms. Mauldin.

16 A Good morning.

17 Q Ms. Mauldin, do you have a copy of what's been
18 previously marked as Exhibits WOWSC 4, 5, and 6 in front
19 of you, which is a copy of your testimony, including
20 both supplementals?

21 A I do.

22 Q And are these true and correct copies of the
23 prefiled testimony in this case?

24 A They are.

25 Q And if we were to ask you the questions

1 presented in this document to you, would the answers
2 still be the same as what's contained in your testimony?

3 A Yes.

4 MS. KATZ: With this exhibit already in
5 the record, Windermere Oaks passes the witness for
6 cross-examination.

7 JUDGE SIANO: Ms. Allen.

8 CROSS-EXAMINATION

9 BY MS. ALLEN:

10 Q Ms. Mauldin, hang on one second. I know I'm
11 probably muted. Hold on.

12 Okay. Ms. Mauldin, can you hear me okay?

13 A I can.

14 Q Okay. Great. Can you tell us whether the
15 rates that are being appealed from were determined based
16 upon all of the expenses that the Company either paid or
17 incurred for work done in 2019?

18 A I am only here to testify about my direct
19 testimony, which is the rate case expenses in this case.

20 MS. KATZ: Yeah, Your Honor -- thanks,
21 Ms. Mauldin. Your Honor, I would be objecting to this
22 question. It's outside the scope of her testimony.
23 Ms. Mauldin is here only to testify as far as rate case
24 expenses, not expenses in all of the cases at hand.

25 JUDGE SIANO: Well, I understand that.

1 Cross-examination is wide open. She can answer that
2 question.

3 Ms. Allen -- or Ms. Mauldin, go ahead and
4 answer the question.

5 A Can you ask the question again? I'm sorry.

6 Q (BY MS. ALLEN) Yes, ma'am. Do you know
7 whether the rates that are being appealed from for which
8 you're trying to get expenses for the appeal, whether
9 those rates were calculated on the basis of all of the
10 expenses that the Company paid or incurred for services
11 during 2019?

12 JUDGE SIANO: I'm sorry. Maybe I
13 misunderstood the question initially.

14 I'll sustain the objection.

15 MS. ALLEN: Fair enough.

16 Q (BY MS. ALLEN) Ms. Mauldin, did you provide
17 the board with any sort of -- for lack of a better
18 word -- legal budget for what this rate appeal would
19 likely cost the company?

20 A At certain times throughout the last year-and-a
21 half while this case has been pending, I have provided
22 estimates to Mr. Gimenez and Mr. Nelson. Whether or not
23 they took that to the board, I am -- I don't know.

24 Q So just so that I'm clear: The board did not
25 request or require you to furnish any sort of budget

1 when you were engaged for this work. Is that fair to
2 say?

3 A If they did, I do not recall.

4 Q And you can't recall having ever furnished
5 a budget. Is that right?

6 A I have definitely furnished estimates to
7 complete this proceeding with various outcomes and --
8 but I don't recall when exactly those estimates were
9 provided.

10 Q Okay. You did not undertake to try to
11 determine whether the rates that are being appealed from
12 were just and reasonable. Is that fair to say?

13 A I would say that I was hired to defend the
14 Water Supply Corp in the rate appeal.

15 Q So can you answer my question?

16 A Can you repeat the question?

17 MS. ALLEN: Ms. Griffin, could you read
18 back the question, please, ma'am.

19 (The record was read as requested.)

20 Q (BY MS. ALLEN) I think what I meant to say
21 was: Did you undertake to determine whether or not the
22 rates being appealed from are just and reasonable?

23 A I would say in the course of my representation
24 I have evaluated the rates that are being appealed.

25 Q What evaluation have you made?

1 MS. KATZ: Your Honor, I'm going to object
2 to relevance.

3 JUDGE SIANO: Sustained.

4 Q (BY MS. ALLEN) Have you evaluated any of the
5 legal fees that are included within the rates being
6 appealed from in order to ascertain whether or not they
7 are reasonable expenses of operation?

8 MS. KATZ: Your Honor, I'm going to object
9 to relevance again.

10 JUDGE SIANO: Response?

11 MS. ALLEN: Your Honor, I mean, I can't
12 know without asking, but it seems to me that if
13 evaluations were made that suggested that these expenses
14 were not reasonable operating expenses, then that should
15 have informed the strategy and therefore the level of
16 expense of Company resources that would be allocated to
17 this effort.

18 MS. KATZ: Your Honor, I believe this line
19 of questioning is asking Ms. Mauldin about her
20 assessment of the case and attorney/client privileged
21 communication regarding strategy. And I also don't
22 think it's relevant to this proceeding.

23 MS. ALLEN: Well, relevance I hear. But
24 once this witness takes the stand, she does not have a
25 privilege.

1 JUDGE SIANO: Well, I don't know if I
2 agree with you on that.

3 So your question, Ms. Allen, is whether or
4 not Ms. Mauldin has made an independent evaluation of
5 the reasonableness of the legal expenses that are the
6 subject of this appeal?

7 MS. ALLEN: Right. Whether they are --
8 whether they are reasonable operating expenses, yes.

9 JUDGE SIANO: I will allow that question.

10 A May I ask a clarifying question, Ms. Allen?
11 I'm am sorry to ask you a question, but I'm a little
12 confused about the term "operating expenses" in this
13 manner. Are we talking about utility operating expenses
14 or legal operating expenses?

15 Q (BY MS. ALLEN) Let me rephrase.

16 Have you analyzed the litigation expenses
17 that were included within these rates to determine
18 whether they are or are not costs incident to the
19 operation of the Corporation's water and wastewater
20 system?

21 A I have reviewed the legal expenses that were
22 included in this -- in the appealed rate, yes.

23 Q What evaluation did you make to determine
24 whether or not they were costs incident to the operation
25 of the Corporation's water and wastewater system?

1 A I determined that the utility needed to pay
2 these outstanding legal invoices.

3 Q Why?

4 A Because they are owed to the law firms that
5 performed the work for them.

6 Q Okay. So they are valid debts of the Company.
7 Is that right?

8 A Sure.

9 Q You didn't evaluate whether or not it was
10 reasonable to have approved those expenditures. Is that
11 correct?

12 A As an attorney, I was hired to defend this rate
13 appeal. I reviewed the facts of the case, and I have
14 prepared a case defending the rate appeal. And I
15 believe the testimony stands and speaks for itself.

16 Q Has anyone ever suggested to you that any of
17 these legal costs were not approved by the board, in
18 other words, were unauthorized?

19 A No. Not that I recall.

20 Q Is it fair to say that the best that you know,
21 every one of the legal expenses that are included in
22 these rates was approved by the board of directors?

23 A As far as I know.

24 MS. ALLEN: Nothing further, sir.

25 JUDGE SIANO: Redirect? I'm sorry. Let's

1 see.

2 Did Staff have any questions?

3 MS. LANDER: No, Your Honor. Staff has
4 waived this witness as well.

5 JUDGE SIANO: Okay. Ms. Katz?

6 MS. KATZ: I just have a few questions,
7 Your Honor.

8 JUDGE SIANO: Go ahead.

9 REDIRECT EXAMINATION

10 BY MS. KATZ:

11 Q Ms. Mauldin, let's talk about your specific
12 testimony that you filed now.

13 Does Lloyd Gosselink use lower rates than
14 other law firms who provide similar utility
15 representation?

16 A Generally speaking, yes.

17 Q Okay. And have you billed consistently?

18 A Yes.

19 Q Okay. And are -- what are your hourly rates?

20 A In this case, my hourly late rate is \$280. My
21 normal hourly rate is \$350 that I charge to other
22 clients.

23 Q Okay. And generally speaking, what are rates
24 typically capped at in these types of cases?

25 A I believe the Commission has a general cap of

1 \$550 an hour for outside legal expenses.

2 Q So it's fair to say \$280 is much less than
3 \$550?

4 A Yes.

5 Q And has your billing changed recently regarding
6 this case?

7 A Yes. As we have prepared for hearing, I have
8 begun to -- well, consistently throughout this case, I
9 have tried to rely on my support staff and associates to
10 prepare a lot of the work in order to keep rate case
11 expenses down. And as of late, as we prepare for
12 hearing, I have been personally writing off a lot of my
13 time so as not to charge the Ratepayers.

14 Q Okay. And the Ratepayers were pro se until
15 about a week or two ago. Is that right?

16 A Correct.

17 Q Okay. And how did their number of pleadings
18 compare to a typical rate appeal? Like, were they more
19 than normal, less than normal?

20 A I would say in a typical rate appeal there
21 could be a lot of pleadings but there were -- this has
22 been a very motion practice heavy proceeding, in my
23 experience.

24 Q Okay. And when -- as an attorney representing
25 the Water Supply Corporation, when you receive pleadings

1 or motions, do you have a duty to respond to those?

2 A Yes, I do. I have a duty to represent and
3 defend my client.

4 MS. KATZ: Okay. Thank you, Ms. Mauldin.
5 Pass the witness.

6 JUDGE SIANO: I have a question,
7 Ms. Mauldin. It looks likes this is your second
8 supplement and you're at right around \$270 at this
9 point. Do you anticipate that that number will increase
10 through briefing and Commission consideration?

11 THE WITNESS: Yes, Your Honor. The
12 latest -- my second supplement was through I believe the
13 end of October so that -- to date, the rate cases
14 expenses do not include November. And, yes, it will
15 continue to incur expenses until this proceeding is
16 final and nonappealable.

17 JUDGE SIANO: And do you have an estimate
18 of what that will be?

19 THE WITNESS: I cannot say off the top of
20 my head. I know I estimated I think at the end of
21 October that it would probably cost us an additional
22 \$100,000 to go through hearing and briefing and the
23 exceptions, the whole process, to take it to final
24 decision at the Commission. But that's subject to
25 change depending on how much work we need to do.

1 JUDGE SIANO: I'm sorry. Is that \$100,000
2 on top of the 270 number, or is that on top of the
3 second supplement -- I mean first supplement?

4 THE WITNESS: That would be on top of the
5 second supplement.

6 JUDGE SIANO: So we're looking at
7 approximately 370?

8 THE WITNESS: I would say that's a fair
9 estimate.

10 JUDGE SIANO: All right. Thank you.
11 Any questions based on my questions,
12 Ms. Allen?

13 MS. ALLEN: Your Honor, I do have just a
14 bit of re-cross. It's really based on Ms. Katz
15 questions.

16 JUDGE SIANO: That's fair. Go ahead.

17 RECROSS EXAMINATION

18 BY MS. ALLEN:

19 Q Ms. Mauldin, would you agree with me that it is
20 not in the public interest for the Company's ratepayers
21 to pay the legal expenses incurred for this appeal if it
22 is determined that the rates that their board set were
23 not just and reasonable?

24 MS. KATZ: Your Honor, I'm going to
25 object. That's outside the scope of recross.

1 JUDGE SIANO: Sustained.

2 Q (BY MS. ALLEN) Ms. Mauldin, would you agree
3 with me that it is not good public policy to require the
4 ratepayers of this company to pay the costs that their
5 board has incurred in this appeal if it is determined
6 that the rates that their board set for them are not
7 just and reasonable?

8 MS. KATZ: Your Honor, I'm going to
9 object. It's outside the scope of re-cross.

10 JUDGE SIANO: Sustained.

11 Q (BY MS. ALLEN) Ms. Mauldin, do you represent
12 any other, what I'm going to call, smaller utilities?

13 A I do.

14 Q So that we can make a comparison, can you tell
15 us who they are?

16 A In terms of small water utilities I represent
17 MSEC. I represent IntegraWater Texas. I'm sure I
18 represent others that I can't think of off the top of my
19 head.

20 Q Have you represented them in a rate proceeding
21 of this type?

22 A Not those clients, no.

23 Q Okay. I should have asked you that. That's
24 what I intended to ask is whether you'd represented any
25 other smaller utilities in a rate appeal like this or a

1 rate proceeding like this?

2 A I have represented the City of Austin in a rate
3 appeal.

4 Q You don't consider the City of Austin a small
5 utility, do you?

6 A I do not.

7 MS. ALLEN: Okay. Okay. Your Honor,
8 that's all I have. Thank you.

9 JUDGE SIANO: Ms. Katz?

10 MS. KATZ: I have nothing further, Your
11 Honor.

12 JUDGE SIANO: All right. Thank you
13 Ms. Mauldin.

14 Well, I guess I should ask Staff.
15 Anything?

16 MS. LANDER: No, Your Honor. Thank you.

17 JUDGE SIANO: All right. Thank you.

18 Ms. Mauldin, you're excused.

19 THE WITNESS: Thank you.

20 JUDGE SIANO: Okay. Well, that brings us
21 to lunch time, and let's see as far as the next
22 witnesses -- where is my list here? We have Joe Gimenez
23 and Mike Nelson. Mike Nelson needs to testify this
24 afternoon. Is that right?

25 MS. KATZ: Yes, yes, Your Honor.

1 JUDGE SIANO: Okay. Let's go off the
2 record. I just want to just talk about sort of how
3 we're going to proceed here.

4 (Recess: 12:12 p.m. to 12:50 p.m.)

5 AFTERNOON SESSION

6 WEDNESDAY, DECEMBER 1, 2021

7 (12:50 p.m.)

8 JUDGE SIANO: Well, let's go back on the
9 record, and I believe we're taking up Mike Nelson.

10 MS. KATZ: Correct, Your Honor.

11 JUDGE SIANO: Ms. Katz.

12 MS. KATZ: Thank you, Your Honor. At this
13 time Windermere Oaks calls Mike Nelson to the stand.

14 (Witness sworn)

15 JUDGE SIANO: Okay. You're going to need
16 to speak up just a little bit.

17 THE WITNESS: Yes.

18 JUDGE SIANO: Thank you.

19 Ms. Katz.

20 MS. KATZ: Thank you, Your Honor.

21 PRESENTATION ON BEHALF OF

22 WINDERMERE OAKS WATER SUPPLY CORPORATION (CONTINUED)

23 MIKE NELSON,

24 having been first duly sworn, testified as follows:

25

1 DIRECT EXAMINATION

2 BY MS. KATZ:

3 Q Good morning -- good afternoon, Mr. Nelson.

4 (Laughter) We're in the afternoon now.

5 A Good afternoon.

6 Q Can you hear me okay?

7 A Yes, I can.

8 Q Okay. Great. Mr. Nelson, do you have a copy
9 of what's been marked as Exhibits WOWSC 07, 08, and 10?

10 A My direct testimony and my rebuttal testimony?

11 Q And your errata?

12 A Yes.

13 Q Okay. And are there any corrections or errors
14 you'd like to make to your direct testimony, which is
15 on -- which is Exhibit WOWSC 07, specifically on Page 7
16 and on Page 16?

17 A Yes. So, on --

18 Q So, let's start with Page 7, Mr. Nelson.

19 A On Page 7, Line 21, it says: What were the
20 results of --

21 (Simultaneous discussion)

22 MS. ALLEN: Ratepayers object to this
23 testimony --

24 JUDGE SIANO: Wait --

25 MS. ALLEN: -- on the same basis as they

1 objected to the untimely supplement, Your Honor.

2 JUDGE SIANO: I'm sorry. Let's -- which
3 page are we on?

4 MS. KATZ: Your Honor, we're on Page 7 of
5 Mike Nelson's direct testimony, which was marked as
6 Windermere Oaks Exhibit 7.

7 JUDGE SIANO: Okay. And I assume that
8 your line of questioning now pertains essentially to the
9 errata.

10 MS. KATZ: Yes, Your Honor, but I would --
11 yes, Your Honor. But since it wasn't admitted in whole
12 and just in part, that's why I was referring to the
13 direct testimony rather than the errata.

14 JUDGE SIANO: Okay. Ms. Allen, your
15 objection is overruled.

16 Go ahead.

17 Q (BY MS. KATZ) Mr. Nelson, on Page 7 what
18 language needs to be corrected or revised?

19 A So, Line 21, the Question: What were the
20 results of the TRWA study? It should read: The TRWA
21 rate analysis used WOWSC's 2019 year-end financials and
22 determined a base water and wastewater rate of \$174.59
23 using 253 customers.

24 Q Okay. And on Page 16, what corrections or
25 revisions do you have on that page from your direct

1 testimony?

2 A Yeah, I am scrolling there. So, on Line 4 --

3 MS. ALLEN: Your Honor, just to make sure
4 our record is clear, we object to this correction on the
5 same grounds that we objected to the untimely filed
6 supplement.

7 JUDGE SIANO: Ms. Katz, I believe we
8 already covered this page. Was there anything else that
9 you were going to address?

10 MS. KATZ: Your Honor, I was clarifying,
11 as far as what was changed, because I was planning on
12 asking him if everything was true and correct in those
13 exhibits.

14 JUDGE SIANO: Okay.

15 MS. KATZ: And since it's not true and
16 correct, as far as the direct, that's where we were
17 clarifying the language on Page 16 in Lines 8 through 9,
18 which has been addressed in the errata, as well, but
19 that was not admitted at that time, and we were waiting
20 until Mr. Nelson was taken -- or took the stand.

21 JUDGE SIANO: Okay. Go ahead.

22 A So, on Line 4, the question: Did WOWSC
23 experience any unusual costs or professional fees for
24 the period from January 2019 until the time the rates
25 were adopted? And so, the answer is: Yes. As a result

1 of the various lawsuits and inordinate amount of public
2 information act requests, WOWSC paid approximately
3 \$171,337 in legal, accounting, and total contract
4 services costs in 2019, incurred approximately --

5 (Simultaneous discussion)

6 JUDGE SIANO: So, I'm going to stop you
7 right there because now we're getting into what
8 Ms. Allen objected to.

9 Ms. Allen, you're going to have to unmute
10 yourself.

11 MS. ALLEN: I have, Your Honor, and I
12 don't mean to belabor the point. But I object to this
13 new testimony on the same grounds as I objected to the
14 untimely supplement.

15 JUDGE SIANO: And your basis is that
16 there's -- it's surprise and --

17 MS. ALLEN: It is untimely, and there is
18 surprise and prejudice.

19 JUDGE SIANO: So, Ms. Katz, this does seem
20 to go beyond a mere correction.

21 MS. KATZ: So, Your Honor, it's our
22 opinion that it's a clarification on the amount, and
23 Mr. Nelson, of course, will be available in cross for
24 Ms. Allen addressing any of that, of the questions that
25 she has.

1 JUDGE SIANO: Okay. As I understand your
2 prior argument, though, this information is -- well,
3 there's a cite to it. Right? The citation has not
4 changed. So, the information is in the workpapers.
5 Correct?

