



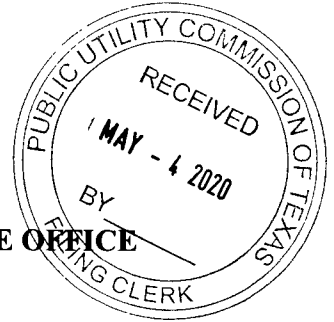
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SOAH DOCKET NO. 473-20-3110.WS
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APPLICATION OF UNDINE TEXAS, § BEFORE THE STATE OFFICE
LLC AND UNDINE TEXAS §
ENVIRONMENTAL, LLC FOR § OF
AUTHORITY TO CHANGE RATES § ADMINISTRATIVE HEARINGS

**UNDINE TEXAS, LLC AND UNDINE TEXAS ENVIRONMENTAL, LLC'S
SUPPLEMENTAL OBJECTIONS TO SUGARTREE POA'S MOTION TO INTERVENE**

Undine Texas, LLC and Undine Texas Environmental, LLC (Undine) files these Supplemental Objections to the intervention of the SugarTree POA. Undine filed initial Objections to SugarTree POA's Motion to Intervene on April 27, 2020.¹ On April 30, 2020, Brandon Smith, purportedly on behalf of SugarTree POA, filed a Power of Attorney with no cover pleading or explanation.² Undine files these Supplemental Objections to address the information provided in the Power of Attorney filed by Brandon Smith.

I. SUPPLEMENTAL OBJECTIONS

Undine further objects to the intervention of the SugarTree POA because the Power of Attorney filed by Brandon Smith does not correct SugarTree POA's initial failure to comply with the Commission's rules, and further attempts to confer standing to participate in this proceeding where there is none.

A. Failure to prove standing.

The Power of Attorney grants Brandon Smith, a residential lot owner in the Reserve at SugarTree and Member of the Reserve at SugarTree POA, Inc. the authority to act as Kel Devlin's attorney-in-fact and agent in this proceeding.³ According to the Power of Attorney, Kel Devlin is the President of Yalumba Partners, LP, owner of the lots in the Reserve at SugarTree Addition to Parker County, Texas and declarant of the Reserve at SugarTree POA, Inc, the

¹ Undine Texas, LLC and Undine Texas Environmental, LLC's Objections to SugarTree POA's Motion to Intervene (Apr. 27, 2020) (Undine's Objection to SugarTree POA's Motion to Intervene).

² Power of Attorney for SugarTree (Apr. 30, 2020) (Power of Attorney).

³ Power of Attorney at 2.

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homeowners association for the Reserve at SugarTree Addition, Parker County, Texas.⁴ The Power of Attorney fails to clarify whether Kel Devlin, or Yalumba Partners, LP, is a customer of Undine.

In fact, neither Kel Devlin, nor Yalumba Partners, LP, is a customer of Undine. The Power of Attorney states that Kel Devlin is the declarant of the SugarTree POA and grants authority to Brandon Smith to act on his behalf.⁵ However, Kel Devlin, acting in his own capacity, and as president of Yalumba Partners, LP, does not have standing to participate in this proceeding. Under 16 Texas Administrative Code (TAC) § 22.103(b), a party has standing to participate in a proceeding if that right is expressly conferred by statute, commission rule or order or other law; or that person has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.⁶

Mr. Devlin is not a ratepayer, and is therefore his right to participate in this proceeding is not conferred by statute or rule or other law. Further, as the owner of the lots in the Reserve at SugarTree Addition to Parker County, he has not established that those lots are sold and receiving service from Undine. Therefore, in his own capacity and as owner of Yalumba Partners, LP, Mr. Devlin is unable to confer authority to participate in this proceeding to Mr. Smith, because Mr. Devlin does not have standing.

B. Failure to provide proof of authority to appear on behalf of another person and failure to specify the particular persons or classes of persons the represented in this proceeding.

Additionally, the Power of Attorney states that Mr. Devlin is the declarant of the SugarTree POA homeowners association and grants Brandon Smith the right to stand in his shoes and represent him in all capacities in this proceeding.⁷ As discussed in Undine's Objection to SugarTree POA's Motion to Intervene, "[t]he presiding officer may require a representative to

⁴ *Id.*

⁵ *Id.*

⁶ 16 TAC § 22.101(b).

⁷ Power of Attorney at 2.

submit proof of his or her authority to appear on behalf of another person.”⁸ SugarTree POA’s Motion to Intervene failed to provide the authority granted to it by the members of the POA, and Mr. Devlin’s Power of Attorney fails to provide this proof as well. Under 16 TAC § 22.103(b), any association or organized group must include in its motion to intervene a list of the members of the association or group that are persons other than individuals that will be represented by the association or organized group in the proceedings.⁹ Therefore, the Power of Attorney fails to correct the failings of Sugartree POA’s Motion to Intervene, as it also fails to specify the particular persons Kel Devlin and Yalumba Partners, LP represent in this proceeding, as required by 16 TAC § 22.101(b). It further fails to demonstrate that Mr. Devlin and Yalumba Partners, LP have been authorized to represent everyone whom they claim to be representing.

II. PRAYER

Undine respectfully reurges its request that the Motion to Intervene on behalf of the SugarTree POA be in all respects denied. Undine also additionally reurges the importance of requiring individuals purporting to speak on behalf of others to demonstrate that they have been so authorized.

Respectfully submitted,

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⁸ See *Application of Sw. Pub. Serv. Co. for Auth to Reconcile Fuel & Purchased Power Costs*, 473-19-1644, 2019 WL 919616, at *1 (Tex. S.O.A.H. Feb. 19, 2019) (Motion of individual to intervene was denied because: (1) he failed to “specify the particular persons or classes of persons” he was representing; (2) he submitted no proof of his authority to appear on behalf of all citizens of Texas; and (3) the claimed representation is too broad to encompass only persons with a justiciable interest in this case); See Undine’s Objection to SugarTree POA’s Motion to Intervene at 2.

⁹ 16 TAC § 22.103(b)

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LLC**

CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on May 4, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



GEORGIA N. CRUMP