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DOCKET NO. 46998

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BEFORE THE
PUBLIC UTILITY COMMISSION
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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

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 28, 2017 ("Petition"), which is the subject matter of this Docket No. 46998. Malakoff filed its Response and Motion to Dismiss for Lack of Standing and Untimeliness ("Motion") on April 27, 2017, and Malakoff initially supplemented the Motion on May 16, 2017 ("Initial Supplement"). After Malakoff filed the Initial Supplement, Public Utility Commission Staff filed a "Recommendation on Administrative Completeness" on June 7, 2017, concluding and requesting 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 Then, on June 14, 2017, the Administrative Law Judge issued his Order No. 4, deeming the Petition "administratively incomplete"² and requiring the Star Harbor Ratepayers to file a response to Malakoff's Motion on or before June 27, 2017. There have been no filings since the Administrative Law Judge's June 14, 2017 Order.

¹ Commission Staff's Recommendation on Administrative Completeness at 1 (June 7, 2017).

² Order No. 4 Deeming Petition Administratively Incomplete (June 14, 2017).

II. MALAKOFF'S SUPPLEMENT TO MOTION TO DISMISS

Malakoff reurges that the Petition be dismissed, as 50 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.

Respectfully submitted,


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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