6 MS. KATZ: Correct, your Honor. Yes.

7 JUDGE SIANO: Okay. I'm going to --
8 (Simultaneous discussion)

9 MS. KATZ: It's information that was
10 already provided. It was just a clarification on
11 specifics.

12 JUDGE SIANO: Ms. Allen, how do you
13 respond to that?

14 MS. ALLEN: Your Honor, although I only
15 had 30 minutes to check that, those numbers still don't
16 add up. The work -- the quote/unquote "workpapers" do
17 not add up to the numbers that are in his supplement. I
18 don't know why. I could probably figure it out if I had
19 more than 30 minutes or even a day, but they don't. So,
20 I'm at a bit of a loss with this last-minute supplement
21 to try to figure out what it relates to and how to
22 manage it.

23 MS. KATZ: Well, Your Honor, this is
24 simply a clarification, and it's my understanding that
25 this is the time where Ms. Allen would ask Mr. Nelson

1 additional questions about those numbers if she is
2 confused, and I'm sure that he's happy to answer them.
3 But we thought that we would clarify those numbers
4 initially, specifically that there's an issue -- that
5 this issue is with the wording of paid and incurred.

6 JUDGE SIANO: Okay. Well -- okay. So,
7 if -- okay. So, if the correction is -- okay. So, what
8 you're saying is that the 171 was paid, but there are
9 additional fees that were incurred? Is that -- do I
10 understand that?

11 THE WITNESS: Yes.

12 MS. KATZ: Correct.

13 JUDGE SIANO: Okay. So, the invoices are
14 in evidence, and it's not jumping out to me where that
15 testimony is. So, if you want to refer to it in your
16 closing argument or if the door is open to it, then on
17 redirect, but I'll sustain the objection after 2019.
18 So, I'll allow the change from incurred to paid on
19 Line 8, but the objection is sustained after 2019.

20 MS. KATZ: Understood, Your Honor. May I
21 proceed?

22 JUDGE SIANO: You may.

23 MS. KATZ: Thank you.

24 Q (BY MS. KATZ) Mr. Nelson, if we were to ask
25 you the same questions presented in the documents --

1 those three documents in front of you to you, would the
2 answers to those questions be the same as what's
3 contained in your testimony other than what we have just
4 spoken about?

5 A Yes.

6 Q Okay.

7 MS. KATZ: Then, Your Honor, at this time
8 Windermere Oaks passes the witness.

9 JUDGE SIANO: All right.

10 Ms. Allen.

11 MS. ALLEN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. ALLEN:

14 Q Mr. Nelson, can you hear me all right?

15 A Yes.

16 Q Thank you. So, I'm going to start right there.
17 You recall that the board put out a notice February 11
18 of 2020. Right?

19 A What notice are you referring to?

20 Q It was the notice of rate/tariff changes
21 effective March 23, 2020. Would it help you if I showed
22 it to you?

23 A Yes.

24 Q Okay. Let me see if I got it done, and I'll
25 scroll it so that you can see it. Can you see it now?

1 A Yes.

2 Q I'm going to make it just a hair smaller so
3 that you can see a little more of it, but I'll show you
4 any part of it you like. That's the limitation of
5 screen sharing. Can you satisfy yourself that you're
6 now looking at the notice that the Company sent when it
7 changed the rates?

8 A Yes.

9 MS. ALLEN: And this is Ratepayer
10 Exhibit 01, Bates Page 5. And, Your Honor, I would
11 offer this page, and I would -- for clarity of the
12 record, I would offer this page as Ratepayer's 18.

13 JUDGE SIANO: I assume there's no
14 objection to this being admitted, Ms. Katz? My only
15 concern is with the marking, and we don't have a way to
16 easily --

17 MS. KATZ: Right. Yeah --

18 JUDGE SIANO: -- separate this out.

19 MS. ALLEN: Your Honor, here's my
20 suggestion, what we've done in other cases: The marking
21 is simply because if I were present, I would point to
22 it, but I'll furnish for the record a clean copy with no
23 highlighting. Is that acceptable?

24 JUDGE SIANO: I'm not concerned about the
25 highlighting. I'm concerned about -- that this marked

1 Exhibit 1, Ratepayer Exhibit 1, to which there is an
2 objection. I understand it contains more pages than
3 this, and I don't want it to be confused with the rest
4 of the exhibit.

5 MS. ALLEN: That's the reason I separated
6 it out and marked it separately as 18 so that it's crisp
7 and separate, and it can be ruled on all by itself.

8 JUDGE SIANO: Okay.

9 Ms. Simon, do you have a copy of this
10 as -- that you can --

11 (Discussion off the record)

12 JUDGE SIANO: Okay. Ms. Katz, does this
13 document exist anywhere else in the record?

14 MS. KATZ: I'm so confused, Your Honor.
15 I'm trying to figure that out because the last exhibit
16 list that we have from Ratepayers is only through 17,
17 and I understand Ms. Allen said she's separating this
18 and marking one page as 18.

19 JUDGE SIANO: This is Page 5 of Exhibit 1.

20 MS. ALLEN: Correct.

21 JUDGE SIANO: And she wants to offer this
22 as a stand-alone exhibit.

23 (Brief pause)

24 JUDGE SIANO: Let's go off the record for
25 a moment to figure out the mechanics of doing this.

1 (Brief recess)

2 JUDGE SIANO: We can go back on the
3 record.

4 Ms. Katz, any objections to Ratepayers
5 Exhibit 18?

6 MS. KATZ: We have no objection to
7 Ratepayers new Exhibit 18, as long as it's of the
8 understanding that it's not inclusive of what's been
9 marked as Ratepayers Exhibit 1. They are separate and
10 two district exhibits. Correct?

11 JUDGE SIANO: Correct.

12 MS. KATZ: Okay.

13 JUDGE SIANO: Not admitting Exhibit 1 at
14 this time, and she's not offering it.

15 MS. KATZ: We have no objection, then.

16 JUDGE SIANO: Okay. Ratepayers Exhibit 18
17 is admitted.

18 (Exhibit Ratepayers No. 18 admitted)

19 Q (BY MS. ALLEN) So, Mr. Nelson, it's my
20 understanding that the Company is required -- when it
21 makes a rate change, it's required to notify its
22 customers. Is that right?

23 A I believe so.

24 Q And this is the notice that accomplished that.
25 Is that correct?

1 A Yes.

2 Q Exhibit 18. Okay. And in Exhibit 18 on
3 February 11 of 2020 the Company told its customers that
4 the rate analysis considered all the operating expenses
5 we incurred, including the 169,000 in legal fees. Do
6 you see that?

7 A Yes.

8 Q That was not true. Was it?

9 A I don't understand your question.

10 Q Haven't you just told us that the Company
11 incurred in the Year 2019 at least 121,000 more in legal
12 costs?

13 A We paid the \$169,000 in Year 2019. The Year
14 2019 financials were used in the rate analysis. So, the
15 \$169,000 in legal fees was used in the rate analysis.
16 We incurred additional fees in work -- for work done in
17 2019 that was paid in 2020, as well as incurred
18 additional legal expenses in 2020 prior to this rate
19 case, and that's what I was trying to correct in the
20 record.

21 Q Yesterday you sent a correction that said that
22 the WOWSC incurred approximately 121,659 in legal costs
23 in late 2019. Isn't that right?

24 A Yes.

25 Q Those incurred costs were not included for

1 purposes of the rate analysis. Correct?

2 A That is correct.

3 Q When the Company told its ratepayers the rate
4 analysis considered all of the operating expenses
5 incurred, that was not true. Was it?

6 A Again, I don't understand your question. We
7 used the expenses from Year 2019, which included all
8 operating expenses. So, yes, all operating expenses
9 were included.

10 Q Okay. Your new testimony is as follows: The
11 Company incurred approximately 121,659 in legal costs in
12 late 2019. Are you with me?

13 MS. KATZ: Your Honor, I'm going to object
14 to mischaracterization of testimony. If you recall,
15 this was not admitted yet, this portion. And so, if she
16 has a question regarding numbers, then I would ask
17 Ms. Allen to ask him first about the numbers and what
18 those numbers should be, and then move on to more
19 specific questions. But he didn't technically testify
20 to this yet. This wasn't included in what you admitted.

21 MS. ALLEN: Your Honor --

22 (Simultaneous discussion)

23 JUDGE SIANO: Sustained.

24 Q (BY MS. ALLEN) When this board of directors
25 decided to raise these rates, it knew from information

1 that it had before it that the legal expenses the
2 Company had incurred for 2019 was upwards of \$250,000.
3 Isn't that correct?

4 A I'm not sure I understand what you said. Are
5 you saying that on top of the 169 we paid here, plus the
6 121 incurred, that the 169 plus 121 is more than 250?
7 Yes, that's correct.

8 Q Mr. Nelson, all I want to know from you is,
9 isn't it true that the board knew from the information
10 that was before it at the time that it raised the rates
11 that the legal costs on which the rate increase was
12 based that the total amount incurred for 2019 was
13 upwards of 250,000?

14 A Again, the rate analysis used, used the amount
15 of legal fees paid in 2019. It was our understanding,
16 based off of guidance from TRWA, that we could only use
17 what was actually occurred in 2019 as far as payments
18 go. So, we had to use our 2019 financials. That's what
19 we used.

20 Q Isn't it true --

21 A What came out of that was a water base rate of
22 \$174,000, and what we knew at the end of 2019 is that we
23 just received some really high legal bills at the end of
24 2019. So, like the November work we got in very late
25 December, the December work we didn't get billed for

1 until January. And so we knew that we had paid all the
2 legal bills or most of them through October work and not
3 the November-December work, and so we knew that those
4 were quite high and would far exceed our cash flow.

5 And so that's when we started discussing
6 what we would need to do, and with the legal case just
7 starting to explode, the 48292 case where depositions
8 were just starting and we knew that that was going to
9 continue throughout 2020, that we needed to increase our
10 cash flow. And we talked with our law firms --

11 (Simultaneous discussion)

12 Q (BY MS. ALLEN) Mr. Nelson, if the ALJ wants to
13 hear this, I am happy for you to tell him, but I'm
14 looking for a number. May we --

15 (Simultaneous discussion)

16 A I just told you the number. I guess it's not
17 the number you wanted to hear.

18 Q (BY MS. ALLEN) I am looking for a number.

19 A Yes, it's 169 in legal fees was used in the
20 rate analysis.

21 Q Isn't it true that the Company became obligated
22 in 2019 to pay more than \$250,000 for legal costs for
23 these two lawsuits?

24 A For those two lawsuits, no, that's not
25 accurate.

1 Q All right. What's the number?

2 A I don't know.

3 Q Well, who does?

4 A You'd have to look at all the different
5 billings. The legal fees include three different -- we
6 had two lawyers, our general counsel, and then we have
7 the TOMA and the 48292 --

8 (Simultaneous discussion)

9 Q (BY MS. ALLEN) And you're claiming that --

10 A -- and then we have Enoch Kever, which is the
11 48292 case.

12 Q (BY MS. ALLEN) All right. Is it accurate that
13 the Company is claiming that many of the expenses that
14 were placed on its billings under General Counsel have
15 to do with these lawsuits?

16 A There -- I guess in -- if you considered the
17 PIA requests, that's true, but there were many other
18 general counsel issues in Year 2019.

19 Q But there's no way from the billings to
20 separate that out with any precision. Isn't that true?

21 A I don't know what you mean by it being precise.
22 So, I guess that's up to interpretation. I think we did
23 an estimate.

24 Q There's no way to go through the billings and
25 identify tasks and hours and rates associated with

1 discrete matters. Isn't that true?

2 A I review the bills, and I recall there being
3 descriptions and how many hours and who did that work in
4 those line items. And I believe that's how the estimate
5 was raised.

6 Q There are entries on the invoices for the
7 account titled General Counsel that have directly to do
8 with matters in the TOMA Integrity lawsuit. Correct?

9 A Are you regarding to PIA requests? Because our
10 general counsel --

11 (Simultaneous discussion)

12 Q (BY MS. ALLEN) Are you able to answer my
13 question?

14 A -- does not litigate the TOMA lawsuit.

15 JUDGE SIANO: Ms. Allen, we need to be
16 really careful about not talking over each other.
17 The -- so, please wait until he's done, or --

18 MS. ALLEN: There's a little bit of a
19 delay, but I apologize. And I will be more careful.

20 JUDGE SIANO: Thank you.

21 Q (BY MS. ALLEN) Mr. Nelson, are you able to
22 answer the question that I asked you?

23 A Would you repeat it, please?

24 Q You want me to ask it again?

25 A Yes, please.

1 Q Isn't it true there are entries on the invoices
2 under the matter General Counsel that have to do with
3 work that was performed in the TOMA Integrity lawsuit?

4 A No, not that I'm aware of.

5 Q Okay.

6 A The PIA requests work.

7 Q Isn't it true there are entries in the invoices
8 under the heading General Counsel that are for work done
9 in the lawsuit in which Rene Ffrench, Dick Dial, and
10 Bruce Sorgen are the plaintiffs?

11 A Again, not that I'm aware of, not General
12 Counsel. That's another -- that's another bill that we
13 get from Lloyd Gosselink.

14 Q You would agree with me that there shouldn't be
15 entries in General Counsel for work that was done in the
16 TOMA Integrity lawsuit. Right?

17 A I'm not aware of it.

18 Q There shouldn't be any. Isn't that right?

19 A I don't know.

20 Q You don't know whether there should or there
21 shouldn't?

22 A Right. So, I don't know if the TOMA legal
23 counsel requested help from the general counsel on a
24 particular matter or not. I don't recall.

25 Q Okay.

1 A So, to say that that never happened, I don't
2 think is --

3 (Simultaneous discussion)

4 Q (BY MS. ALLEN) Okay.

5 A It's a possibility. Right?

6 Q Isn't it true that the Company takes the
7 position that the public information requests that it
8 was having to deal with in 2019 were directly related to
9 the litigation?

10 A The PIA requests requested a lot of information
11 that was eventually used by you.

12 Q Oh, I think not, but let me try my question
13 again. Doesn't the Company take the position that the
14 expenses in connection with the Public Information Act
15 requests are directly related to one of these lawsuits
16 or the other?

17 A No. We -- the Company takes the position that
18 the PIA request was resubmitted, and we fulfilled it.
19 That's the position --

20 (Simultaneous discussion)

21 Q (BY MS. ALLEN) Do the --

22 A -- of the Company.

23 Q Do the charges for 2019 for the PIA requests
24 pertain to one lawsuit or another in the Company's view?

25 A They're PIA requests that we fulfilled.

1 Q Can you answer my question, Mr. Nelson?

2 A I don't know that the Corporation has a
3 viewpoint or opinion on that. I'm not aware of it.

4 Q Is it your testimony here today before this
5 panel that the Company does not take the position that
6 the PIA requests and the legal fees associated with them
7 are directly related to one or the other of the two
8 lawsuits?

9 MS. KATZ: Your Honor, this question has
10 been asked and answered several times. Mr. Nelson
11 indicated he wasn't sure.

12 JUDGE SIANO: Sustained.

13 Let's move on.

14 Q (BY MS. ALLEN) Mr. Nelson, I scrolled down on
15 the notice that the board sent to its customers. Can
16 you see the bottom of it?

17 A Yes.

18 Q And it says to the customers: The legal fees
19 we were incurring far exceed the expenses necessary to
20 continue to provide clean drinking water and to
21 effectively treat our effluent. Do you see that?

22 A Yes.

23 Q Was that true?

24 A It was at that time, yes.

25 Q How on earth did the board allow legal expenses

1 to exceed the costs to provide water and wastewater
2 services for the customers?

3 A The water supply corporation was sued by TOMA
4 Integrity and then by Ffrench, Dial, and Sorgen in the
5 48292 case and was defending itself.

6 Q Okay. So, let's --

7 (Simultaneous discussion)

8 A And so that's how those legal expenses were
9 incurred, was in defense of the Corporation that was
10 sued in both cases.

11 Q (BY MS. ALLEN) Let's work on that. We learned
12 from Mr. Burriss's testimony that the TOMA lawsuit was
13 filed in December 2017. You were not on the board yet.
14 Were you?

15 A Correct.

16 Q Mr. Nelson?

17 A Correct.

18 Q Okay. You're aware, though, from your later
19 service that the Company was unsuccessful in persuading
20 its insurance carrier to cover the costs for that
21 litigation. Right?

22 A Correct.

23 Q Okay. You were on the board and were the
24 secretary-treasurer when the original petition was filed
25 in the Double F lawsuit. Correct.

1 A Yeah, I was secretary-treasurer when the
2 Double F lawsuit was filed. Yes.

3 Q The Double F lawsuit was filed against Dana
4 Martin's Company in the Burnet County Commissioners
5 Court. Right?

6 A I don't know. I assume so.

7 Q Did the Company spend money on the Double F
8 lawsuit in July of 2018?

9 A I don't know.

10 Q Did the Company spend money on the Double F
11 lawsuit in August of 2018?

12 A I'm trying to remember when the Water Supply
13 Corporation was enjoined into that lawsuit. I'm
14 thinking it was May 2019 for 48292. So, that would
15 require some legal work in May or June. So, June work
16 would get billed in July, get paid in July or August.
17 So, roughly, yes.

18 Q In-between -- let's see. Let me get my dates
19 right. In-between July 9th of 2018, when the Double F
20 lawsuit was filed, and May 14th of 2019, when an
21 intervention was filed that named the Company, did the
22 Company pay any legal costs for the Double F lawsuit?

23 A Not that I'm aware of.

24 Q It shouldn't have. Should it?

25 A Not that I'm aware of.

1 Q Okay. After the Double F lawsuit -- well, let
2 me back up. Do you have an understanding of what the
3 Double F lawsuit was about when it was filed?

4 A I learned about it after.

5 Q You learned about it when after?

6 A I don't recall.

7 Q Okay. But you do know the Double F lawsuit was
8 filed in July of 2018. Correct?

9 A I did not know the date.

10 Q Do you need to see the pleading?

11 A No.

12 Q Okay.

13 JUDGE SIANO: Ms. Allen, we're spending a
14 lot of time on the dates, and I'm not sure that the
15 exact date is -- has a strong bearing on the justness
16 and reasonableness of the rates.

17 MS. ALLEN: Okay. I'm now -- just -- Your
18 Honor, just by way of explanation, I'm really now
19 working more on the reasonableness of the expenses that
20 are the basis for those rates. But I hear you, and I'll
21 move on.

22 Q (BY MS. ALLEN) Mr. Nelson, you were on the
23 board and you were secretary-treasurer at the time that
24 the Company decided to have a forensic appraisal done.
25 Right?

