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DOCKET NO. 46955

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

BEFORE THE PUBLIC UTILITY COMMISSION  
OF TEXAS

PUBLIC UTILITY COMMISSION  
FILING CLERK

**CITY OF MALAKOFF'S SECOND SUPPLEMENT TO MOTION TO DISMISS**

COMES NOW, the City of Malakoff ("Malakoff") and files this Second Supplement to Motion to Dismiss ("Supplement") in accordance with 16 Texas Administrative Code ("TAC") §§ 22.77, 22.181(d)(1), (8), and (11), and 22.181(e), in this matter.

**I. BACKGROUND**

The retail sewer customers of the City of Star Harbor (the "Star Harbor Ratepayers") filed a petition appealing Malakoff's wholesale sewer rates on March 16, 2017 ("Petition"), which is the subject matter of this Docket No. 46955. Malakoff filed its Response and Motion Motion to Dismiss for Lack of Standing and Untimeliness ("Motion") on April 17, 2017, and Malakoff initially supplemented the Motion on May 12, 2017 ("Initial Supplement"). Since Malakoff filed the Motion and Initial Supplement, Public Utility Commission ("Commission") Staff filed a "Motion for Reconsideration of Order No. 4 and Amended Recommendation of Deficiency/Completeness" on June 7, 2017, concluding that the Petition "...does not meet the requirements of 16 TAC §24.42(a)(1) as more completely described in the memorandum of Leila Guerrero of the Commission's Water Utility Regulation Division..."<sup>1</sup> Specifically, Ms. Guerrero's memorandum provides that "...Staff recommends the petition is administratively invalid and insufficient for filing."<sup>2</sup> Then, on June 8, 2017, Commission Staff filed a Response

<sup>1</sup> Commission Staff's Motion for Reconsideration of Order No. 4 and Amended Recommendation of Deficiency/Completeness at 1 (July 7, 2017).

<sup>2</sup> *Id.* at 4.

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to the City of Malakoff's Motion to Dismiss, where 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"<sup>3</sup> and "the entry of an order consistent with the above request."<sup>4</sup> Next, on June 13, 2017, the Administrative Law Judge issued his Order No. 5, deeming the Petition "to be insufficient"<sup>5</sup> and requiring the Star Harbor Ratepayers to amend its Petition to cure the deficiencies noted by Commission Staff and file a response to the Motion. There have been no filings since the Administrative Law Judge's June 13, 2017 Order.

## II. MALAKOFF'S SUPPLEMENT TO MOTION TO DISMISS

Malakoff reurges that the Petition be dismissed, as over 60 days have passed since the Administrative Law Judge ordered the Star Harbor Ratepayers to respond to the Motion, and no responsive document has been filed to rebut the arguments in Malakoff's Motion. Commission Rule § 22.181(e)(3) affords the Star Harbor Ratepayers 20 days to respond, and this passage of time, in addition to the uncontested, valid arguments in Malakoff's Motion, as supplemented (which are supported by Commission Staff), makes the Motion ripe for dismissal in accordance with 16 TAC § 22.181(f).

Thus, for the reasons stated in the Motion, the Initial Supplement, and this Second Supplement, the City of Malakoff respectfully requests that the Public Utility Commission issue an order dismissing the City of Star Harbor Ratepayers' Petition in this matter with prejudice. The City of Malakoff further requests any and all other relief to which it is justly entitled.

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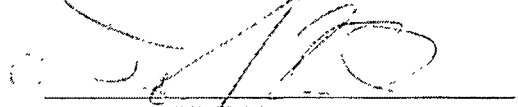
<sup>3</sup> Commission Staff's Response to the City of Malakoff's Motion to Dismiss at 2 (June 8, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> Order, No. 5 Addressing Motion for Reconsideration; Finding Petition Insufficient (June 13, 2017).

Respectfully submitted,

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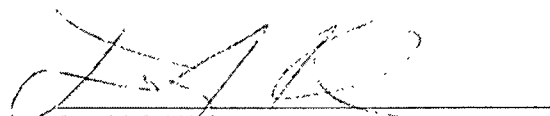


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**ATTORNEY FOR THE CITY OF MALAKOFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 18th day of August, 2017 to the parties of record.

  
David J. Klein