

Control Number: 46998



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**RATEPAYERS' APPEAL OF THE
DECISION BY THE CITY OF
MALAKOFF TO CHANGE RATES** §
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PUBLIC UTILITY COMMISSION
2017 JUN -7 AM 11:14
OF TEXAS
PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on Administrative Completeness in response to Order No. 3 and would show the following:

I. BACKGROUND

On March 28, 2017, citizens of the City of Star Harbor ("the Ratepayers" or "the Petitioners") filed a petition appealing the decision of the City of Malakoff ("the City") to increase wastewater rates effective January 1, 2017.

On June 5, 2017 the Administrative Law Judge (ALJ) issued Order No. 3, extending Staff's deadline to file comments on the administrative completeness of the petition to June 7, 2017. This pleading is therefore timely filed.

II. COMMENTS ON ADMINISTRATIVE COMPLETENESS

As supported by the attached memorandum of Leila Guerrero of the Water Utilities Division, Staff recommends that the petition be deemed administratively incomplete and dismissed. Under 16 Texas Administrative Code § 22.103(b)(1) (TAC), a person has standing if the person has a right to participate that is expressly conferred by statute, Commission rule, or other law. Texas Water Code § 13.043(b)(3) (TWC) permits the ratepayers of a municipally owned utility to appeal a decision of the utility's governing body that affects the rates of their water, drainage, or sewer service if the ratepayers reside outside the corporate limits of the municipality. Thus, standing under TWC § 13.043(b)(3) has two elements: 1) the persons or entities appealing the decision must be ratepayers of the utility, and 2) the ratepayers must reside outside the corporate limits of the municipality.

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The Petitioners in this appeal are not ratepayers of the utility in question. The City of Malakoff is the governing body whose decision the Petitioners challenge. The petitioners, however, receive service from the City of Star Harbor. A review of documentation submitted by Malakoff shows that Star Harbor receives wholesale service from the City of Malakoff. Malakoff has no agreements with the Petitioners and does not issue monthly invoices to them. Retail ratepayers lack standing to challenge the rate decisions of their retail provider's wholesaler.¹ Therefore, the Petitioners do not have standing to appeal the rates of the City of Malakoff. Dismissal for lack of jurisdiction² and failure to state a claim for which relief is available³ are thus appropriate.

Staff also notes that the petition does not conform with 16 TAC § 24.42(a)(1), which requires each signature page of the petition to contain a brief statement of the intent of the petition.

III. CONCLUSION

Staff respectfully requests that the petition be deemed administratively incomplete and dismissed for lack of jurisdiction and failure to state a claim for which relief is available.

¹ See *Ratepayers' Appeal of the Decision by Trophy Club Municipal Utility District No. 1 to Change Rates*, Docket No. 45231, SOAH Order No. 4 (April 7, 2016) (severing ratepayers of retail service provider in an appeal of the wholesaler's rate).

² 16 TAC § 22.181(d)(1).

³ 16 TAC § 22.181(d)(8).

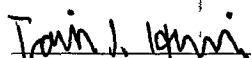
Dated: June 7, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney

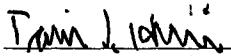


TJ Harris
Attorney – Legal Division
State Bar No. 24097804
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7216
(512) 936-7268 (facsimile)
TJ.Harris@puc.texas.gov

DOCKET NO. 46998

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on June 7, 2017 in accordance with 16 TAC § 22.74.



TJ Harris

Public Utility Commission of Texas

Interoffice Memorandum

TO: TJ Harris, Attorney
Legal Division

THRU: Tammy Benter, Director
Debi Loockerman, Financial Manager
Water Utility Regulation Division

FROM: Leila Guerrero, Regulatory Accountant/Auditor
Water Utility Regulation Division

DATE: June 6, 2017

SUBJECT: **Docket No. 46998, Ratepayers' Appeal of the Decision by the City of Malakoff to Change Rates**

On March 28, 2017, the Public Utility Commission of Texas (Commission) received a petition pursuant to Texas Water Code § 13.043(b) (TWC) from the outside city limit ratepayers of the City of Malakoff ("Malakoff") to appeal the wastewater rates established by the City. The outside city limit rates were established by the City in City Ordinance No. 436, which was approved by the Malakoff City Council on August 1, 2016. While the Ordinance passed on August 1, 2016, the new rate structure was effective January 1, 2017.

Pursuant to TWC 13.043(b): *Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:*

.....
(3) *a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality*

Based on Staff's review of the petition, it appears that the ratepayers who signed the petition do not receive service from the City of Malakoff ("Malakoff"). Instead, they receive service from the City of Star Harbor's ("Star Harbor"). Further review of the documentation show that Star Harbor is a wholesale customer of Malakoff. In addition, Malakoff does not have agreements with the residential ratepayers and does not issue monthly invoices to them. Star Harbor is responsible for maintaining the collection lines between Star Harbor's residential ratepayers to the point of delivery of raw sewage to Malakoff, as well as the meters for the Star Harbor's residential ratepayers. Star Harbor bills the residential ratepayers for the wastewater utility service.

Consequently, pursuant to 16 Tex. Admin. Code §24.42. *Contents of Petition Seeking Review of Rates Pursuant to the Texas Water Code, §13.043(b).*

(a) Petitions for review of rate actions filed pursuant to the TWC, §13.043(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;

The petition did not comply with TAC §24.42(a)(1). Each page of the petition should contain the ratepayers' names, signatures, and other information and a brief statement of the intent of the petition. Only the first page of the petition contains this information and the subsequent pages do not.

Based on the information above, Staff recommends the petition is administratively invalid and insufficient for filing.