1 A Yes.

2 Q That was --

3 JUDGE SIANO: Mr. Nelson, you're going to
4 need to speak up a little bit.

5 THE WITNESS: Okay.

6 JUDGE SIANO: Was that a -- did you answer
7 "yes"?

8 THE WITNESS: Yes, I did.

9 JUDGE SIANO: Okay.

10 Go ahead, Ms. Allen.

11 Q (BY MS. ALLEN) The forensic appraisal
12 reflected that the properties that had been sold to
13 Martin for \$200,000 was worth \$700,000 at the time. Is
14 that right?

15 A The Bolton appraisal, yes.

16 Q Yes. That was the appraisal the board had
17 ordered. Right?

18 A Yes.

19 Q Okay. And that report came out in December of
20 2018. Right?

21 A Yes.

22 Q And the board published it to the membership.
23 Correct?

24 A I believe so, yes.

25 Q The board decided to have its lawyer do a legal

1 analysis and prepare a demand letter. Correct?

2 A Yes.

3 Q Actually, two demand letters. Right?

4 A I believe so.

5 Q One to Ms. Martin and her Company and one to
6 Mr. Hinton, who had provided an appraisal years ago.
7 Right?

8 A Yes.

9 Q You participated in that effort, and you
10 approved those letters. Did you not?

11 A Yes.

12 Q And they outlined all manner of wrongful
13 conduct in connection with that transaction. Isn't that
14 right?

15 MS. KATZ: Your Honor, I'm going to object
16 to relevance.

17 JUDGE SIANO: Sustained.

18 Q (BY MS. ALLEN) At the time the board decided
19 to approve the payment of legal expenses to oppose
20 relief in the TOMA Integrity lawsuit, its lawyers had
21 written a demand letter to Dana Martin and to Mr. Hinton
22 that outlined all manner of wrongful conduct. Isn't
23 that right?

24 MS. KATZ: Your Honor, I'm going to object
25 to relevance again. None of this has anything to do

1 with the list of issues in the preliminary order. These
2 specific questions don't address any of these questions,
3 of these Issues 1 through 11.

4 JUDGE SIANO: Sustained.

5 MS. ALLEN: Your Honor, I thought that
6 this panel was supposed to analyze whether or not the
7 legal expenses, themselves, were prudent and reasonable,
8 and it seems to me that it's pertinent to know what the
9 board knew when it was approving them. That is the only
10 effort that I have here.

11 MS. KATZ: Your Honor, she's getting into
12 the details of each case and laying out the foundation
13 of each case and minutia that have nothing to do with
14 whether the rates that the board determined and approved
15 were reasonable or not, which is the substance of this
16 proceeding.

17 JUDGE SIANO: Ms. Allen, your line of
18 questioning is going beyond -- in the details that don't
19 pertain to the issues at hand.

20 MS. ALLEN: All right.

21 Q (BY MS. ALLEN) Mr. Nelson, you know why the
22 Company was later named in the Double F lawsuit. Don't
23 you?

24 A No.

25 Q You know why the directors were later named in

1 the Double F lawsuit. Don't you?

2 A I have -- no, nobody's ever actually told me.
3 I have my own --

4 (Simultaneous discussion)

5 A -- suspicions.

6 Q (BY MS. ALLEN) Isn't it true that it was
7 because the board had an appraisal that reflected an
8 unfair transaction and it had a legal analysis that
9 reflected wrongful conduct and it did not act on them?

10 MS. KATZ: Your Honor, once again, I'm
11 going to renew my objection as far as relevance, as well
12 as Mr. Nelson already answered her question that he
13 wasn't sure.

14 JUDGE SIANO: Sustained.

15 Q (BY MS. ALLEN) Is it true that at the time the
16 Company and the directors were named as parties in the
17 Double F lawsuit, the Company's board of directors had
18 the Bolton appraisal reflecting a gross disparity in
19 value and consideration, and it had its own attorney's
20 legal analysis of the wrongful conduct before it?

21 MS. KATZ: Your Honor, I'm going to
22 object. She's trying to litigate the underlying
23 matters. There's other litigation going on at this
24 time, and I would ask Your Honor to please remind
25 Ms. Allen that you've sustained the previous objections

1 so we don't have to keep doing this over and over again.
2 I'm happy to, but I'm going to object again for the same
3 reasons.

4 JUDGE SIANO: Okay.

5 Ms. Allen, we're spending a lot of time on
6 this, and we need to move on. Okay? So, I'm sustaining
7 the objection, and we don't need to go into those
8 details here.

9 MS. ALLEN: And, Your Honor, once again,
10 simply procedurally, may we reserve time with Mr. Nelson
11 at the conclusion so that I can make my offer of proof?

12 JUDGE SIANO: If there's time. My
13 understanding is that he has some constraints. So, if
14 there's time. You can -- in my view, we don't need the
15 witness for the offer of proof. You can tell me what
16 you think the evidence would show.

17 MS. ALLEN: Okay.

18 JUDGE SIANO: So, I will allow you to make
19 an offer of proof.

20 Q (BY MS. ALLEN) The board did not pursue
21 Ms. Martin or her Company or Mr. Hinton after the demand
22 letters were made. Is that correct?

23 MS. KATZ: Your Honor, I'm going to object
24 again. This is regarding details of litigation that
25 aren't within the scope of the issues listed in the

1 preliminary order.

2 JUDGE SIANO: So, yeah, Ms. Allen, please
3 move on.

4 MS. ALLEN: So, that's a sustained?

5 JUDGE SIANO: Sustained.

6 MS. ALLEN: Okay.

7 Q (BY MS. ALLEN) In May of 2019 there was a
8 petition and intervention filed in the Double F lawsuit.
9 Right?

10 JUDGE SIANO: Ms. Allen, unless you can
11 tell me otherwise, this continues to delve into details
12 of these lawsuits in a way that I believe exceeds the
13 scope of what this hearing is about.

14 MS. ALLEN: I understand that, and with
15 respect, there's simply nothing that I can do about
16 that. But somebody, someone at some level is going to
17 want to understand whether the board of directors made
18 good decisions or bad decisions in approving these legal
19 fees. What I am talking about now has nothing to do
20 with the merits of either of these cases. It simply has
21 to do with the decisions that the board of directors
22 made when it spent Company money on these lawsuits.

23 Now, I can't know what the panel or the
24 Commission would find important. So, all I can try to
25 do is develop the best record that I can about what the

1 board knew when it did that, when it made those
2 decisions. So, I'm not trying to tax the panel's
3 patience, but my effort here is to make sure there is
4 adequate information from which to assess whether these
5 expenditures were prudent and reasonable.

6 Q (BY MS. ALLEN) Mr. Nelson, the intervention
7 that we just talked about made clear that it sought no
8 monetary relief against the Company whatsoever. Isn't
9 that true?

10 A I don't know.

11 Q Wouldn't that be important to know?

12 A I don't know.

13 Q In determining -- let me back up and ask you
14 this --

15 JUDGE SIANO: Ms. Allen --

16 Q (BY MS. ALLEN) -- with regard --

17 JUDGE SIANO: -- Ms. Allen, I'm going to
18 cut you off. If you want to take this up on your offer
19 of proof, then you can, but I'm asking you to move on.
20 This --

21 MS. ALLEN: Is there anything that the
22 panel would be interested in knowing in order to make
23 the determination about whether or not the decision to
24 incur these legal fees was prudent and reasonable?

25 JUDGE SIANO: It's a matter of burden of

1 proof. If we agree that the Company has met its burden
2 of proof, then we side with them. If they haven't, then
3 we don't.

4 MS. KATZ: Well, I guess I'm -- you're
5 asking me to move along, and I want to accommodate that
6 request. But I'm asking for a bit of guidance from the
7 panel about what information would be helpful to you
8 when you're later trying to assess whether the legal
9 expenses that were paid were prudent and reasonable. I,
10 apparently, am on the wrong track, and I respect that.

11 JUDGE SIANO: So --

12 MS. ALLEN: I want to get on the right
13 track.

14 JUDGE SIANO: -- if we get past the
15 threshold issue, then we move on to whether the rates
16 are just and reasonable. And if -- and, certainly,
17 you're free to argue that these legal expenses were not
18 reasonable, and we may agree with you. That's -- but
19 the level of detail that you're getting into, I believe,
20 exceeds the scope of what we need to make that
21 determination --

22 MS. ALLEN: Okay.

23 JUDGE SIANO: -- of second guessing the
24 board's determination in very minute ways. The
25 Commission may disagree with that, but you're welcome to

1 make your offer of proof at the appropriate time.

2 Q (BY MS. ALLEN) Mr. Nelson, let me do it this
3 way, and we'll move right along. Okay? I am going to
4 share my screen, I think, with you to show you the
5 petition in the Double F case.

6 MS. KATZ: Your Honor, before she
7 continues, this is exactly what you ruled upon over the
8 past eight or nine minutes. So, I will save Ms. Allen
9 the breath and object right now to relevance.

10 MS. ALLEN: Before she does that, may I
11 have the courtesy of being allowed to mark this as
12 Ratepayers Exhibit 19 and offering it into evidence?
13 And then let's have all the objections we want.

14 JUDGE SIANO: Well, you can -- was this --
15 is this an extract from an already-filed exhibit?

16 MS. ALLEN: I can't remember because I had
17 it just in case he could not remember the date, but I
18 don't know. Here it is. I'm marking it as 19, and I am
19 offering it for whatever it says. And I'll move along.
20 I'm done.

21 JUDGE SIANO: Objections?

22 MS. KATZ: Your Honor, I'm going to object
23 to relevance, hearsay, and I don't -- if it's what -- I
24 don't know if this was previously provided to us. But
25 relevance and hearsay to start.

1 JUDGE SIANO: Sustained.

2 Q (BY MS. ALLEN) Okay. Now, I am going to show
3 you -- I hope. Let me see if I've done that
4 successfully. Probably not. There we go -- the
5 petition and intervention that joined the Company into
6 the Double F lawsuit. Do you see it?

7 MS. KATZ: Your Honor, I believe -- did
8 you sustain my objection --

9 JUDGE SIANO: I did.

10 MS. KATZ: -- of this -- I apologize.
11 This is a different exhibit.

12 I'm sorry, Ms. Allen. I apologize.

13 MS. ALLEN: I'm just going to mark these,
14 and I'm going to offer them. And I'm looking for a
15 ruling, and I'll move right along.

16 Q (BY MS. ALLEN) Mr. Nelson, do you recognize
17 the document that I'm showing you and that I have marked
18 as Exhibit 20 as the original petition and intervention
19 in the Double F lawsuit which made the Company and the
20 directors parties?

21 MS. KATZ: Your Honor, I'm going to object
22 to this line of questioning as to relevance and hearsay.

23 JUDGE SIANO: Ms. Allen, are you trying to
24 authenticate this document? What's --

25 MS. ALLEN: Your Honor, this is the

1 petition that they spent all the legal fees about.
2 Somebody might want to know what it said, and I'd just
3 like to have it available. That's all. I expect it's
4 going to be excluded. I'm not trying to tax your
5 patience. I simply would like to have a record that we
6 tried to make that available.

7 JUDGE SIANO: All right. I'll sustain the
8 objection.

9 MS. ALLEN: Okay.

10 Q (BY MS. ALLEN) The TOMA lawsuit, final
11 judgment in the TOMA lawsuit -- oh, let me back up,
12 Mr. Nelson, just for a second and ask you this: Is it
13 true the Company requested -- after this petition and
14 intervention got filed, the Company requested that its
15 insurance carrier foot the bill for the defense of this
16 lawsuit?

17 A Yes, we submitted a claim.

18 Q The insurance carrier told you it was not
19 covered. Correct?

20 A Yes, and that's in -- that's in discussion
21 right now.

22 Q You can tell me all about that if you want to,
23 but I'm really not asking you. I'm afraid I'm already
24 far afield, and that's further afield that even I want
25 to go. Now, can you -- let's see. Can you confirm for

1 me that the document I'm -- I hope now -- I'm probably
2 not showing you. Let me try that again. I'm going to
3 show you what I'm marking as Exhibit 21, which is the
4 order in the TOMA case that determined that, although
5 there was a violation, relief was not available. Do you
6 recognize it?

7 MS. KATZ: Your Honor, I'm going to object
8 to relevance, to hearsay, and to untimely --
9 untimeliness of presenting this exhibit.

10 JUDGE SIANO: Sustained.

11 Q (BY MS. ALLEN) Mr. Nelson, did the board
12 authorize the payment of legal expenses in the TOMA
13 Integrity case for discovery after the time that this
14 order was entered July 23rd of 2018?

15 A For discovery? I'm not understanding the
16 question.

17 Q How about -- let me just back up and say, did
18 the board authorize its lawyers to perform legal work on
19 the TOMA Integrity lawsuit after July 23rd, 2018.

20 A Yes.

21 Q What work was that?

22 A I don't recall all that was going on. There
23 were appeals, several appeals.

24 Q Aside from work on appeals, was there any work
25 that needed to be done in the TOMA Integrity lawsuit

1 after July 23rd, 2018?

2 A I think in that lawsuit it was the appeals at
3 that point.

4 Q So, there was no other work that needed to be
5 done in the TOMA Integrity file other than appellate
6 work. Is that right?

7 A On that lawsuit.

8 Q Okay. So, moving on. Let me show you -- hang
9 on a minute. Oops. I've got to get to the top of that
10 thing. I'm going to mark as Ratepayers Exhibit 22 the
11 amended petition in the Double F case which, by then,
12 had changed style. Do you remember that happening?

13 A At what time?

14 Q Hang on because I want to be clear. Okay. Am
15 I -- I should be, hopefully, showing you an amended
16 pleading in a case that's 48292. That's the Double F
17 number. Right?

18 A Can you scroll up to the date?

19 Q Yes.

20 A Okay. November 2019, yes.

21 Q Okay. And all I want to be sure that we're
22 clear about is, even though this says, Rene Ffrench,
23 John Richard Dial, and Stuart Bruce Sorgen, this is the
24 cause number for what we're calling the Double F
25 lawsuit. Correct?

1 A Yeah, 48292.

2 Q And this was the amended petition that was
3 filed in that case, correct, on November 5th of 2019?
4 Is that right?

5 A I assume so.

6 Q Okay. I have marked that as Exhibit 22 and
7 offer it into evidence.

8 MS. KATZ: Okay. Your Honor, may I?

9 JUDGE SIANO: Please.

10 MS. KATZ: I'm going to object to this for
11 several reasons: Once again, relevance; two, hearsay;
12 three, improper predicate; four, SOAH Order No. 14
13 specifically states -- and this goes for all of these
14 exhibits, and it is the third bullet point -- file a
15 list of all exhibits it intends to offer at the hearing,
16 including, for example, on cross-examination. And then,
17 the paragraph below, signed by Your Honor -- above your
18 signature, states: All exhibits shall, in all caps, be
19 marked with the offering party's name and the exhibit
20 number, and it goes on. And so, with that, untimely
21 filing, as well.

22 MS. ALLEN: Your Honor, it was never my
23 expectation that I would need to offer filed pleadings
24 that had been served on the Company into evidence. I
25 never expected that. I could ask the panel to take

1 judicial notice of these things. They are public
2 record. They are filed at court houses. It's easier on
3 the record to mark them, and if there is an objection,
4 to have it considered and ruled upon. So, that's what
5 I'm doing.

6 JUDGE SIANO: Sustain the objection.

7 Q (BY MS. ALLEN) Let's see here. Mr. Nelson, I
8 am now showing you the third amended petition in the
9 Double F case filed August 24 of 2020. Do you see it?

10 A Yes.

11 Q Have you seen it before?

12 JUDGE SIANO: Ms. Allen, how many more of
13 these do you have? I assume that the objections will be
14 the same and the ruling will be the same, and we're
15 spending a lot of time on this. I want this hearing to
16 be productive.

17 MS. ALLEN: Two. I have two beyond this
18 one.

19 JUDGE SIANO: And you're trying to
20 preserve error?

21 MS. ALLEN: Well, I suppose. I suppose,
22 yes.

23 JUDGE SIANO: Okay. Let's do those two.
24 If we can see them briefly, assuming that they were not
25 previously filed as ordered and not marked, then we can

1 address those together and move on.

2 MS. ALLEN: Okay.

3 JUDGE SIANO: Can we see those?

4 MS. ALLEN: So -- of course. If you'll
5 give me just a second, Your Honor. I want to be sure
6 that I have marked this third amended as Exhibit 23
7 because I want to keep up with this so I can get to the
8 court reporter what I need to. And then just give me a
9 moment.

10 (Brief pause)

11 MS. ALLEN: I was truly not expecting to
12 have to offer these into evidence. So, it's going to
13 take me just a moment.

14 (Brief pause)

15 MS. ALLEN: By way of preview, though, I
16 can tell you that one of them is the cover letter that
17 goes along with the board's forensic appraisal. Ah,
18 there we go, and I will mark that for the record as
19 Exhibit 24.

20 JUDGE SIANO: Is that in your prefiled
21 exhibits?

22 MS. ALLEN: It is.

23 JUDGE SIANO: Which number?

24 MS. ALLEN: It is -- hang on one second.
25 Let me scroll and -- nope. That's not the one. I will

1 find the copy that is in Ratepayers Exhibit 1 -- if you
2 can help me with that --

3 (Discussion off the record)

4 MS. ALLEN: Okay. Hold on one second, and
5 I will substitute for what I have just marked. I will
6 substitute the document that comes out of Ratepayers
7 Exhibit 1.

8 JUDGE SIANO: So, it looks like Page 48 of
9 Exhibit 1.

10 MS. ALLEN: Okay. Your Honor, if you've
11 been able to find it in Ratepayers 1, I will give you my
12 word that it will be those pages, or we can wait for me
13 to find it, Your Honor.

14 JUDGE SIANO: I see it. I'm looking at it
15 now. So, it was previously filed, and as we did with
16 Exhibit 18, I'll hear the objections. But we -- it was
17 properly filed. So, you want to offer this as an
18 exhibit.

19 Are there any objections to --

20 MS. ALLEN: And for Ms. Simon's benefit, I
21 have marked it as 24.

22 JUDGE SIANO: Okay. Ms. -- and then
23 you'll provide this to Ms. Simon, as well.

24 Okay. So, Ms. Katz, are you --

25 MS. KATZ: Yes, Your Honor. I just want

1 to -- before I make my objection, I want to make sure
2 that I'm looking at the correct page or pages. So, it
3 would be from the prefiled Exhibit 1 but only Page 48
4 and that's it, or is it a continuation of pages?

