

Control Number: 46998



Item Number: 8

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THE CITY OF STAR HARBOR § PUBLIC UTILITY COMMISSION
RATEPAYERS' APPEAL OF THE §
DECISION BY THE CITY OF §
MALAKOFF TO CHANGE RATES § OF TEXAS

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**Ratepayers of the City of Star Harbor's Reply to the
City of Malakoff's Response to Petition and Motion to Dismiss for
Lack of Standing and for Untimeliness**

NOW COMES, Ratepayers of the City of Star Harbor and file this, their Reply to the City of Malakoff's Response to their Petition and Motion to Dismiss for Lack of Standing and Untimeliness, and would show as follows:

**I.
STANDING**

A. The City of Malakoff's position that the Ratepayers located in the City of Star Harbor are not retail customers of the City of Malakoff is unsupported by the facts.

B. Pursuant to Texas Water Code, Section 13.002(20) retail water or sewer utility service means "potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation." Malakoff's provision of sewer service to Ratepayers undoubtedly qualifies as a provision of "retail sewer utility service." Malakoff is the sole treatment source of the effluent for Ratepayers. Further, Malakoff receives compensation for this service by the ultimate consumer, in this case, the Ratepayers bringing this appeal.

C. By placing the word "wholesale" in the City of Malakoff's Ordinance No. 436, Malakoff attempts to negate its clear retail relationship with Ratepayers. To this end, the City of Star Harbor does not, in any way, dictate the wastewater rates paid by its citizens. These rates are set exclusively by the City of Malakoff by way of the passing of City ordinances, in the instant case, Ordinance No. 436.

D. By way of Ordinance No. 436, Ratepayers have been mandated to pay the same per connection fee for wastewater (\$47.50) as other outside city limit retail customers for the City of Malakoff. Additionally, the City of Malakoff, by way of Ordinance No. 436, has dictated a wastewater impact fee on a per connection basis for Ratepayers located within the City of Star Harbor. These per connection usage and impact fees with Ratepayers establish a direct retail relationship between the City of Malakoff and Ratepayers.

E. Malakoff incorrectly states that the City of Star Harbor is the retail wastewater provider for Ratepayers. The only involvement the City of Star Harbor has in the retail relationship between Malakoff and Ratepayers is to simply act as a third party billing entity for Malakoff. The City of Star Harbor does not set the wastewater rates or the per customer impact fees paid by Ratepayers. These acts are the functions of the City of Malakoff, with respect to Ratepayers.

F. Malakoff's contention that Ratepayers do not remit monthly sewer service bills to Malakoff is, at best, a misrepresentation of the facts. As noted previously, the City of Star Harbor invoices Ratepayers. However, the rates billed by Star Harbor are those mandated by the City of Malakoff by way of Ordinance No. 436. Payment is not made directly to Malakoff by Ratepayers, but is made to the City of Star Harbor as a "pass through" billing entity. All monies collected by the City of Star Harbor by Ratepayers are then remitted to Malakoff.

G. Malakoff's contention that there is no retail contractual relationship between Ratepayers and Malakoff is an irrelevant argument. As indicated in the water code's definition of "retail sewer service" (see Texas Water Code, Section 13.002(20), there is no requirement of a contractual relationship between retail provider and the end user. All that is required to establish retail sewer service is a provision of sewer service provided by a retail public utility (Malakoff) to the ultimate consumer (Ratepayers) for compensation. This is precisely the situation with the case at bar.

H. Malakoff's argument that Ratepayers should protest their sewer rates with the City of Star Harbor is misplaced. As noted throughout this Reply, Malakoff has set a floor/minimum per connection fee of \$47.50 for Ratepayers. It is this rate set by Malakoff that is being questioned by way of Ratepayers' appeal. There is no rate set by the City of Star Harbor over and above the minimum rate set by way of Malakoff's Ordinance No. 436. Therefore, there is no City of Star Harbor retail rate to appeal. Malakoff's unilateral setting of the sewer rate, its services of sewer treatment, and its direct financial benefit from Ratepayers for its services establish a clear retail customer relationship between Malakoff and Ratepayers, allowing Ratepayers standing to prosecute this appeal.

I. Based on the above, the Ratepayers bringing this appeal to the Public Utility Commission have standing as "retail customers" with the City of Malakoff.

II. TIMELINESS

A. Ratepayers' appeal is brought pursuant to Texas Water Code, Section 13.043(B)(3). Pursuant to Section 13.043(C), "an appeal under subsection (B) must be initiated by filing a petition for review with the Utility Commission and the entity providing service within 90-days after the effective date of the rate change or, if appealing under subsection (B)(2) or (5), within 90-days after the date on which the governing body of the municipality or affected county makes a final decision."

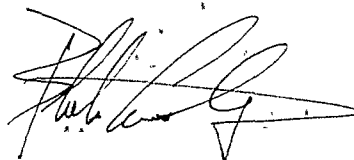
B. As noted previously, Ratepayers bring this appeal pursuant to Texas Water Code, Section 13.043(B)(3). The effective date of the City of Malakoff's rate change of which this appeal is based, was January 1, 2017. Therefore, Ratepayers' filing of this appeal on March 28, 2017 was timely.

**III.
CONCLUSION AND PRAYER**

Ratepayers respectfully request that the City of Malakoff's Motion to Dismiss Ratepayers' Petition be denied, and for all other relief to which Ratepayers may be justly entitled.

Dated: May 4, 2017

Respectfully submitted,



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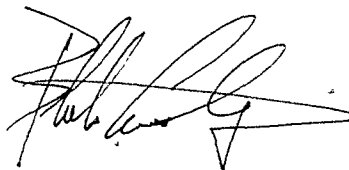
**ATTORNEYS FOR CITY OF STAR
HARBOR RATEPAYERS**

CERTIFICATE OF SERVICE

I certify that on May 4, 2017, a copy of this document was served upon the following parties of record via email, facsimile and certified mail, return receipt requested:

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