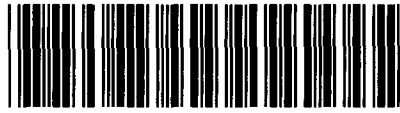




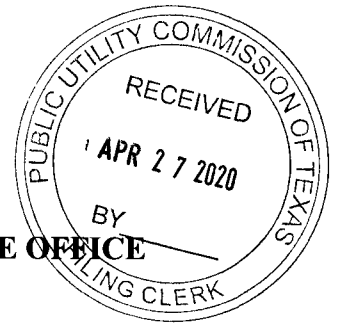
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SOAH DOCKET NO. 473-20-3110.WS  
PUC DOCKET NO. 50200



APPLICATION OF UNDINE TEXAS, § BEFORE THE STATE OFFICE  
LLC AND UNDINE TEXAS §  
ENVIRONMENTAL, LLC FOR § OF  
AUTHORITY TO CHANGE RATES § ADMINISTRATIVE HEARINGS

**UNDINE TEXAS, LLC AND UNDINE TEXAS ENVIRONMENTAL, LLC'S  
OBJECTIONS TO BRITNEY MAY'S MOTION TO INTERVENE AND, IN THE  
ALTERNATIVE, MOTION IN LIMINE**

Undine Texas, LLC and Undine Texas Environmental, LLC (Undine) file these Objections to Britney May's Motion to Intervene<sup>1</sup>, and would respectfully show as follows:

**I. PROCEDURAL HISTORY**

The Commission referred this case to the State Office of Administrative Hearings (SOAH) on March 19, 2020, requesting the assignment of an Administrative Law Judge (ALJ) to conduct a hearing and issue a proposal for decision, if necessary. Due to concerns regarding the coronavirus, the SOAH ALJs departed from the normal practice for Class B applications, as specified in SOAH Order No. 1.<sup>2</sup> Pursuant to SOAH Order No. 1, all requests for intervention were required to be filed by April 21, 2020, and there will not be a separate opportunity to intervene in person at the prehearing conference.<sup>3</sup>

Further, pursuant to the procedural schedule in SOAH Order No. 1, all objections to motions to intervene are required to be filed by April 27, 2020.<sup>4</sup> Therefore, this filing is timely.

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<sup>1</sup> Britney May's Request to Intervene (Apr. 22, 2020). (Britney May's Motion to Intervene).

<sup>2</sup> SOAH Order No. 1 at 2-3 (Mar. 26, 2020).

<sup>3</sup> SOAH Order No. 1 at 3.

<sup>4</sup> SOAH Order No. 1 at 4.

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## II. OBJECTIONS

Undine objects to Britney May's Motion to Intervene for the following reasons:

### A. Motion to Intervene Filed Late.

Pursuant to SOAH Order No. 1, all requests for intervention were required to be filed by April 21, 2020, and there will not be a separate opportunity to intervene in person at the prehearing conference.<sup>5</sup> Ms. May's request for intervention is filed-stamped April 22, 2020.<sup>6</sup> Undine objects to Ms. May's Motion to Intervene because it was filed after April 21, 2020, the deadline specified in SOAH Order 1.

### B. Failure to Provide Email Address

SOAH Order No. 1 requires any person filing a motion to intervene to include the person's contact information, including at a minimum, the person's address, telephone number, and email address.<sup>7</sup> Additionally, SOAH Order No. 1 requires electronic service via email in this proceeding.<sup>8</sup>

Ms. May's motion fails to include her email address, as required in SOAH Order No. 1. As such, Ms. May's motion is incomplete rendering it impossible for Undine and other parties to serve Ms. May with documents filed in the proceeding as ordered by the ALJs.<sup>9</sup> Undine objects to Ms. May's Motion to Intervene because her Motion fails to include the required contact information pursuant to SOAH Order No. 1.

## III. MOTION IN LIMINE

If the ALJs elect to allow Ms. May to intervene in this proceeding, and deny Undine's objections above, Undine alternatively moves for a motion in limine restricting Ms. May from introducing, mentioning, or in any way referring to the lawsuit filed by Ms. May against Undine

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<sup>5</sup> SOAH Order No. 1 at 3.

<sup>6</sup> Britney May's Motion to Intervene at 1.

<sup>7</sup> SOAH Order No. 1 at 6.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> Counsel for Undine has subsequently obtained Ms. Mays' email address, but Undine continues to object on the grounds that the initial filing was inadequate.

currently pending in Brazoria County, Texas (the “Beechwood Lawsuit”). Ms. May is the lead plaintiff in this pending lawsuit. The Beechwood Lawsuit concerns claims by fourteen individuals, seeking money for personal injury and property damage purportedly arising from discolored water. None of the plaintiffs in that lawsuit pursued or exhausted their administrative remedies with either the Commission or the Texas Commission on Environmental Quality.

A motion in limine is a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the court may be asked to make.<sup>10</sup> The purpose of a motion in limine is to prevent the other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission.<sup>11</sup> The same considerations apply to the exclusion of prejudicial evidence in an administrative proceeding because of the need to ensure that only evidence relevant to the Commission’s decision be included in the administrative record.<sup>12</sup>

Undine files this motion in limine to eliminate the possibility that Ms. May will attempt to use this Commission proceeding as an avenue to acquire information for the pending lawsuit or to unfairly seek to prejudice the Commission. Undine moves to prevent Ms. May from introducing the issues present in the Beechwood Lawsuit that are distinct from any issues addressed in the Preliminary Order in this proceeding and that are being litigated in the courts, and to prevent such issues from being considered by the ALJs and/or Commission in this proceeding.

Furthermore, Undine has removed from its Application all costs associated with defending the Beechwood Lawsuit.<sup>13</sup> Therefore, the Beechwood Lawsuit, the issues being litigated in that suit, and costs of defending that suit are properly excluded from consideration in

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<sup>10</sup> See *Hartford Accident & Indem. Co. v. McCardell*, 369 S.W.2d 331, 335 (Tex.1963).

<sup>11</sup> *Id.*

<sup>12</sup> 16 TAC § 22.221(a) (“Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.”)

<sup>13</sup> See Supplemental Response to OPUC 2-5 (Apr. 27, 2020).

this proceeding, as they are irrelevant to determining just and reasonable rates Undine may charge its customers.

Undine respectfully requests that the ALJs grant this motion in limine, and order that Ms. May refrain from offering any evidence relating to any matter described above, directly or indirectly, before the Commission or before any ALJ overseeing this matter, during the hearing on the merits, through examining or cross-examining witnesses, offering documentary evidence, making closing argument, or otherwise. Further, ordering that Ms. May or her counsel instruct any and all witnesses they may call to refrain from any comment, mention, or reference to, directly or indirectly, in any manner whatsoever, any of the matters set forth in this motion; and to inform such witnesses of the consequences of violating the Commission's order.

#### IV. PRAYER

Undine requests the ALJs sustain Undine's objections and deny Britney May's Motion to Intervene, or in the alternative, grant Undine's motion in limine. Undine also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900

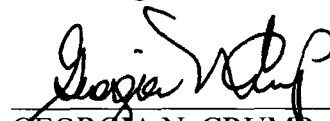
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**ATTORNEYS FOR UNDINE TEXAS, LLC  
AND UNDINE TEXAS ENVIRONMENTAL,  
LLC**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 27, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
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GEORGIA N. CRUMP