5 MS. ALLEN: It is about four pages, and I
6 will tell you exactly how many. Hang on. Give me a
7 moment.

8 (Brief pause)

9 JUDGE SIANO: It appears to go to Page 53,
10 Bates.

11 MS. ALLEN: That's right. You have it.
12 Absolutely.

13 MS. KATZ: Yes, Your Honor. Then, I would
14 object to relevance and hearsay. As far as hearsay, I
15 believe this is a report prepared by somebody else, who
16 is not a witness. Mr. Bolton -- two Mr. Boltons, and so
17 that would be hearsay.

18 MS. ALLEN: Your Honor, it is not hearsay
19 because it is an admission by the Company, and it is not
20 offered for the truth of the matter asserted. It is
21 offered to show the information that was before the
22 board. That's why.

23 You think I'm -- I don't know what I'm
24 doing here.

25 MS. KATZ: Your Honor, this was not --

1 (Simultaneous discussion)

2 JUDGE SIANO: I don't --

3 MS. KATZ: -- the Company.

4 JUDGE SIANO: I don't see how it's an
5 admission. This is -- on its face, it's by the Bolton
6 Real Estate Company.

7 MS. ALLEN: You've heard -- yeah, you've
8 heard from testimony from two witnesses now that the
9 board commissioned this appraisal. It was done for the
10 board at its direction. Now --

11 JUDGE SIANO: Okay. Well, I'll let you --
12 I'll let you lay the predicate for that. I have heard
13 of reference to an appraisal. I don't know that it was
14 this one. So, I'll allow you to develop that.

15 MS. ALLEN: Okay. So, let me try to clean
16 that up.

17 Q (BY MS. ALLEN) Mr. Nelson, I don't know what
18 the heck I'm showing you right now, but I'm hoping that
19 it is the first page of the Bolton appraisal, December
20 3rd of 2018. Is that what you see?

21 A You need to share your screen.

22 Q I need to share my screen. Thank you so much.
23 How about that?

24 A I see Bolton Real Estate, December 3rd, 2018.

25 Q We've talked previously about a forensic

1 appraisal by Bolton Real Estate. Do you remember that?

2 A Yes.

3 Q This is the forensic appraisal by Bolton Real
4 Estate. Isn't it?

5 A It --

6 Q Let me back up and say, this is the summary
7 sheet, the first two pages that summarize the
8 conclusions. Is that right?

9 A It looks like it.

10 MS. ALLEN: Okay. I'm offering as
11 Exhibit 24 the summary for the Bolton appraisal.

12 JUDGE SIANO: Okay. So -- and this is not
13 being offered for the truth of the matter asserted.

14 MS. ALLEN: This is being offered to show
15 what was before the board in connection with its
16 decision-making.

17 JUDGE SIANO: It was available at the time
18 the board made its decision.

19 MS. ALLEN: Yes, I'm sorry.

20 MS. KATZ: Your Honor --

21 JUDGE SIANO: But what is this probative
22 of? I believe that I heard a relevance objection.

23 MS. ALLEN: Sometime or another somebody
24 is going to wonder why it was the board spent 2- or
25 \$300,000 to try to prevent people from recovering this

1 property for the benefit of the Company. I would like
2 for that person to be able to know that it was a
3 valuable asset worthy of pursuit. So, that is the
4 purpose for which it's offered.

5 JUDGE SIANO: Okay. But that would tend
6 to be for the truth of the matter asserted.

7 MS. ALLEN: It is what the board knew when
8 it was decision-making. The board had no other
9 appraisal when it was decision-making. This was it.
10 So...

11 (Brief pause)

12 JUDGE SIANO: Ms. Katz.

13 MS. KATZ: Your Honor, I think it is
14 going to the truth of the matter asserted, and this
15 hearing is not -- shouldn't be used as a pedestal for a
16 witch hunt trying to find out different answers to
17 questions that people may or may not have in the future.
18 This is a very specific hearing with specific objectives
19 that Your Honor laid out in the beginning. I would -- I
20 would -- Your Honor, if Ms. Allen wanted to elicit
21 information whether or not the board had received an
22 appraisal or information on an appraisal, that testimony
23 has already been read into the record.

24 I'm not sure what this additional
25 testimony concerning the numbers and the meat of the

1 appraisal or how they have any relevance or value to
2 this hearing. The fact of the matter is, is was there
3 an appraisal done? Yes, that's it. There's no reason
4 to get into the details here as far as what's in this
5 report.

6 Additionally, this is a report that was
7 not prepared by Mr. Nelson. So, it would still be
8 improper predicate. He didn't prepare the report. He
9 can't testify that this report is accurate, an accurate
10 representation of what was originally submitted to the
11 board. He can't really answer any questions about what
12 is in this report, specifically because he was not the
13 person who prepared it. He can't testify as far as
14 predicate is concerned, if there are any errors, and if
15 it -- this is an exact copy of the report as it was
16 provided to Windermere Oaks because he is not the person
17 who prepared that.

18 JUDGE SIANO: All right.

19 MS. ALLEN: Your Honor, he most certainly
20 could tell you that it is a duplicate of the report if
21 he were allowed to. I've been cut off from asking him
22 questions, and I'm being content with that.

23 JUDGE SIANO: Well, it sounds like -- my
24 understanding is that he does recognize it. However,
25 I'm going to sustain the objection on hearsay and

1 relevance, unless you can establish that the board
2 relied on this report in making its rate decision.

3 Q (BY MS. ALLEN) Mr. Nelson, isn't it true the
4 board never engaged any other appraisal -- any other
5 appraiser to prepare any other appraisal report for
6 purposes of its decision-making?

7 A When you say, "engaged," what do you mean?

8 Q Hired? I don't know what else to say.

9 A No, the board did not hire another appraiser --

10 Q Okay.

11 A -- at the time. There was one done many years
12 before.

13 Q By Dana Martin?

14 A By the --

15 Q By Dana Martin's appraiser. Is that the one
16 you're talking about?

17 A The board, yeah.

18 Q Okay. But the board didn't hire Dana Martin's
19 appraisers. Right?

20 A I -- my understanding was that was a board --

21 Q The board hired Dana Martin's appraiser?

22 A I don't know what you mean by Dana Martin's
23 appraiser.

24 JUDGE SIANO: All right. So, let's
25 just -- I want to be efficient here. So, I think the

1 question was: Is -- was there any other appraisal done?

2 Q (BY MS. ALLEN) The question was: Was there
3 any other appraisal done by an appraiser engaged by the
4 board of directors? That's the question.

5 A Yes. So, there was -- to go to the other
6 question. There was an appraisal done by Dana Martin
7 after the demand letter, and so that was also received
8 by the board.

9 Q Dana --
10 (Simultaneous discussion)

11 A That was not hired by the board. The board,
12 along with Ffrench, Dial, and Sorgen, hired Bolton.

13 Q (BY MS. ALLEN) Dana Martin was an opponent in
14 litigation. Correct?

15 A Dana Martin, Friendship Homes, was served a
16 demand letter.

17 Q They were an opponent in litigation. Correct?

18 A I'm sorry. I'm not a lawyer. So, I don't
19 understand all the legal terms. So, the demand letter
20 was sent to them.

21 Q Okay. And the board never engaged the
22 appraiser for Dana Martin. Correct?

23 A The board did not hire that appraiser or talk
24 to them.

25 Q Okay. Now, let me share my screen to show you

1 what I have marked as Exhibit 25. Hopefully, that is
2 the letter that Mr. de la Fuente prepared at the board's
3 direction and sent it to Ms. Martin's attorney. Right?

4 A Can you make it a little smaller? I just --

5 Q I can do that. Yes, I can. Let me -- if I
6 make it too small, you let me know.

7 A That's good.

8 Q How's that? If you want me to scroll down, I
9 will scroll down.

10 A Yeah. So, I believe that's the demand letter.

11 Q Okay. And I don't want to belabor the point,
12 but I believe that earlier you testified that you
13 participated in this effort and you authorized the
14 sending of this letter. Correct?

15 A The board voted on it and approved it --

16 Q Okay.

17 A -- that I recall.

18 MS. ALLEN: So, that's No. 25, and I'm
19 offering it.

20 MS. KATZ: Your Honor, I'll object at this
21 time to both hearsay and relevance. Hearsay,
22 specifically, Mr. Nelson is not the person who prepared
23 this. It's an outside statement, a previously written
24 statement being offered for the truth of the matter
25 asserted. If it weren't being offered for the truth of

1 the matter asserted, then Mr. Nelson's testimony,
2 general testimony, regarding a letter would be
3 sufficient.

4 JUDGE SIANO: Ms. Allen, what do you --
5 (Simultaneous discussion)

6 JUDGE SIANO: -- was this previously
7 filed? If so, you're going to need to --

8 MS. ALLEN: This was previously filed.
9 You'll see the Bates -- am I still sharing my screen to
10 show you the Bates number --

11 JUDGE SIANO: Yes.

12 MS. ALLEN: -- and exhibit number? And,
13 Your Honor --

14 JUDGE SIANO: Okay. I'm looking at it.

15 MS. ALLEN: -- this was a communication
16 that was made at the board's direction and with the
17 board's authority and on behalf of the Company. It is
18 not hearsay, and this witness has authenticated it.

19 JUDGE SIANO: And what is this being
20 offered for?

21 MS. ALLEN: It is being offered to show
22 the information that the board had before it when it was
23 making decisions about whether to incur the legal
24 expenses that are the basis for these new rates and
25 whether it ought to raise the rates on that basis.

1 JUDGE SIANO: Ms. Katz, this looks --

2 MS. KATZ: Your Honor -- I'm sorry. Go
3 ahead.

4 JUDGE SIANO: So, this looks like it gets
5 into the land transaction --

6 MS. KATZ: Yes.

7 JUDGE SIANO: -- details.

8 MS. KATZ: Details of the litigation,
9 correct, and drafted by an attorney at our firm, who is
10 not a witness here to testify that this is, in fact,
11 what he wrote and so on and prove it up that way.
12 Mr. Nelson is not the witness who, one, can get this
13 into the record and, two, it's still irrelevant.

14 JUDGE SIANO: I'll sustain the objection.

15 MS. KATZ: Thank you.

16 Q (BY MS. ALLEN) Mr. Nelson --

17 MS. ALLEN: I'm sorry. Are y'all done?

18 Q (BY MS. ALLEN) Mr. Nelson, the letter begins:
19 I am writing to you on behalf of my client, the
20 Windermere Oaks Water Supply Corporation. Do you see
21 that?

22 MS. KATZ: Objection, Your Honor. You
23 sustained leaving this -- the offering of this letter
24 into evidence, and this line of questioning is directly
25 related to the substance of the letter.

1 JUDGE SIANO: Ms. Allen, what are you
2 trying to establish with this?

3 MS. ALLEN: How about this?

4 Q (BY MS. ALLEN) Mr. Nelson, is it true that
5 Mr. de la Fuente was writing to Ms. Martin and
6 Ms. Mitchell on behalf of his client, the Windermere
7 Oaks Water Supply Corporation?

8 A Yes, Mr. de la Fuente represents the Windermere
9 Oaks Water Supply Corporation.

10 Q He was the Company's lawyer at the time this
11 letter was written. Right?

12 A Yes, he was one of --

13 (Simultaneous discussion)

14 Q (BY MS. ALLEN) He wrote it on behalf of the
15 Company. Correct?

16 A Yes.

17 Q He wrote it at the direction of the board of
18 the directors. Right?

19 A Yes.

20 Q And the board of directors authorized it to be
21 sent. Correct?

22 A Yes.

23 MS. ALLEN: Your Honor, with that
24 predicate, I reoffer Exhibit 25.

25 MS. KATZ: And, Your Honor, I would still

1 object as far as relevance with the specifics of the
2 details within this letter.

3 JUDGE SIANO: Ms. Allen, you're going to
4 need to tell me how you think this is relevant to
5 whether the rates are just and reasonable.

6 MS. ALLEN: Your Honor, it is directly
7 relevant to whether the expenses upon which these rates
8 are based are prudent and reasonable expenses to be
9 included for purposes of ratemaking. It is directly
10 relevant to that question. That is the first -- as I
11 understand it, the first question to be asked when one
12 is trying to analyze whether the rates that were derived
13 with these expenses are just and reasonable. So, I'm
14 trying to look at the cost information that we know was
15 used and enable the trier of fact to ascertain whether
16 the legal fees that were generated by this Company to
17 oppose the recovery of the property were prudent and
18 reasonable.

19 I don't care who was right. I just want
20 to ask and be able for somebody to ascertain that they
21 were not reasonable and not prudent, and I don't know
22 any other way to do that but to provide the record of
23 what happened.

24 JUDGE SIANO: So, is this to prove up the
25 value of the land or the appraised value or the purchase

1 price?

2 MS. ALLEN: Your Honor, I don't -- I mean,
3 again, I'm not trying to belabor the point, but for
4 illustration, my argument will be that no reasonable
5 board of directors whose own appraiser said, your land
6 was transferred for \$500,000 less than it was worth and
7 whose own lawyer wrote this letter, that board of
8 directors would not be opposing the recovery of the
9 property. That is not reasonable. That not prudent,
10 and spending the ratepayers' money to keep them from
11 recovering their property is not reasonable and --

12 (Simultaneous discussion)

13 MS. KATZ: Your Honor, Ms. Allen is -- I'm
14 sorry. Go ahead.

15 JUDGE SIANO: I'm just taking argument. I
16 won't consider it for evidence.

17 Thank you, Ms. Allen. That's helpful, and
18 with that, I sustain the objection.

19 MS. ALLEN: Okay.

20 Q (BY MS. ALLEN) Mr. Nelson, so let me ask you,
21 after the amended petitions were filed in the Double F
22 case, the Company, again, asked its insurance carrier to
23 pay the director's litigation costs. Right?

24 A In an ongoing discussion, yes.

25 Q And the Company again, said, no. Right?

1 A Yes.

2 Q This time the demand was -- on the insurer was
3 made for the 2019 board, as well. Right?

4 A It included all the directors added.

5 Q It included the directors who were involved in
6 the 2016 land transaction, and it included the directors
7 who in October of 2019 had authorized additional land to
8 be transferred. Correct?

9 A For those that were still included in the
10 suits. Some were de-suited, as I recall.

11 Q Later, yes. But, initially, those amended
12 pleadings included not just the directors who were
13 involved in the 2016 land deal, but it also included the
14 directors who, in October of 2019, had approved the
15 giving of additional property. Correct?

16 A I am sorry. I don't know what you mean by
17 giving of additional property.

18 Q Well, okay. I just want to be sure that if
19 anybody wants to know it, they will understand why it
20 was that the 2019 board was made party to the lawsuit.
21 Okay? So, help me with the chronology. Isn't it true
22 that following the filing of that petition and
23 intervention that we saw, the Company and Dana Martin
24 engaged in negotiations about their disputes?

25 MS. KATZ: Your Honor, I'm going to object

1 to relevance. This is, again, getting into the details
2 of outside litigation, and this is -- this proceeding
3 is -- we're here for a limited purpose in this
4 proceeding. We're belaboring the same details of
5 previous litigation, pending litigation, and this isn't
6 the forum to do so.

7 MS. ALLEN: Your Honor, maybe the PUC
8 Staff is way off base, too, but they seem to think that
9 it's somewhat important that the board didn't make
10 efforts to, for example, settle with the plaintiffs or
11 more efficiently handle their litigation. They seem to
12 think those things are important. I'm trying to develop
13 the record on the handling of the lawsuit, not on who's
14 right or wrong -- it's not for here -- but on the
15 handling of the lawsuit.

16 JUDGE SIANO: I'll sustain the objection.

17 Ms. Allen, please, again, these are
18 details that -- they may seem very important to you.
19 They -- we're just here --

20 (Simultaneous discussion)

21 MS. ALLEN: Okay. I got it. I got it. I
22 got it. I will make my record, and that's -- I'll move
23 right along.

24 Q (BY MS. ALLEN) Mr. Nelson, isn't it true that
25 in October of 2019 the Company made a deal with

1 Ms. Martin?

2 MS. KATZ: Objection, Your Honor.

3 Relevance.

4 JUDGE SIANO: Sustained.

5 Q (BY MS. ALLEN) Mr. Nelson, isn't it true that
6 in October of 2019 the Company made a deal with
7 Ms. Martin as a result of a mediation in the lawsuit?

8 MS. KATZ: Objection, Your Honor.

9 Relevance.

10 JUDGE SIANO: Sustained.

11 Q (BY MS. ALLEN) Mr. Nelson, isn't it true that
12 the Company did not invite the plaintiffs to the
13 mediation?

14 MS. KATZ: Objection, Your Honor.

15 Relevance.

16 JUDGE SIANO: Sustained.

17 Q (BY MS. ALLEN) Mr. Nelson, isn't it true that
18 all of the legal fees that were expended between May of
19 2019 and the end of 2019 that were expended by the
20 Company on these lawsuits were expended for the purpose
21 of making the deal with Ms. Martin?

22 A That's not what I recall.

23 Q There were no depositions during that time.
24 Correct?

25 A I believe depositions started in November.

1 Q So, beginning in May of 2019 and up through
2 October, all of the money the Company spent on these
3 lawsuits was spent making a deal with Ms. Martin. Isn't
4 that true?

5 A I believe that Water Supply Corporation was
6 included in 48292 I think in May --

7 (Simultaneous discussion)

8 Q (BY MS. ALLEN) That's why I started in May,
9 yes, sir.

10 A -- and so that's why I would think, then, that
11 our lawyers would have been involved there in 48292 in
12 some way, fashion, or form.

13 Q And that's why I'm asking you, isn't it true
14 that in that lawsuit there were no depositions during
15 the May through October timeframe? Isn't that true?

16 A I don't know.

17 Q There were no motions, practices, no hearings.
18 Right?

19 A I don't know.

20 Q Your lawyers were busy during that time making
21 a deal with Ms. Martin. Isn't that right?

22 MS. KATZ: Objection, Your Honor.
23 Speculation.

24 JUDGE SIANO: Sustained.

25 Next question.

1 Q (BY MS. ALLEN) Isn't it true that in
2 connection with the deal that was made with Ms. Martin
3 from the mediation the Company executed and delivered a
4 correction deed that conveyed additional property?

5 MS. KATZ: Objection, Your Honor.
6 Relevance.

7 JUDGE SIANO: Sustained.

8 Q (BY MS. ALLEN) Is that true?

9 MS. KATZ: Your Honor, objection.

10 MS. ALLEN: I'm sorry.

11 Q (BY MS. ALLEN) Mr. Nelson, isn't it true that
12 when the petition was amended, it named as parties the
13 directors who had approved that correction deed and
14 delivery of additional land?

