

Control Number: 46955



Item Number: 17

Addendum StartPage: 0

CITY OF STAR HARBOR
RATEPAYERS' APPEAL OF THE
DECISION BY THE CITY OF
MALAKOFF TO CHANGE RATES

§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

RECEIVED
2017 JUN -8 AM 10:53
PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S RESPONSE TO THE CITY OF MALAKOFF'S
MOTION TO DISMISS**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Response to the City of Malakoff's Motion to Dismiss. In support thereof, Staff shows the following:

I. BACKGROUND

On March 16, 2017, ratepayers in the City of Star Harbor (Ratepayers) filed a petition appealing the decision of the City of Malakoff (Malakoff) to increase wastewater rates effective January 1, 2017. On April 17, 2017, Malakoff filed a Response to the Petition and Motion to Dismiss. On May 5, 2017, the Administrative Law Judge (ALJ) issued Order No. 3, which required Staff to respond to Malakoff's Motion to Dismiss by June 9, 2017. Therefore, this pleading is timely filed.

II. STAFF'S RESPONSE

Under Texas Water Code (TWC) § 13.043(b), only ratepayers of a utility have standing to appeal the utility's rates. The Ratepayers are not customers of Malakoff directly; they are ratepayers of the City of Star Harbor, and the City of Star Harbor (Star Harbor) pays the rates directly to the Malakoff.¹ The Contract for Sewage Transportation and Treatment Service between Star Harbor and Malakoff further evidences that there is a wholesale relationship

¹ Ratepayers' Response to Staff's First RFI at 34.

between the two cities.² Therefore, the Ratepayers do not have standing to appeal the rates of Malakoff.³

Under 16 Tex. Admin. Code (TAC) § 22.103(b)(1), a person has standing if the person has a right to participate that is expressly conferred by statute, Commission rule, or other law. The Ratepayers have no expressly conferred standing in this case. The rule also states that a person has standing if that person has a justiciable interest that may be adversely affected by the outcome of the proceeding.⁴ The Ratepayers reside outside the city limits of Malakoff and do not have a justiciable interest in this case. Any relief to which the Ratepayers are entitled would be available from the City of Star Harbor, not Malakoff. Staff respectfully requests that the ALJ dismiss this appeal pursuant to 16 TAC § 22.181(d)(8) for failure to state a claim for which relief can be granted.

III. CONCLUSION

For the reasons stated above, Staff respectfully requests the entry of an order consistent with the above request.

² *Id.* at 3-11.

³ See *Ratepayers' Appeal of the Decision by Trophy Club Municipal Utility District No. 1 to Change Rates*, Docket No. 45231 (pending) (ratepayer appeal where the PID ratepayers were not customers of the utility, did not have standing to appeal the utility's rates, and did not have a justiciable interest in the matter).

⁴ 16 TAC § 22.103(b)(1).

DATED: June 8, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

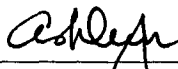


Ashley Nwonuma
State Bar No. 24096650
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7163
(512) 936-7268 (facsimile)
ashley.nwonuma@puc.texas.gov

DOCKET NO. 46955

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 8th of June, 2017, in accordance with. 16 TAC § 22.74.



Ashley Nwonuma