15 A I don't recall there being any additional land.
16 So, I don't know what you're talking about.

17 Q You don't recall the correction deed?

18 A I recall the deed being corrected as part of an
19 agreement.

20 Q And it included a tract of land that had never
21 been included in any deed the Company had ever given.
22 Right?

23 MS. KATZ: Objection, Your Honor.
24 Relevance.

25 JUDGE SIANO: Sustained.

1 Ms. Allen.

2 MS. ALLEN: I wouldn't have belabored that
3 point. I can't imagine that he's not going to answer
4 that question, but I wouldn't have belabored that.

5 Q (BY MS. ALLEN) All right. Can you at least
6 confirm that the amended petition that was filed after
7 the deal with Ms. Martin and that named additional
8 directors named those directors who had approved the
9 deal with Martin?

10 MS. KATZ: Objection, Your Honor, to
11 relevance.

12 JUDGE SIANO: Sustained.

13 Ms. Allen, I feel like I'm repeating
14 myself, but you're getting into details that are beyond
15 the scope of this proceeding. So...

16 Q (BY MS. ALLEN) Mr. Nelson, when is the first
17 time that the Company ever made any effort to mediate
18 with the plaintiffs in the Double F lawsuit?

19 MS. KATZ: Objection to relevance.

20 JUDGE SIANO: Sustained.

21 Q (BY MS. ALLEN) Can you identify any steps that
22 the board ever took in an effort to control its legal
23 spending for these two lawsuits?

24 A Yes, we have discussed with our legal firms on
25 how to be most efficient in these matters.

1 Q Can you identify even one step that the board
2 implemented in an effort to control the legal spending
3 for these lawsuits?

4 A One, off the top of my head, that I recall
5 asking our legal teams because we had the director
6 being -- directors being represented by Enoch Keever Law
7 Firm and the Water Supply Corporation being represented
8 by Lloyd Gosselink Law Firm, and so we asked them to
9 coordinate efforts to minimize -- to be most efficient
10 so they could use each other's arguments and not have to
11 spend the resources both in parallel and basically
12 double-charge us.

13 Q Okay. To your point, is it accurate that the
14 Enoch Keever Firm, whose legal fees we've seen in this
15 rate, their job was nothing but to handle this
16 litigation for the directors? Is that true?

17 A Enoch Keever represents the directors, yeah.

18 Q Okay. The directors had been sued to collect
19 personal liability for money damages. Right?

20 A Yes.

21 Q The Company had never been sued to collect any
22 damages. Right?

23 A I don't know.

24 Q Can you identify even one single time the
25 Company was ever sued in these lawsuits for damages?

1 A I may be conflating things.

2 Q If you can identify even one single time, I'm
3 happy to hear it.

4 A Ask your question again.

5 Q Can you identify even one single pleading that
6 seeks money damages against the Company in either one of
7 these lawsuits?

8 A Now, you're asking for the Corporation to pay
9 damages?

10 Q Mr. Nelson, I'm asking you if there was ever a
11 pleading filed in either one of these lawsuits in which
12 the plaintiff sought to recover any kind of damages or
13 other expense from the Company.

14 A I may be getting things confused between
15 pleadings and motions and mediations and things. So,
16 I'm going to say, I don't recall.

17 Q You do recall, however, that the individual
18 directors were sued for money damages for all of the
19 value of the property if it could not be recovered. You
20 know that. Don't you?

21 A I don't recall all the specifics of the suit
22 and what was being requested.

23 Q You are one of those defendants. Aren't you?

24 A I was.

25 Q You're still in the lawsuit. Aren't you?

1 A There was a ruling.

2 Q Are you still a party in the lawsuit, or are
3 you not?

4 A Well, the judge ruled take no decision in my --
5 in director's favor.

6 Q Okay. In November --

7 A You know more about proceedings than I do --
8 oh, sorry.

9 Q No, I just thought you might know because it
10 affected you directly. In November 2019 the directors
11 who were named as parties to the lawsuit were sued for
12 money damages to recover the entire value that the
13 Company lost if it could not restore the property.
14 Right?

15 A I'll take your word for it.

16 Q Well, okay. When you were sued, what did you
17 understand you were sued for?

18 A I believe that I was sued because I was on the
19 board of directors that approved the mediation results
20 with Friendship Homes.

21 Q Mr. Nelson, I'm --

22 (Simultaneous discussion)

23 JUDGE SIANO: One at a time. One at a
24 time.

25 MS. ALLEN: Go ahead. Go ahead. That's

1 not what I'm asking, but go ahead.

2 A Yeah, so that approval improved the deal for
3 the Water Supply Corporation. We got -- were to get
4 \$20,000 additional --

5 (Simultaneous discussion)

6 MS. ALLEN: Your Honor, he can talk all he
7 wants about the substance in the merits --

8 JUDGE SIANO: Mr. Nelson, you're going
9 beyond the question. So, please limit --

10 THE WITNESS: Sorry.

11 JUDGE SIANO: -- your answer to the
12 question asked. Okay?

13 All right. Ms. Allen, go ahead.

14 Q (BY MS. ALLEN) Mr. Nelson, I'm really not
15 trying to intrude on the substance or the matter --
16 merits or who was right or who was wrong, but what --
17 did you not have an understanding -- when you were sued,
18 along with the other directors who approved that deal in
19 November 2019, did you not have an understanding that
20 you were being sued for personal liability for money
21 damages?

22 A Yes.

23 Q Okay. And the idea was that if we could -- if
24 the plaintiffs were unable to recover the property for
25 the benefit of the Company, then whatever loss that was

1 occasioned, the plaintiffs wanted to recover from the
2 directors. You got that. Right?

3 A That part is not clear to me.

4 Q Okay. When the board made the decision to
5 incur legal costs in connection with the TOMA Integrity
6 lawsuit, it engaged a lawyer named Les Romo. Do you
7 remember that?

8 A Les was the general counsel when I joined the
9 board.

10 Q Okay. In reviewing the invoices from Mr. Romo,
11 I noticed they had handwriting on them and cross-outs
12 and things like that. Have you ever seen those
13 invoices?

14 A I don't think so. I'm not recalling them.

15 Q Who was reviewing --

16 (Simultaneous discussion)

17 A That was in 2018.

18 Q (BY MS. ALLEN) Right.

19 A Yeah.

20 Q Who reviewed Mr. Romo's invoices, if you know?

21 A The -- I believe it was our president at the
22 time.

23 Q And that was who?

24 A The board -- the board president at the time,
25 David Bertino, and possibly our vice president at the

1 time.

2 Q And that was who?

3 A Oh, good question. I'm drawing a blank. I can
4 see his face.

5 Q Does Dorothy Taylor ring a bell?

6 A No, it wasn't Dorothy.

7 Q Okay. Norm Morse, maybe?

8 A Yeah, Norm. Very good.

9 Q Okay.

10 A Yeah.

11 Q All right. Was there a reason why the board of
12 directors did not make an effort through its lawyers to
13 bring everyone who was interested in the court in the
14 TOMA lawsuit so that it could all be resolved?

15 A In the TOMA lawsuit?

16 Q That was the first one. Right?

17 A So, that's the one you're asking about?

18 Q Yes, sir.

19 A Okay. Our understanding was -- or this is my
20 understanding, was the TOMA Integrity wanted the Water
21 Supply Corporation to sue Dana Martin and Friendship
22 Homes and the title company to get the land back and so
23 that -- or else they would continue with the lawsuit.
24 And so our understanding is it would cost at least
25 \$100,000 to sue Friendship and Martin, and I believe

1 that's a very low mark considering what we've paid here
2 in litigation over the last couple of years.
3 Friendship's defense was going to be provided by the
4 title company. There was no guarantee the Water Supply
5 Corporation would win and get the land back, and
6 Friendship, Martin, and the title company would
7 countersue the Water Supply Corporation for damages for
8 going back on a properly-executed property sale, which
9 would be well over a million dollars. And then, the
10 Water Supply Corporation suing Friendship and Martin
11 would tank the Water Supply Corporation's reputation as
12 a seller that tries walking back on property sales
13 making it potentially difficult to find willing buyers
14 to purchase the Water Supply Corporation's remaining
15 airport property.

16 Q Okay. So, the TOMA litigation gets filed in
17 December 2017 by a plaintiff that seems willing to
18 invest its own resources to try to recover the Company's
19 property. Is that correct? That's what the lawsuit was
20 about. Right?

21 A I would -- I would characterize it as the TOMA
22 Integrity team being upset with Dana Martin and dragging
23 the Water Supply Corporation into their fight with Dana
24 Martin, is how I would answer that.

25 (Simultaneous discussion)

1 Q (BY MS. ALLEN) I know that you would, but I'm
2 just trying to stick to the facts. Isn't it a fact that
3 there was a plaintiff named TOMA Integrity that filed a
4 lawsuit and prosecuted it with its very own resources,
5 not the Company's resources, in an effort to try to get
6 the property back for the benefit of the Company and its
7 ratepayers?

8 A I don't know why they did it other than it
9 was -- they sued the Water Supply Corporation --

10 (Simultaneous discussion)

11 Q (BY MS. ALLEN) You know what they sought in
12 the lawsuit --

13 A -- and the Water Supply Corporation -- they
14 were trying to strongarm the Water Supply Corporation
15 into suing to get the property back and --

16 Q You know what they --

17 (Simultaneous discussion)

18 A -- work, then they tried that lawsuit to the
19 Water Supply Corporation --

20 JUDGE SIANO: Mr. Nelson, I'm going to
21 stop you.

22 (Simultaneous discussion)

23 JUDGE SIANO: Mr. Nelson and Ms. Allen, I
24 do want as clean a record as possible. It's getting I
25 think far afield of what's relevant to this proceeding

1 and what we're here to decide. So, please confine your
2 questioning to the issues that are the subject -- well,
3 we're getting into a lot of detail here, and it's just
4 beyond issues that we can resolve.

5 Q (BY MS. ALLEN) Mr. Nelson, isn't it true that
6 every dollar that the board approved to spend in
7 connection with these two pieces of litigation was for
8 the purpose of preventing the plaintiff from prevailing?

9 A All the money that has been spent in those two
10 cases was in defense.

11 Q For the purpose of preventing the plaintiff
12 from recovering the relief that it sought. Correct?

13 A In defense of the Corporation.

14 Q The Company could easily have joined Martin and
15 her Company in the TOMA lawsuit. Isn't that right?

16 JUDGE SIANO: Ms. Allen, I'm going to cut
17 you off. Again --

18 MS. ALLEN: Okay.

19 JUDGE SIANO: Okay. And while we're here,
20 I know that this witness has a time constraint, and I
21 want to allow enough time for Staff, if Staff has any
22 witnesses.

23 Ms. Lander, do you -- how much cross do
24 you anticipate for this witness?

25 MS. LANDER: Staff has also waived

1 Mr. Nelson.

2 JUDGE SIANO: Okay. All right. So, we
3 don't have to worry about that.

4 Ms. Allen.

5 Q (BY MS. ALLEN) Mr. Nelson, wouldn't you agree
6 with me that had all the parties been brought before the
7 court in the TOMA Integrity lawsuit, every single one of
8 those issues that you just mentioned in your litany of
9 reasons could have been resolved in one lawsuit, in one
10 courtroom and finally?

11 MS. KATZ: Your Honor, I'm going to object
12 to speculation. Number one, he's not in charge of
13 making those -- those, excuse me, decisions, and two,
14 he's not an attorney.

15 JUDGE SIANO: Sustained.

16 Q (BY MS. ALLEN) Mr. Nelson, what effort, if
17 any -- prior to approving these legal expenditures, what
18 effort, if any, did the board make to try to determine
19 whether there was a way to get all of the parties before
20 the court so that all of the issues could be resolved in
21 one place finally?

22 A We've had ongoing discussions since I've been
23 on the board on how best to resolve this and move
24 forward for the Corporation. So, that's been ongoing.

25 Q Well, the Company has never tried to get all of

1 the parties in one courtroom. Has it?

2 JUDGE SIANO: Ms. Allen, I believe this
3 was addressed through the prior objection. So, I'm
4 going to ask you to move on.

5 MS. ALLEN: Okay.

6 Q (BY MS. ALLEN) Mr. Nelson, you know it was
7 your lawyer, so let me make sure that you agree with
8 that. Your lawyer said awhile earlier that if I wanted
9 to know the exact amount of legal expenses that were
10 incurred by the Company for 2019 work, all I had to do
11 was look at the invoices and total them up. Do you
12 recall that?

13 A When you say -- so, what do you mean by
14 incurred in 2019? You mean for the work --

15 (Simultaneous discussion)

16 Q (BY MS. ALLEN) I mean, that the Company became
17 obligated to pay for work that it approved that the
18 board approved to be done in 2019.

19 A So -- okay. So, you know, the reason I ask is
20 because --

21 MS. ALLEN: I have no idea.

22 A -- for work done in December we don't get
23 invoiced until January. So, are you talking about for
24 all the work that was done in 2019 by legal teams?

25 MS. ALLEN: Madam Court Reporter, could I

1 trouble you to read my question back, please, ma'am?

2 (Requested portion was read by the
3 reporter)

4 A That would make sense to look at all the
5 invoices and total them up.

6 Q (BY MS. ALLEN) Okay. So, I did that. Let me
7 ask you this: What was the Company's net operating
8 income for February of 2019?

9 A I don't recall.

10 Q Order of magnitude. You're the money guy.
11 Right?

12 A I don't -- I don't -- I'd have to look.

13 Q What's the Company's average NOI monthly for
14 2019?

15 A For 2019?

16 Q Yes, sir.

17 A I would have to go look.

18 Q I'm sorry?

19 A I would have to look.

20 Q Where would you look?

21 A I would look at the financial reports, the
22 monthly financial reports.

23 Q Have those been provided by the Company for the
24 Year 2019 in connection with this proceeding?

25 A I don't recall.

1 Q Those are the records that one would need in
2 order to determine whether the legal fees exceeded the
3 NOI on a monthly basis for 2019. Right?

4 A Well, what we used for the rate case was the
5 year-end 2019 financials.

6 Q I know that, but I'm not really asking you
7 that.

8 A Yes, I'm not understanding your question
9 because --

10 Q Okay.

11 A -- the rate was --

12 Q Let me try it this way.

13 A -- the rates were increased for 2020, not --

14 Q (BY MS. ALLEN) Let me try it this way: Would
15 you agree with me the Company did not have \$18,957.68 in
16 net operating income in February of 2019?

17 A I don't recall.

18 Q Do you really think that it might have?

19 MS. KATZ: Your Honor, I'm going to
20 object. He said he didn't know. This is badgering the
21 witness.

22 JUDGE SIANO: He can respond. I'll allow
23 it.

24 A I mean, it's theoretically possible. If --

25 (Simultaneous discussion)

1 Q (BY MS. ALLEN) The Company's --

2 A -- very little, very few or no repairs and no
3 chemical costs and all we had were just, you know, the
4 normal people costs, water costs, and we had a good -- a
5 good month on water revenue, it's possible.

6 Q Okay. But you're the one who has those
7 records. Right?

8 A I think I still have 2019, I think.

9 Q Okay. And you don't really think that the
10 Company had net operating income in excess of \$18,000 in
11 February 2019. Do you?

12 MS. KATZ: Objection, Your Honor. Asked
13 and answered.

14 JUDGE SIANO: Sustained.

15 Q (BY MS. ALLEN) The Company's net operating
16 income for all of 2019 was \$41,000. Right?

17 A Honestly, I'd have to look at the report.

18 Q Okay. Look at it. Just look at anything you
19 need to.

20 JUDGE SIANO: Mr. Nelson, do you have that
21 handy, or are you going to have to do some search for
22 it?

23 We've been at this for some time. I think
24 it might be a good time for a break.

25 THE WITNESS: Okay.

1 MS. KATZ: Ratepayers are fine with that.

2 JUDGE SIANO: All right. Let's take a
3 10-minute recess.

4 (Recess: 2:42 p.m. to 2:55 p.m.)

5 JUDGE SIANO: Okay. Let's go back on the
6 record.

7 Ms. Allen, go ahead.

8 Q (BY MS. ALLEN) So, Mr. Nelson, you were going
9 to do some looking over the break so that you could give
10 us some information. Were you able to find it?

11 A Honestly, I forgot the question. Can you just
12 show me where in my testimony what you're talking about?

13 Q I would love to, but I would need records that
14 the Company didn't produce. I would need monthly
15 financials. I would need monthly financials, is what
16 you told me.

17 A Okay. Well, sorry, then.

18 (Discussion off the record)

19 Q (BY MS. ALLEN) Isn't that what I would need,
20 is monthly financials?

21 A I forgot your question. What was your question
22 again?

23 Q My question was: Do you have any reason to
24 think that the Company's net operating income in
25 February of 2019 exceeded \$18,000?

1 A As I told you before, I don't know.

2 Q And I heard that. I asked you to find out.
3 Were you able to find out?

4 A I told you, no.

5 Q Okay.

6 A I don't know, so -- but if you've got it, you
7 can show me. Was it in my testimony?

8 Q I would need monthly financials in order to
9 know that answer. Would I not?

10 A Well, I'm asking you. Was it in my testimony?
11 Is that what you're referring to?

12 Q No, I would need monthly financials. Correct?

13 A Oh, okay. Then, yeah, I --

14 (Simultaneous discussion)

15 Q (BY MS. ALLEN) The Company apparently is not
16 prepared today to testify about its monthly --

17 A -- any and all monthly financials, that's
18 correct.

19 Q No, no, no. Monthly financials for the test
20 year only, for the test year only. The Company is not
21 prepared today to testify about monthly financials for
22 the test year?

23 JUDGE SIANO: Ms. Allen --

24 MS. KATZ: Your Honor, I'm going to --
25 thank you.

1 (Simultaneous discussion)

2 JUDGE SIANO: Yeah. Test year is sort of
3 a term of art in the utility world. So, if you want to
4 refer specifically to a calendar year, that might be
5 more helpful.

6 MS. ALLEN: Will do.

7 Q (BY MS. ALLEN) For the Year 2019, I take it
8 the Company is not prepared to testify about its monthly
9 financials for the Year 2019. Is that right?

10 A Can you point me to your questions in my
11 testimony? That would be great.

12 Q No, sir.

13 (Simultaneous discussion)

14 Q (BY MS. ALLEN) I'm asking you questions.

15 (Simultaneous discussion)

16 Q (BY MS. ALLEN) I'm asking you questions. I'm
17 asking the Company questions about its financial
18 information for the Year 2019 in an effort to test the
19 data that was relied upon by the board in raising these
20 rates. That's my effort.

21 A And that --

22 (Simultaneous discussion)

23 Q (BY MS. ALLEN) Is the Company prepared to
24 testify about its monthly financials for 2019 here
25 today?

1 A Yes.

2 Q What was the Company's net operating income in
3 February -- for February of 2019?

4 A I told you that I don't know.

5 Q You don't know. What was the Company's --

6 JUDGE SIANO: One at a time. Ms. Allen,
7 one at a time. I --

8 MS. ALLEN: I'm sorry.

9 JUDGE SIANO: Just wait for him to answer.
10 It's super important --

11 MS. ALLEN: Your Honor, there is a little
12 bit of a delay, and I do apologize. I'll watch that.

13 JUDGE SIANO: Go ahead.

14 Q (BY MS. ALLEN) So, Mr. Nelson, let's be crisp.
15 I asked you about monthly net operating income for
16 February 2019. I'm going to be quiet until I hear an
17 answer.

18 A I don't know.

19 Q What was the Company's net operating income for
20 March of 2019?

21 A I don't know.

22 Q What was the Company's net operating income for
23 April of 2019?

24 A I don't know.

25 Q What was the Company's net operating income for

1 May of 2019?

2 A I don't know.

3 Q What was the Company's net operating income for
4 June of 2019?

5 A I don't know.

6 Q Can the Company tell us whether or not it had
7 sufficient cash flow to pay legal expenses in the amount
8 of \$15,743.60 in June of 2019?

9 A Cash flow? I don't know.

10 (Simultaneous discussion)

11 Q (BY MS. ALLEN) To stay current --

12 A -- but in cash. I do recall in 2019 that we
13 had paid all legal invoices through most of October. I
14 think there might have been one Enoch Keever in October
15 we didn't pay until 2020, but I believe everything up
16 until that point was paid in full. And --

17 (Simultaneous discussion)

18 Q (BY MS. ALLEN) Mr. Nelson --

19 A -- using cash on hand, as well as from revenues
20 monthly.

21 Q Isn't it true that the Company's legal fees
22 that it has tried to include in these rates for the
23 Year 2019 were in excess of \$250,000?

24 A The rate case, again, the analysis done for the
25 rate study used the -- 171,000 for legal accounting, and

1 I forget the other.

2 Q We're talking past one another. I know that's
3 the number that was in there. What I'm asking you is:
4 Isn't it true the real number of amount of attorney's
5 fees that the board had obligated the Company to pay for
6 services in 2019 was over \$250,000?

7 A The total amount of legal work done in 2019
8 was -- yeah, was more than 171. I don't recall how
9 much.

10 Q But all I have to do is add up the invoices.
11 Right?

12 A Correct.

13 Q All right. If, in fact, the incurred legal
14 fees over and above the 171,000 were 250, that means
15 there's \$250,000 in legal fees that were for work done
16 in 2019 that the Company didn't pay. Right?

17 A The numbers don't sound right to me.

18 Q Well, you help me. It's your supplemental
19 testimony. I thought what you said is there was 171,000
20 in our model, and there was --

21 (Simultaneous discussion)

22 A One was a --

23 Q (BY MS. ALLEN) -- \$250,000 besides that. Is
24 that right?

25 A No.

1 Q Okay. How much of the attorney's fees for
2 work --

3 A This is what you argued to be stricken or
4 from -- so, what I was going to say earlier was to amend
5 my testimony --

6 (Simultaneous discussion)

7 Q (BY MS. ALLEN) Mr. Nelson, I need to get a
8 question out.

9 A Okay.

10 MS. ALLEN: Your Honor, I need to get a
11 question out just so the record is clear.

12 JUDGE SIANO: Go ahead.

13 Q (BY MS. ALLEN) Here is my question: Tell me
14 the number, the amount, of the legal fees that the
15 Company -- that the board committed the Company to pay
16 for work done in 2019 that was not paid for in 2019.

17 A 121,659 approximately.

18 Q Okay. So, if my math is right -- and it isn't
19 always -- that's legal fees in the amount of 279 --
20 280,000?

21 A You mean, the 171 plus the 121 --

22 Q Yes, sir.

23 A -- would be 192?

24 Q Okay. So, that means that the legal fees that
25 the board approved for the Company to pay in connection

1 with these disputes in the year of 2019 was almost
2 \$300,000?

3 A That was the total.

4 Q Okay. The Company used in its rate design a
5 number that was like half of that. Right?

6 A \$171,337 legal accounting and total contract.

7 Q And the 171,000 wasn't even all legal fees.
8 Right?

9 A Correct. Mostly, but not all.

10 Q It included the contract services that was paid
11 to Mr. -- is it Gimenez or Gimenez? How does he say
12 that?

13 A Gimenez.

14 Q Gimenez?

15 A Gimenez.

16 Q Gimenez. Thank you. It was the \$400 a month
17 contract fee that was paid to Mr. Gimenez to be the
18 public information officer. It included that. Right?

19 A There might have been a little bit of that.

20 Q The Company's general ledger would reflect how
21 much it was. Right?

22 A Yes.

23 Q Has the Company produced its general ledger in
24 this proceeding?

25 A I believe the year-end 2019 financials were

1 provided.

2 Q Yes, sir, but that's not the general ledger.
3 Right?

4 A Then, I don't know if a general ledger was
5 provided.

6 Q Does the Company know today how much of the
7 170-so-thousand included contract services fees paid to
8 its board president for public information officer
9 services?

10 A That number could be figured out.

11 Q But you don't know right now?

12 A Not off the top of my head, no.

13 Q Okay. Does the Company know whether or not it
14 had sufficient cash flow in May of 2019 to pay \$7,479.59
15 in attorney's fees?

16 A As I said earlier, we were up-to-date on all of
17 our legal payments until the end of 2019. So, between
18 cash flow from revenues that month versus what we had in
19 the bank, we were able to pay all of our expenses until
20 the end of 2019.

21 Q The Company did not receive invoices for
22 \$120,000 in legal services in December of 2019. Did it?

23 A Between November -- so, the November costs were
24 received in December. The December costs were received
25 in January, and then there was an Enoch Kever bill in

1 October. So, all of those were not paid in 2019 but
2 incurred in 2019.

3 Q Isn't it a fact that the Company got behind on
4 its obligations to the law firm much earlier than
5 October of 2019?

6 A That's incorrect.

7 Q Tell me when the Company claims that it first
8 got behind.

9 A It was at the end of 2019 when we saw the legal
10 bills for work done in October and in November as being
11 very, very high, and our reserve funds in the bank were
12 depleted and our cash flow would not keep up.

13 Q Tell me the amount of legal fees the Company
14 contends that it was obligated to pay for work done in
15 December 2019.

16 A I don't recall. I don't. I don't recall.

17 Q It was not 120,000. Was it?

18 A No, it was a part of that that's included in
19 that. So, November, December, and then, like I said, a
20 part of October.

21 Q Tell me the amount of legal fees the board
22 obligated the Company to pay for work that was done in
23 November 2019.

24 A I don't have that detail in front of me.

25 It's -- I have the total. Like I told you, the 121,659

1 approximately was all incurred in late 2019.

2 Q Tell me the attorney's fees that the board
3 obligated the Company to pay for for work done in
4 October 2019.

5 A I don't -- I don't know. It was high. That
6 was -- that was a high -- a lot of work done there.

7 Q Tell me the attorney's fees that the board
8 obligated the Company to pay for in September of 2019.

9 A I don't -- I don't recall.

10 Q Tell me the payments that the Company made for
11 legal services in December 2019.

12 A The payments made in December?

13 Q Yes, sir.

14 A I don't -- I don't recall, but if you want to
15 show me, we can look at it.

16 Q How about in November?

17 A I don't recall.

18 Q How many payments -- what amount of payments
19 were made, if any, in October?

20 A I don't recall. I know for the whole year we
21 did, you know, the 171,337 in legal accounting and
22 contract.

23 Q Yes, sir. But wouldn't you agree with me that
24 it would be a big red flag for a board of directors if
25 it was unable to be current on its -- on any of its

1 expenses in the middle of the year?

2 A Oh, yes. And that's why we did the rate study,
3 and that's why we talked with our legal firms.

4 Q So --

5 (Simultaneous discussion)

6 Q (BY MS. ALLEN) So, why was it? Go ahead.

7 A And so that's exactly why we talked with our
8 legal firms and discussed our understanding of the case
9 and it having continued significant expenses projected
10 throughout 2020 and for us to meet those we would need
11 an increased revenue cash flow, and that's why we did
12 the rate study, to understand how much we could increase
13 our base rates so that way we could work with our legal
14 terms on a monthly payment plan towards our legal
15 balance.

16 Q Isn't it true that the board had no earthly
17 idea on a monthly basis how much it was committing the
18 Company to pay for legal fees until it got invoices?

19 A Correct.

20 Q And so it was not until after those obligations
21 had been incurred and approved by the board of directors
22 that you were able to analyze the financial
23 ramifications of them. Isn't that right?

24 A Correct.

25 Q I'm sorry, Mr. Nelson, but I just didn't hear

1 you.

2 A Yes.

3 Q Can the Company identify the point in time in
4 2019 where it had unpaid legal invoices at the end of
5 the month?

6 A Late December.

7 Q The Company's contention is that was the first
8 time?

9 A That's when we looked at the invoices from the
10 work done in October and the work done in November.

11 Q Do you understand what I'm --

12 (Simultaneous discussion)

13 Q (BY MS. ALLEN) -- really asking about?

14 A So, about, oh, I think \$100,000-plus for the
15 work done in October and the work done in November.

16 Q And the Company had no idea that was coming, I
17 take it?

18 A I, personally, did not. I did not understand
19 the cost of depositions and that the 48292 case would
20 start deposing, and so we just -- and then we had a
21 general counsel also in October that was high and in
22 November, as well. So, yeah, those were really, really
23 two high months.

24 Q I'm going to tell you that the Company's
25 records reflect that it got behind on its legal bills in

1 the middle of 2019. Does the Company deny that?

2 A I -- we were -- my understanding is we had paid
3 all our legal invoices through September and most of it
4 in October.

5 Q Will the Company provide the records --

6 (Simultaneous discussion)

7 A -- the work in October.

8 Q (BY MS. ALLEN) Is the Company willing to
9 provide the records to prove that?

10 MS. KATZ: Your Honor, I'm going to object
11 to this. Ms. Allen is requesting records that are
12 outside any of the marked exhibits and outside the scope
13 of this specific proceeding.

14 MS. ALLEN: Your Honor, in RFI 7 the PUC
15 Staff asked specifically for these records.

16 JUDGE SIANO: Okay. And --

17 (Simultaneous discussion)

18 MS. ALLEN: And I looked at those
19 yesterday and none of that is in there. So, I want to
20 know if we can get them.

21 JUDGE SIANO: Okay. Well, the discovery
22 period has ended. So, if -- and I didn't see a motion
23 to compel. So, sustained.

24 Q (BY MS. ALLEN) Okay. You are familiar
25 with a -- I think they call it a metric. Let's see what

1 it's called. I'm not good with this. Let's see. It's
2 called debt service coverage ratio. You're familiar
3 with that. Right?

4 A (No audible response)

5 JUDGE SIANO: You're going to need speak
6 up.

7 A Yes.

8 Q (BY MS. ALLEN) It is an indicator of financial
9 condition. Correct?

10 A Yes.

11 Q Its idea is to let us know what resources a
12 Company has to pay its obligations over and above its
13 debt service. Right?

14 A I believe, yeah. So, it's the amount of profit
15 available to pay the debt service, is my understanding.

16 Q Well, do you have -- okay. What is a debt
17 service coverage ratio of 1.1 mean?

18 A That means that if you had debt payment of \$100
19 and you had profits of \$110, you would have -- 110
20 divided by 100 would be 1.1.

21 Q What is a debt service coverage ratio of
22 negative 2.1 mean?

23 A Negative sounds like it means that you didn't
24 have cash flow to cover your expenses, and so then you
25 also didn't have profit to cover your debt in that

1 calculation.

2 Q Isn't it true that if we consider the unpaid
3 legal expenses for services performed in 2019, the
4 Company's debt service coverage ratio for that year is
5 negative 2.15?

6 A I don't know.

7 Q Has the Company ever undertaken to consider
8 what that metric would be if the board of directors were
9 to include amounts that the Company was obligated to pay
10 for 2019 but hadn't gotten around to?

11 A I have not.

12 Q Okay. Do you know anybody with the Company who
13 has?

14 A I do not.

15 Q A debt service coverage ratio of negative 2.15
16 would be, in layman's terms, terrible. Right?

17 A Yeah.

18 Q It would be a signal to the board of directors
19 that it needed to do something drastic. Wouldn't it?

20 A Yes, and that's why we did the rate study and
21 the rate change.

22 Q Can the board --

23 (Simultaneous discussion)

24 Q (BY MS. ALLEN) -- explain why it did not
25 include all of the 2019 legal expenses in its rate

1 study?

2 A Yes, we were instructed that we could only use
3 what was actually paid for in 2019.

4 Q Who told you that?

5 A That's what was used in the model.

6 Q Who told you that you could only use expenses
7 that the Company had actually paid?

8 A What I recall was that was the guidance we
9 received from TRWA.

10 Q Did that make a lick of sense to you?

11 A I do not know enough about all of the rules and
12 regulations, and so we do ask questions and rely on
13 guidance. And so what we were told is it had to be
14 actual payments, and so we needed actual financial
15 reports. And so that's what we used, and it met our
16 revenue requirements.

17 Q Your actual revenue requirements for 2019 were
18 much higher than what's in the model. Right?

19 A Because of the costs incurred, the legal costs
20 at the end of the year.

21 Q And you understand that when I use the term
22 revenue requirement, I'm using it the way you do, but
23 I'm not agreeing with you that the Company had that
24 revenue requirement. Can we have that understanding?

25 A I'm not sure what you mean, but --

1 Q Okay. And so, when the board raised the rates,
2 it said: And we're going to have another 250 in legal
3 fees in 2020. Right?

4 A That was our projection, yes, and --
5 (Simultaneous discussion)

6 Q (BY MS. ALLEN) So, how the heck were you going
7 to pay the 120- or \$150,000 in legal fees for 2019 that
8 you hadn't paid?

9 A We were going to -- we worked with our legal
10 law firms on an agreement to where we could increase
11 rates to pay them \$10,000 a month once the rates kicked
12 in, and so that's what we've been doing, is paying Lloyd
13 Gosselink and Enoch Keever \$10,000 per month since the
14 rates increased.

15 Q Are you telling us that the rates that the
16 board adopted in 2020 were not ever designed to recoup
17 the actual expenses that included the legal fees for
18 2019?

19 A They were increased to pay down the balance --
20 legal balances until the legal balances are gone, and
21 then we were to revisit the rates and reduce them.

22 Q Your --

23 A So, the concept was --
24 (Simultaneous discussion)

25 Q (BY MS. ALLEN) Okay. So --

1 A So, the concept was to look at 2019, right, use
2 it in a rate study to understand how high we could
3 increase rates and then see if we could meet the \$10,000
4 a month per law firm. And so that's where we were able
5 to do that, so at a lower amount than the TRWA
6 analysis --

7 (Simultaneous discussion)

8 Q (BY MS. ALLEN) Okay. So -- okay. I got it.
9 So, you designed these rates to enable you to meet a
10 budget of 10,000 a month per law firm going forward?

11 A Yep.

12 Q Okay. Without regard to what the actual legal
13 expenses might be?

14 A Well, we were already in balance, so we were --
15 and we didn't have the cash on hand to pay off those
16 balances.

17 Q You were not in balance at the end of 2019.

18 A I said --

19 (Simultaneous discussion)

20 Q (BY MS. ALLEN) You just said that.

21 A -- we had legal balances.

22 Q Okay. That's what you mean by in balance? You
23 owed money.

24 A I didn't say in balance. I said we had legal
25 balances.

1 Q I misunderstood you. Okay. So, the rate
2 design -- hang on, and let me see if I can find that.
3 Mr. Nelson, is the -- I believe that the rate design
4 that the Company is relying on and that the board relied
5 on is a part of your testimony. Is that right?

6 A Yes, I believe so.

7 Q Can you help me to locate it?

8 A Can you just open it up? I think it's one of
9 the attachments.

10 Q Probably not. I kind of thought that the
11 Company would probably be prepared to --

12 MS. KATZ: Your Honor, I'm going to object
13 to sidebar. That was unnecessary.

14 JUDGE SIANO: Sustained.

15 MS. ALLEN: Okay. Hold on. Hang on.
16 Hang on just a second, and I will see if I can
17 accommodate that request.

18 (Discussion off the record)

19 Q (BY MS. ALLEN) Okay. Mr. Nelson, I think I've
20 got it. Let me -- let me see. Okay. Let's see here if
21 I've got the right thing. Can you see it on my screen
22 yet? Or, no, that's not it. It's --

23 A That looks like the --

24 Q I've got a spreadsheet up. Hang on a minute,
25 and I'll try to fix that. I told you this is not really

1 the best thing to do. Well, now I really messed things
2 up.

3 (Discussion off the record)

4 JUDGE SIANO: Ms. Allen, what are you
5 looking for?

6 MS. ALLEN: I am trying to get back to the
7 screen that will -- oops.

8 (Discussion off the record)

9 MS. ALLEN: I don't know. I made a mess.
10 I know, but I think I have kicked us out of the meeting.

11 (Discussion off the record)

12 JUDGE SIANO: We still see you.

13 MS. ALLEN: I think I have kicked myself
14 out of the meeting. I am so sorry. I just -- I'm
15 very -- this is not something that I'm very facile with.

16 JUDGE SIANO: We still see you.

17 MS. ALLEN: Okay.

18 JUDGE SIANO: Which document are you
19 trying to pull up?

20 MS. ALLEN: I'm trying to pull up
21 Mr. Nelson's direct testimony, and it is MN-2 Page 1 of
22 1. Does that help?

23 JUDGE SIANO: It helps me find it.

24 (Discussion off the record)

25 Q (BY MS. ALLEN) Mr. Nelson, did that help you,

1 the reference that I furnished?

2 A No. Could you show it to me, please?

3 Q No, sir. I'm sorry, but I can't. I mean, I
4 really literally cannot. I'm sorry that I --

5 (Discussion off the record)

6 JUDGE SIANO: Ms. Allen, I'm going to give
7 you about 30 more minutes with this witness.

8 (Discussion off the record)

9 MS. ALLEN: Your Honor, I've had a
10 technical difficulty over here. I don't really know
11 exactly what's happened. We're working on it as fast as
12 we can, and I apologize. I may have to -- I may have to
13 leave the meeting and rejoin -- oh, wait. There we go.
14 Got it. There we go.

15 Q (BY MS. ALLEN) Okay. So, Mr. Nelson, now I
16 can try to show this to you. Okay. How about that?
17 Have I got it? MN-2. Is that it?

18 A The water revenue requirement and rate design?

19 Q I'm looking for the rate design that the board
20 relied on when it raised these rates. I want to make
21 sure I got the right --

22 A Okay. Can you make it a little smaller?

23 Q I can try. How about that?

24 A Okay.

25 Q And can you scroll down a little bit?

1 A Yes, sir. A little bit more. A little bit
2 more.

3 Q Yes, sir.

4 A That looks like it, yes.

5 Q So, this is MN-2 Pages 1 and 2. Right?

6 A Yes.

7 JUDGE SIANO: Speak up, please.

8 Q (BY MS. ALLEN) Can you just identify this for
9 the record, Mr. Nelson, so we'll know later what we were
10 looking at?

11 A It's the TRWA rate model that I used Windermere
12 Oaks Water Supply Corporation Year 2019 year-end
13 financials.

14 Q And its Attachment MN-2 Pages 1 and 2 to your
15 testimony. Right?

16 A Yes.

17 Q Okay. Great. Now, this shows -- first of all,
18 if I understand it correctly, this model included water
19 only. Is that right?

20 A You kind of cut out there. Please repeat.

21 Q This model included water only. Correct?

22 A No, that's incorrect.

23 Q Okay. Where can I find the analysis with
24 regard to the wastewater?

25 A The water and wastewater are combined. These

1 are totals for Windermere Oaks Water Supply Corporation.
2 So, you see the total down there, the 576,192. It's the
3 total.

4 Q Okay. And I'm going to scroll down to the rate
5 calculation part, and what I see here is that the
6 minimum bill based -- for the base rate is calculated at
7 \$116.68. Is that right?

8 A No. That is -- what you're looking at, \$116.68
9 per month, is a fixed cost portion of the base rate.

10 Q Okay. The Company did not alter its rates for
11 gallonage charges. Correct?

12 A Correct.

13 Q So, it was not trying in early 2020, excuse me,
14 to analyze revenue requirements and things such as that
15 for variable expenses. Correct?

16 A Correct. The --

17 Q Okay.

18 A -- idea was we were a small Water Supply
19 Corporation, you know, 271 members at the time or so,
20 and we wanted for all the members to participate in the
21 higher base rates, disparate the higher base rate --

22 (Simultaneous discussion)

23 Q (BY MS. ALLEN) Okay. All right. Now, the
24 board didn't settle on the rates that were recommended
25 or yielded by this rate model. Right?

1 A Correct.

2 Q Explain for us the additional analysis that the
3 board did in order to make adjustments to arrive at the
4 rates that it adopted.

5 A So, my understanding was we wanted to increase
6 our monthly cash flow or revenue by, say, almost
7 16-\$17,000 per month so we could make legal payments of
8 \$20,000, 10,000 to both law firms. And so when we
9 looked at that, that meant increasing base rates by
10 around \$65 or so. And so we split the \$65
11 60 percent/40 percent, 60 percent for water and
12 40 percent for wastewater. And so we added -- so we
13 multiplied that and added that to the previous base
14 rates, came up with the new base rate, combined about
15 \$156, and that was below the 174.59 here in this model.
16 And so we felt like we could work with our legal teams
17 and with a \$10,000 a month payment, and so we did not
18 increase rates above that once we felt like we could
19 achieve the \$10,000 monthly payments to both law firms.

20 Q Okay. But that business about the \$10,000 a
21 month monthly payments is not anywhere in the rate
22 design, right, that we see here?

23 A Oh, correct.

24 Q Okay.

25 A Yeah, that TRWA model there --

1 (Simultaneous discussion)

2 Q (BY MS. ALLEN) Okay.

3 A -- was to show of high could we increase rates.

4 Q Okay.

5 A We did not increase rates that high.

6 Q Has the Company, in fact, used the increased
7 revenues to pay its legal costs?

8 A Yes.

9 Q Has it used the increased revenues for any
10 other purpose?

11 A Not that I'm aware.

12 Q Okay. So, what that means is that -- so,
13 Ratepayer Mike Nelson paid an extra how much a month?

14 A 65ish.

15 Q So, Mike Nelson paid 65 a month extra, and the
16 Company covered his legal expenses. Right?

17 A For me being sued, my -- they covered my legal
18 defense as a volunteer board director, yes, for my
19 defense.

20 Q Josie Fuller paid an extra \$65 a month, and she
21 got exactly the same service she had always gotten.
22 Right?

23 A As all members.

24 Q All members --

25 (Simultaneous discussion)

1 A -- that Josie Fuller is any different than any
2 of our other members.

3 Q The only ratepayers who are different are the
4 board members who are having the Company pay their legal
5 fees. Right?

6 A It's important for the volunteer board to be
7 protected --

8 (Simultaneous discussion)

9 MS. ALLEN: Your Honor, he can do this if
10 he wants. I just need a yes or no.

11 A -- or else you wouldn't have a volunteer board.

12 JUDGE SIANO: Mr. Nelson, please just
13 answer the question asked.

14 Q (BY MS. ALLEN) Isn't it true that every other
15 ratepayer, besides the directors who are having their
16 legal fees paid by the Company, pay the extra \$65 a
17 month, and they get the same service they have always
18 gotten?

19 A Not -- again, that was a very long sentence,
20 and I'm not understanding it.

21 Q The \$65 a month does nothing --

22 A All members pay \$65 a month extra.

23 Q The \$65 a month doesn't do a thing to increase
24 or enhance the services. Correct?

25 A Oh, no. It --

1 Q Okay.

2 A -- protects the Water Supply Corporation from
3 these legal attacks. So, we would not have a Water
4 Supply Corporation if it did not defend itself.

5 Q Okay. The level of service that was furnished
6 in December of 2019 and the level of service that was
7 furnished in April of 2020 was the same. Right?

8 A Well, I like to think that we continuously
9 improve, but if you want to say people were able to turn
10 on faucets and get water and flush their toilets, yes,
11 that stayed the same.

12 Q What changed is that the director ratepayers
13 also got their legal fees paid. Right?

14 A The volunteer board, yes. The defense costs
15 from the lawsuit brought by 48292, those legal costs are
16 being paid by Windermere Oaks as per Texas law is my
17 understanding.

18 Q Isn't it true that there is one of the
19 directors who doesn't even pay the rate increase and
20 gets his legal fees paid by the Company?

21 A That's not my understanding.

22 Q Mike Madden is not a ratepayer. Is he?

23 A He's a former director, and so former
24 directors, yes, are covered.

25 Q Here's my question --

1 (Simultaneous discussion)

2 A -- and they're volunteer board members --

3 Q (BY MS. ALLEN) Mike Madden is not a
4 ratepayer --

5 A -- and that he's no longer a member.

6 JUDGE SIANO: One person at a time,
7 please.

8 Q (BY MS. ALLEN) You can talk all you want,
9 Mr. Nelson, but my question is simple. Isn't it true --

10 (Simultaneous discussion)

11 A I don't know if Mike Madden is a member or not.

12 Q (BY MS. ALLEN) You don't know?

13 A I don't.

14 Q You don't know whether Mike Madden lives in
15 Windermere?

16 A Or has a property there.

17 Q Okay.

18 A I don't.

19 Q All right. Fair enough. Now, I want to ask
20 you about two other topics. I really want to be quick.
21 One of them is this: The Company produced to the Staff
22 a chart -- let me see if I can find it -- that had to do
23 with gallonage. Okay? Let me see if I can find it.
24 Okay. Where is it? I will find it, but do you recall
25 it, Mr. Nelson, because I believe you were the one who

1 sponsored it?

2 A Can you show --

3 (Simultaneous discussion)

4 Q (BY MS. ALLEN) The staff asked the question:
5 How much gallonage does the Company actually use for
6 2019. Right? Well, I'll just -- it was -- it was
7 Attachment Staff 4-6 Page 18, and it was a chart that
8 showed the gallonage. Do you recall it?

9 A Not off the top of my head. If you could show
10 me, that would be great.

11 Q Okay. We're going to see if we can get that
12 done. But, here, you can help me with this while we're
13 waiting. The Company didn't change the gallonage
14 charges in this rate increase. Correct?

15 A Correct.

16 Q So, if I wanted to know the revenue that the
17 Company received from water sales on a gallonage basis,
18 all I would have to do is go to the tariff and find the
19 charge that is applicable to the tier and multiply it
20 out. Right?

21 A It's a little more complex than that.

22 Q Okay. What else would I need to do?

23 A If you're to build a model, you have different
24 charges for different amounts. So, I believe the first
25 2,000 are at like \$3.55, and then the next 2,000 or so

1 is at a higher rate. And the next 2,000 is another
2 rate, and then the next 4,000 is at another rate and so
3 on and so forth. So, as you use -- so, the first
4 2,000 gallons are cheaper than the next 2,000 --

5 Q Right.

6 A -- which are also cheaper than the next 2,000,
7 which is also cheaper than as you go through the rates.
8 So, you have these different buckets with different
9 rates.

10 Q Okay. And as long as I know, the gallons in
11 each tier that were actually used, I can multiply that
12 by the rate that is applicable to that tier, and I can
13 know the Company's revenues on a gallonage basis.
14 Correct?

15 A You can build that model. I believe I built
16 that model.

17 Q Okay. So, I'm going to see if I can find that
18 chart and visit with you about that.

19 MS. ALLEN: I would be happy to pass the
20 witness and simply come back for him to identify that
21 chart. It will take me just a second. I thought I had
22 it, and I have the wrong page.

23 JUDGE SIANO: Okay. We do need to leave
24 new time for Staff's cross and redirect.

25 MS. ALLEN: So, my suggestion is they go,

1 and I will find that chart.

2 JUDGE SIANO: Well, it's a little bit out
3 of order, but there may be some efficiencies.

4 Are there any objections to that,
5 Ms. Katz?

6 (Discussion off the record)

7 MS. KATZ: That's fine, Your Honor.

8 JUDGE SIANO: Okay. We'll take this a
9 little bit out of order and allow Commission Staff to do
10 cross-examination.

11 Go ahead, Ms. Lander.

12 MS. LANDER: Great. Thank you, Your
13 Honor.

14 CROSS-EXAMINATION

15 BY MS. LANDER:

16 Q Good afternoon, Mr. Nelson. My name is Merritt
17 Lander. I'm a Staff Attorney for the Public Utility
18 Commission of Texas. I have just a couple of questions
19 for you. So, I know we've been over this a lot, but
20 there are approximately \$171,000 in legal expenses
21 included in the current rates that are the subject of
22 this complaint. Correct?

23 A \$171,000, yes, was used in the rate study by
24 TRWA. Yes.

25 Q Great. And for one of the lawsuits for which

1 legal expenses that were included in the rate increase,
2 the Company's insurance provider denied indemnification
3 of coverage for those legal expenses based on a bad acts
4 exclusion. Isn't that correct?

5 A On the TOMA -- so, the very first lawsuit,
6 that's what you're referring to?

7 Q Yes, sir.

8 A Yes.

9 Q Okay.

10 A I believe that there was a -- I'm not well
11 versed in this, but I believe you are correct.

12 Q Okay. So, the insurance company declined to
13 cover legal expenses because it believed that the
14 directors had behaved badly. Correct?

15 A I believe it was because of a TOMA violation on
16 a meeting agenda. So, that property that was sold was
17 not properly -- the discussion of it was not properly
18 listed on the meeting agenda back in like 2015,
19 December.

20 Q Okay. So, that's one of five lawsuits, is that
21 correct, the WSC is involved in at this time, or has
22 TOMA concluded?

23 A That was the first one, and that's the one that
24 the Supreme Court refused to hear. So, that one --

25 Q To rehear?

1 A So, my understanding is it's concluded.

2 Q Okay. And the WSC has now sued the insurance
3 company.

4 A Yeah. So -- I mean, yeah. Yeah. So, that's I
5 guess the formal way of working with them to provide
6 coverage. So, yeah, I mean, we're talking a lot of
7 money, and insurance companies, they just don't like to
8 pay a lot of money.

9 Q It is a lot of money. That's a very good --

10 A And we're working on a settlement with them.

11 Q Understood. Okay. So, there was the lawsuit
12 related to the land sale. There was the TOMA Integrity
13 lawsuit. There was the lawsuit filed by the WSC against
14 the AG's Office. Is that correct?

15 A That was for -- yeah, PIA requests. So, that
16 was for attorney-client privilege protection.

17 Q Okay.

18 A And those -- so it was with regards to the
19 legal invoices and the notes that each of the line items
20 contained, and so those were originally requested, I
21 believe, in 2019. And I believe those got released
22 maybe 2020, so --

23 Q Okay.

24 A -- after the -- well over a year later.

25 Q Okay. So, there were PIA requests, and the WSC

1 declined to provide some legal invoices. And, you know
2 when you do that, you have to file with the AG's Office
3 and say, we're declining to provide these because we're
4 claiming that they're priveledged. And so the AG ruled
5 and said that you had to disclose -- the WSC had to
6 disclose those. Is that correct?

7 A The -- actually, that went back and forth and
8 to where the AG then said the Water Supply Corporation
9 did not have to supply those. So --

10 Q Okay.

11 A -- it went back and forth.

12 Q Okay.

13 A And then, eventually, it just went away when we
14 provided the legal invoices.

15 Q I see. So, you didn't provide the legal
16 invoices, and then the AG said you had to. And then,
17 there was a lawsuit against the AG, and then the AG
18 decided that you did not actually have to release the
19 legal invoices. But then you decided to release the
20 legal invoices anyway?

21 A That's right.

22 Q Okay. All right.

23 A It's a great legal system we have.

24 THE REPORTER: (Requested clarification)

25 A It's a great legal system we have.

1 Q (BY MS. LANDER) All right, and I just want to
2 be sure that I understand. That was four lawsuits,
3 right, that we just covered, and then this rate
4 proceeding, this appeal is the fifth proceeding?

5 A What was the -- you said the land sale. That
6 is TOMA.

7 Q The --the I'm sorry. Then, there's the Double
8 F.

9 A The 48292?

10 Q Yes, sir. Yes, sir.

11 A So, yeah. That's right.

12 Q Okay.

13 A So, we've got the TOMA, the 48292, the Attorney
14 General, the insurance company, and the PUC.

15 Q Okay. And for the test year there were about,
16 I think you said now, just over \$250,000 in legal
17 expenses?

18 A Oh, you mean for the work done in 2019?

19 Q Yes, sir.

20 A Yeah.

21 Q Okay.

22 MS. LANDER: Okay. Pass the witness, Your
23 Honor.

24 JUDGE SIANO: Okay.

25 Ms. Allen, are you prepared to --

1 MS. ALLEN: I am. Let me -- I found it.
2 So, there it is right there.

3 JUDGE SIANO: And there will be no
4 friendly-cross, so to the extent that you just limit
5 your questions to what you previously intended.

6 CROSS-EXAMINATION (CONTINUED)

7 BY MS. ALLEN:

8 Q Mr. Nelson, I have found the gallonage
9 charge -- the gallonage chart. Sorry. It's Attachment
10 4-6 that the Company produced to the Staff. Do you
11 recognize it?

12 A I think I looked at it once.

13 Q Okay. I'm going to mark it as Exhibit 26. It
14 was a part of Ratepayer 16, but I'm going to mark it
15 separately because 16 was not admitted.

16 JUDGE SIANO: Okay. Was it offered?

17 MS. ALLEN: It was, but -- actually, we
18 haven't offered our exhibits yet. But I'm going to
19 offer this one separately because it's been
20 authenticated as Exhibit 26, and this is the chart that
21 I was looking for.

22 JUDGE SIANO: Okay. You'll have to -- as
23 previously discussed, you'll have to mark those and
24 provide them to the other parties, as well as the court
25 reporter.

1 MS. ALLEN: We will have that done before
2 the end of the day.

3 JUDGE SIANO: Okay. Any -- so, you're
4 offering this.

5 Any objections?

6 MS. ALLEN: I'm offering this to show the
7 actual gallonage sold by the Company, and then Mr. --
8 well, let me just let the panel rule on that one.

9 JUDGE SIANO: Yeah. So, let me find it.
10 This is -- okay. I have it.

11 Any objections to -- and you're -- this is
12 being marked as Exhibit --

13 MS. ALLEN: 26.

14 JUDGE SIANO: Ms. Katz.

15 MS. KATZ: Your Honor, I have no objection
16 to this page.

17 JUDGE SIANO: Okay. Marked as 26. It is
18 admitted.

19 (Exhibit Ratepayer No. 26 admitted)

20 Q (BY MS. ALLEN) And then, Mr. Nelson, the rates
21 are in the -- the current rates are reflected in
22 Attachment MN-1 Page 3 of your direct testimony, right,
23 the chart of the current rates?

24 (Brief pause)

25 Q (BY MS. ALLEN) Here. Hang on. Let me just

1 short circuit this, if I can. Doesn't always work.

2 Here we go. There we go. MN-1, Page 3 --

3 A Can you make it a little smaller?

4 Q I can. Current rates, it has the gallonage
5 charges. Right?

6 A Yes. So, it has the --

7 (Simultaneous discussion)

8 Q (BY MS. ALLEN) And --

9 A -- 90.39 base rate and the 66.41 base rate.

10 Q I'm asking about the gallonage charges, please.

11 (Simultaneous discussion)

12 Q (BY MS. ALLEN) And these are the same
13 gallonage charges that were in effect for 2019.

14 Correct?

15 A Yes.

16 Q Okay. So, I can just -- I can figure out
17 revenues from gallons sold by simple multiplication.

18 Correct?

19 A Not quite that simple. The amount of gallonage
20 for the very large use case needs to be reduced. I do
21 not know if that chart you have has the wastewater
22 treatment plant and water treatment plant included in
23 that. So, of course, the wastewater treatment plant and
24 the water treatment plant doesn't generate any revenue.
25 And so when you're doing a revenue calculation, you need

1 to remove any of the water used by our two plants.

2 Q Well, that I understand, but the question that
3 Staff asked you was about gallons of water sold, and
4 this was --

5 (Simultaneous discussion)

6 A I didn't know the question that was --

7 (Simultaneous discussion)

8 JUDGE SIANO: One at a time.

9 A -- and I don't know that table responding to
10 that question.

11 Q (BY MS. ALLEN) Okay. Fair enough.

12 MS. ALLEN: So, Your Honor, that's what I
13 said I'd do, and that's what I did.

14 JUDGE SIANO: All right. You're done with
15 this witness?

16 MS. ALLEN: I am.

17 JUDGE SIANO: Okay.

18 And let's see. Then, I guess it's
19 redirect, Ms. Katz.

20 MS. KATZ: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. KATZ:

23 Q Mr. Nelson, Ms. Allen asked how the board
24 allowed legal expenses to exceed a certain number. Do
25 you have a duty to defend the Corporation?

1 A Yes. The board has the duty to defend the
2 Corporation, and we cannot control what outside people
3 or folks do as far as bringing lawsuits towards the
4 Corporation.

5 Q Okay. And when Ms. Allen -- there was some
6 testimony regarding meters and rates. Are the rates
7 spread equally among all classes?

8 A We only have the one class.

9 Q Right.

10 A So --

11 Q So, yes?

12 A (Nodding).

13 JUDGE SIANO: Please vocalize your answer
14 for the record.

15 A Yes.

16 JUDGE SIANO: Thank you.

17 Q (BY MS. KATZ) Mr. Nelson, do the rates show
18 preference of one class more than another?

19 A No, it's one class.

20 Q Because there's one -- thank you. And do they
21 discriminate against any class?

22 A No, just one class.

23 Q Okay. And there was some discussion from
24 Ms. Allen and some questions she asked you regarding the
25 money, the revenue that was received from the increase

1 in rates and where that was being used. And so you
2 testified that the money, the revenue that was received
3 from the increased rates was used to pay legal expenses.
4 Did that allow the Water Corporation to spend money on
5 operational expenses, as well, by having that extra
6 revenue?

7 A Yes. So, having the extra revenue kept the
8 Water Supply Corporation viable where we could maintain
9 operations, do improvements, and also meet a minimum
10 obligation to our law firms.

11 Q And so is it fair to say that everybody, all
12 the ratepayers benefit from having an operational Water
13 Supply Corporation that provides safe and reliable water
14 to everybody?

15 A Yes, definitely.

16 Q And, Mr. Nelson, are you a volunteer board
17 member?

18 A Yes, I am.

19 Q And does -- do water supply corporations have
20 shareholders?

21 A No.

22 Q Okay.

23 A We have --

24 Q And so is --

25 (Simultaneous discussion)

1 A -- members.

2 Q (BY MS. KATZ) Okay. And is there anybody else
3 who would pay the legal costs other than the Water
4 Supply Corporation, itself?

5 A No.

6 Q Okay. And are you -- you, yourself, are a
7 ratepayer?

8 A Yes, I am.

9 Q Okay. Did Windermere Oaks file the TOMA and
10 the 48929 (sic) lawsuits?

11 A No.

12 Q And did the other insurance suit come out of
13 those?

14 A Yes.

15 Q And did the rate increase occur because of
16 those lawsuits?

17 A Yes.

18 Q And did the PIA or Public Information Act
19 requests litigation come out of those laws, as well?

20 A That's a good guess, but I don't know for
21 certain.

22 Q Okay. That's okay. Are all of those lawsuits
23 really stemming from the initial two lawsuits that were
24 filed against Windermere Oaks?

25 A Yes.

1 MS. KATZ: Pass the witness, Your Honor.

2 JUDGE SIANO: All right. At this point
3 I'll allow some limited additional cross. If there's
4 anything else, it will be limited to the redirect.

5 Ms. Allen, you're --

6 MS. ALLEN: I've got it now. Sorry.

7 JUDGE SIANO: Okay.

8 RE-CROSS-EXAMINATION

9 BY MS. ALLEN:

10 Q Mr. Nelson, isn't it true that the Company has
11 no obligation to pay defense costs for either current or
12 former directors?

13 A That's not my understanding. I disagree.

14 Q You know the Company's bylaws do not require
15 the Company to pay defense costs for current or former
16 directors. Correct?

17 A My understanding is the bylaws are to be
18 consistent with Texas law and that Texas law requires
19 the corporations with volunteer boards to defend their
20 volunteer board members.

21 Q All right. Tell you what, we're not going to
22 belabor this point at all, but let's just mark the
23 bylaws. And then we can see for ourselves. Are you
24 seeing the bylaws of the Company on your screen?

25 A Yes.

1 Q I'm going to -- and you know that they're the
2 bylaws. Right?

3 A They look like them, yes.

4 MS. ALLEN: Okay. I'm going to mark the
5 bylaws as Exhibit 27 and offer them into evidence.

6 JUDGE SIANO: Ms. Katz.

7 MS. KATZ: Your Honor --

8 JUDGE SIANO: Have these been previously
9 submitted?

10 MS. ALLEN: They have not. They have not.

11 (Simultaneous discussion)

12 MS. ALLEN: I had no idea that a
13 representative of the Company would testify that the
14 bylaws contain something they do not contain. And so I
15 want just to put them into evidence, and we can read
16 them for ourselves. I am --

17 (Simultaneous discussion)

18 MS. KATZ: Your Honor --

19 JUDGE SIANO: Okay. Any objection,
20 Ms. Katz?

21 MS. KATZ: I have no objection, Your
22 Honor, but I will say I believe that we did provide
23 these in either our testimony that's been admitted as
24 part of the attachments or in RFI responses. To be
25 honest, I'm not sure off the top of my head, but we have

1 no objection. But this has been provided in some form
2 or fashion.

3 JUDGE SIANO: Okay.

4 So, Ms. Allen, I don't know where they
5 are. Really, it's an issue of marking and getting them
6 to the court reporter, and if they're not --

7 MS. ALLEN: I can do that.

8 JUDGE SIANO: -- if they're not here, then
9 the court reporter doesn't have a copy either. So,
10 since there's no objections, I'll admit them, but you're
11 going to have to submit them to SOAH under the same
12 format as the other exhibits, properly marked the number
13 of copies.

14 MS. ALLEN: Will do.

15 JUDGE SIANO: Okay.

16 Q (BY MS. ALLEN) Mr. Nelson, isn't it true the
17 board made a discretionary decision to advance legal
18 expenses to the directors?

19 A No, I recall the board passing a motion to
20 defend our volunteer board directors.

21 Q Okay. The motion was something that the board
22 decided on. Fair enough?

23 A Yes.

24 Q And when the board did that, the board had no
25 idea how much might be spent on that effort. Isn't that

1 right?

2 JUDGE SIANO: You're going to need to
3 speak up.

4 Q (BY MS. ALLEN) Is that a "Yes"?

5 JUDGE SIANO: We can't hear you.

6 A Oh, yes.

7 JUDGE SIANO: Thank you.

8 A Sorry.

9 Q (BY MS. ALLEN) The board made no effort to put
10 any kind of limitation on that effort. Isn't that
11 right?

12 A No.

13 Q It's not right, or the board made no effort to
14 put on a limitation. You say it yourself.

15 A As I stated previously, we have two attorney --
16 two law firms working the 48292 case and that we asked
17 them to coordinate efforts to use each other's work so
18 we are not basically getting double-billed for the same
19 work.

20 Q Let me ask it this way: An insurance company
21 might say, there are limits of coverage. Are you with
22 me?

23 A (No audible response)

24 Q Are you following me?

25 A I don't know where you're going.

1 Q It doesn't matter. The Company never said,
2 there are limits of coverage. Did it?

3 A The Corporation doesn't know the limits that
4 the people bringing lawsuits against it will go.

5 Q Isn't it true that the board, in the exercise
6 of reasonable diligence and acting prudently, ought to
7 have determined what amount of money was needed to
8 operate the system and then decided whether there was
9 any money left over to defend the directors? Isn't that
10 right?

11 A In the budget for 2020, that's exactly what we
12 did. So, we looked at what was needed to run the
13 Corporation and what we needed to do to meet the
14 agreement of the minimal legal payments towards our
15 balances.

16 Q Isn't it true that the Company, itself, has
17 limitations in its governing documents about what it can
18 do with its assets for its own benefit?

19 A Yeah.

20 Q It cannot use its assets for purposes other
21 than to provide water and wastewater service for its
22 members. Isn't that right?

23 A I don't know. That seems really restrictive.
24 What you just said doesn't make sense to me.

25 Q Did the board -- in approving these legal

1 expenditures for the Company, did the board give any
2 attention to the prohibition in the Company's governing
3 documents about the use of its resources?

4 A Yeah, the board discussed and understands that
5 if the Corporation doesn't defend its volunteer board,
6 there would be no volunteer board. If every individual
7 who became a board member could be sued and would have
8 to cover their own legal defense costs, there would be
9 no volunteer board.

10 MS. ALLEN: Objection to the --

11 A That would severely damage the Corporation and
12 increase costs to all members significantly.

13 JUDGE SIANO: Mr. Nelson, there's an
14 objection.

15 I'm sorry, Ms. Allen. Go ahead.

16 MS. ALLEN: I'm sorry, Your Honor. I was
17 interrupting him, and I didn't mean to do that. I am
18 objecting to the speculative nature of that testimony
19 and its nonresponsiveness.

20 JUDGE SIANO: Okay. Well, I think he's
21 testifying as to the basis for why the coverage was
22 given at the time the decision was made. So, overruled
23 as to speculation. I'll allow it.

24 Q (BY MS. ALLEN) So, Mr. Nelson, what I was
25 really asking you, and if you'll answer it, I'll let you

1 go. What I was really asking you is, when the Company
2 made the decision to pay these lawyers kind of whatever
3 they invoiced for these two pieces of litigation and
4 other things that are related to this litigation, did
5 the board give any attention to the prohibition in the
6 Company's governing documents about using its assets for
7 purposes other than to provide water and wastewater
8 services to the customers?

9 A Yeah, the board works to follow all the bylaws
10 and act consistently within them.

11 Q What attention did the board give to the
12 prohibition against using company assets for purposes
13 other than the provision of water and wastewater
14 services to the customers when it decided to authorize
15 these legal fees?

16 A We work with our legal teams to make sure that
17 we are working within the boundaries of our bylaws and
18 our incorporation. So, our -- yeah. So, we feel good
19 about the -- what has taken place.

20 Q And the -- just so that I'm clear, the "we"
21 that you're talking about are the people who are
22 receiving the benefit of the rate increase. Is that
23 right?

24 A The "we" is the board that made the decision.

25 Q And that's the board that's receiving -- that's

1 at least part of them getting their legal fees paid.

2 Right?

3 A Part of them were added to the 48292 lawsuit in
4 November of --

5 Q And that's the -- right. And --

6 (Simultaneous discussion)

7 A -- 2019.

8 Q I'm sorry. And that's the "we" that decided to
9 raise these rates. Correct?

10 A That board -- yeah, so it was the same board as
11 in late 2019, early 2020 that did the 2020 budget and
12 rate increase. Yeah, and --

13 MS. ALLEN: Pass the witness.

14 A -- the motion that was made was done in, I
15 believe, August of 2019 before the directors were added
16 to the 48292 case.

17 Q (BY MS. ALLEN) Oh, Mr. Nelson, that is why we
18 have that petition in the record because --

19 MS. KATZ: Your Honor --

20 Q (BY MS. ALLEN) -- we can go back and look at
21 the date.

22 MS. KATZ: Your Honor, I'm going to object
23 to sidebar again. I didn't hear a question there. It
24 sounded like she was testifying.

25 JUDGE SIANO: Sustained.

1 Q (BY MS. ALLEN) Are you saying that the
2 directors were not made parties to the lawsuit until
3 after the rate hike?

4 A I didn't say that at all.

5 Q Okay. Because you know that the board that
6 voted on the rate hike was sued individually for
7 personal liability in November of 2019. Right?

8 MS. KATZ: Your Honor, at this point I'm
9 going to object that this is outside the scope of what
10 was in my redirect.

11 JUDGE SIANO: Sustained.

12 MS. ALLEN: Pass the witness.

13 JUDGE SIANO: All right.

14 Anything else, Ms. Lander?

15 MS. LANDER: Just one quick question.

16 RE-CROSS-EXAMINATION

17 BY MS. LANDER:

18 Q Mr. Nelson, you said that the WSC has a duty to
19 defend board directors. Correct?

20 A Yes.

21 Q Does the WSC also owe a duty to its members?

22 A Yes.

23 MS. LANDER: All right. Thank you.

24 JUDGE SIANO: Ms. Katz.

25 MS. KATZ: I have nothing further other

1 than to let you know that for purposes of the record and
2 everybody else's briefing purposes this was included in
3 Windermere Oaks Exhibit 2, and it would be located on
4 Page 27 of 188, the bylaws.

5 JUDGE SIANO: Okay.

6 MS. KATZ: So --

7 JUDGE SIANO: So, it might be easier to
8 just -- Ms. Allen, for purposes of keeping a clean
9 record, instead of submitting your exhibit -- what was
10 it? I've lost it now.

11 THE REPORTER: 27.

12 JUDGE SIANO: 27.

13 MS. ALLEN: 27.

14 JUDGE SIANO: So, instead of submitting
15 your Exhibit 27, just to keep it clean, the record --
16 just reference the one that is already in evidence in
17 Exhibit 2 beginning with Page --

18 MS. KATZ: 27, I believe, Your Honor.

19 JUDGE SIANO: 27.

20 MS. ALLEN: Your Honor, I'm assuming that
21 those are the bylaws that were in effect at the relevant
22 time. They've been changed from time to time, but I'm
23 just going to make sure.

24 JUDGE SIANO: Okay. Go ahead.

25 (Brief pause)

1 (Discussion off the record)

2 MS. ALLEN: Your Honor, the -- I cannot
3 tell you that it is a distinction with a difference
4 because I don't know the answer, but the bylaws that are
5 attached to Mr. Gimenez's testimony postdate the
6 decision-making that we're talking about. And so I want
7 to be sure that we have the applicable bylaws, and those
8 I know are 27.

9 JUDGE SIANO: Okay. That's fair.

10 MS. ALLEN: Okay.

11 JUDGE SIANO: I've admitted Exhibit 27.

12 (Exhibit Ratepayers No. 27 admitted)

13 JUDGE SIANO: Go ahead and submit it as
14 previously discussed, and if there's a difference, then
15 you can point that out. If not, then referencing either
16 one will be sufficient.

17 Okay. And, Ms. Allen, I understand that
18 you wanted to make another offer of proof, and we are
19 coming close to the end of the day. But --

20 MS. ALLEN: Your Honor, I want -- yes. I
21 want to remind myself that that is still necessary
22 because I don't want to waste time, I did have notes
23 about that, and let me just doublecheck to see if that's
24 necessary.

25 (Brief pause)

1 MS. ALLEN: It is with one topic -- with
2 respect to one topic, Your Honor. And, again, you can
3 tell me whatever procedure you want me to follow. My
4 understanding of the procedure is I would -- ought to
5 ask the witness, but I'll do whatever you like.

6 JUDGE SIANO: If it were your own witness,
7 then you'd certainly be able to, but it's not necessary
8 for an offer of proof. And I'm not going to compel this
9 witness to answer your questions in order for you to
10 make that offer.

11 So, Ms. Simon, what we're going to do now
12 is Ms. Allen is going to make an offer of proof, and so
13 we're going to need that segmented out into a different
14 portion of the transcript.

15 JUDGE SIANO: Go ahead, Ms. Allen.

16 MS. ALLEN: Yes, Your Honor.

17 (The following pages, 236 through 238, are
18 Ratepayers Offer of Proof.)

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1 PRESENTATION ON BEHALF OF
2 WINDERMERE OAKS WATER SUPPLY CORPORATION (CONTINUED)
3 JUDGE SIANO: Ms. Simon, we'll go back on
4 the record now.
5 Okay. So, we've gotten through almost all
6 of Windermere's witnesses. We have Joe Gimenez. It
7 might be wishful thinking to -- that we might conclude
8 with him today, but I'm willing to throw it out there.
9 Ms. Allen.
10 (No audible response)
11 JUDGE SIANO: I can't hear you.
12 MS. ALLEN: I'm sorry, Your Honor. I was
13 giving that some serious thought and to see if I can get
14 that done, and I would disappoint you, I'm afraid, if I
15 said that I could get that done. And I don't want to do
16 that, so --
17 JUDGE SIANO: Okay. Do you think we would
18 be able to get a meaningful amount of his
19 cross-examination done today? We can --
20 MS. ALLEN: Quite frankly, I'm afraid I
21 would disappoint you if I said that we would. I always
22 endeavor to get done as quickly as possible, and
23 sometimes it does not work.
24 JUDGE SIANO: All right. Let's see,
25 Ms. Lander, does the -- at this point does the

1 Commission Staff have any cross for Mr. Gimenez?

2 MS. LANDER: No, Your Honor. We waived
3 him, as well. We only have cross for Grant Rabon.

4 JUDGE SIANO: Okay. And I understand that
5 that can change, but I'm just trying to get an idea of
6 what we're looking at. Okay. Well --

7 MS. ALLEN: Your Honor, if it would be at
8 helpful -- and I don't mean to interrupt, but if it
9 would be at all helpful, we would just stipulate that
10 Mr. Gimenez, if called by the WOWSC, would say that his
11 testimony would be set forth in his written testimony,
12 and we would be prepared to start in the morning right
13 away with cross-examination, if that helps at all.

14 JUDGE SIANO: Okay. Well, Ms. Simon,
15 let's go off the record here.

16 (Recess: 4:24 p.m. to 4:27 p.m.)

17 JUDGE SIANO: Let's go back on the record
18 that we're going to adjourn today and pick up with Joe
19 Gimenez tomorrow. Ms. Allen has been instructed to
20 submit the exhibits admitted today, as previously
21 discussed. And I think that's everything.

22 MS. KATZ: Judge Siano, what time are we
23 reconvening tomorrow?

24 JUDGE SIANO: I think we're scheduled for
25 9:00 a.m. Was there a preference for a different time?

1 MS. KATZ: No, I was just making sure.

2 JUDGE SIANO: Okay.

3 MS. ALLEN: Not for us. We're happy to
4 begin at 9:00.

5 JUDGE SIANO: 9:00 a.m. tomorrow. This
6 hearing is adjourned. Have a good day.

7 (Proceedings recessed: 4:28 p.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF TRAVIS)

We, Mary Carol Griffin and Janis Simon,
Certified Shorthand Reporters in and for the State of
Texas, do hereby certify that the above-mentioned matter
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We FURTHER CERTIFY THAT the proceedings of such
were reported by us or under our supervision, later
reduced to typewritten form under our supervision and
control, and that the foregoing pages are a full, true,
and correct transcription of the original notes.

IN WITNESS WHEREOF, we have hereunto set our
hand and seal this 3rd day of December, 2021.

MARY CAROL GRIFFIN
Certified Shorthand Reporter
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