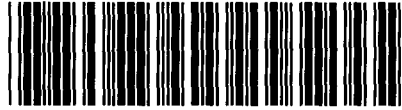
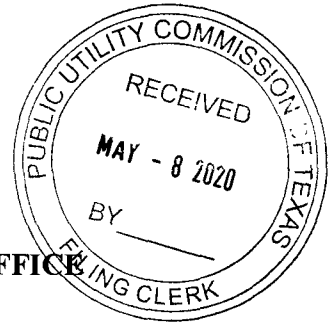


Control Number: 50200



Item Number: 1972

Addendum StartPage: 0



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

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

**UNDINE TEXAS, LLC AND UNDINE TEXAS ENVIRONMENTAL, LLC'S  
OBJECTIONS TO MAYFAIR SOUTH HOA'S MOTION TO INTERVENE**

Undine Texas, LLC and Undine Texas Environmental, LLC (Undine) file these Objections to Mayfair South Homeowners Association, Inc.'s (Mayfair South HOA) Request 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 were required to be filed by April 27, 2020.<sup>4</sup> Additionally, pursuant to 16 Texas Administrative Code (TAC) § 22.78(a) and SOAH Order No. 1, unless otherwise specified in the Commission's procedural rules or an order issued in this case, any responses to a motion or other pleading shall be filed within five working days from receipt of the motion or pleading.<sup>5</sup>

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<sup>1</sup> Mayfair South HOA's Request to Intervene (Apr. 20, 2020) (Mayfair South HOA's Motion to Intervene), provided as Attachment 1.

<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.

<sup>5</sup> See 16 TAC § 22.78; SOAH Order No. 1 at 8.

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Undine is unsure of when Mayfair South HOA's Motion to Intervene was filed. While Mayfair South HOA's Motion to Intervene is file-stamped as being received by the Commission on April 20, 2020, to Undine's knowledge the filing was not uploaded onto the Commission's interchange until after May 1, 2020. Undine was not provided service of Mayfair South HOA's Motion to Intervene by email or by any other means. In fact, Undine only became aware of Mayfair South HOA's Motion to Intervene after being notified by SOAH personnel by email on May 7, 2020.<sup>6</sup> It appears as though Mayfair South HOA's Motion to Intervene was uploaded to the Commission's interchange at some time after May 1, 2020, in the same interchange item as an earlier uploaded document. Counsel for Undine was unaware of any additional motions to intervene; after receipt of the email, counsel rechecked each individual interchange item. Only after doing this additional investigation did counsel find Mayfair South HOA's Motion to Intervene in Item No. 1963; this motion did not exist in Item No. 1963 one week prior.<sup>7</sup>

Neither the Commission's procedural rules nor SOAH Order No. 1 provide a procedural deadline for filing objections to an untimely motion to intervene, or for objections to filings uploaded to the Commission's interchange more than 10 days after the apparent filing date. Therefore, this filing is timely, *i.e.*, made within five working days of becoming aware of Mayfair South HOA's Motion to Intervene.

## **II. CHALLENGE TO THE AUTHENTICITY OF MAYFAIR SOUTH HOA'S MOTION TO INTERVENE**

Due to unusual circumstances outside of Undine's control, Undine is unsure of when Mayfair South HOA's Motion to Intervene was filed or even uploaded to the interchange. Undine also has reason to believe that Mayfair South HOA's Motion to Intervene is an altered version of a request to comment filed individually by Howard Ludwig.<sup>8</sup> Therefore, Undine questions the validity of the Mayfair HOA's Motion to Intervene as well as its true filing date.

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<sup>6</sup> See Attachment No. 3.

<sup>7</sup> Incredibly, at the writing of this Objection, Mr. Ludwig's individual comment form has now disappeared from the interchange at Item No. 1963.

<sup>8</sup> As noted in footnote 7, Howard Ludwig's individual filing has now disappeared from the interchange.

On April 21, 2020, and in the days following the filing deadline, Undine checked the Commission's interchange for Docket No. 50200 several times to account for all motions to intervene, and no filings existed for Mayfair South HOA, nor for Howard Ludwig. On May 1, 2020, Commission personnel added Howard Ludwig's "Request to Intervene" as Item No. 1963 on the interchange.<sup>9</sup> While Item No. 1963 was added on May 1, 2020, the Commission's interchange listing indicates that it was filed on April 20, 2020, and the document is file-stamped as being received on April 20, 2020.<sup>10</sup> Further contributing to the confusion over the precise timing of the filing, Undine was never provided notice of the "Request to Intervene" by Mr. Ludwig or the Commission. Undine initially reviewed Howard Ludwig's "Request to Intervene," and determined from the box checked by Mr. Ludwig that his filing constituted a request to comment in Docket No. 50200, and not a "Request to Intervene," as labeled on the interchange. At the time of Undine's review of Howard Ludwig's Request to Comment on May 1, 2020, it was the only document under Item No. 1963 on the Commission's interchange.<sup>11</sup>

On May 7, 2020, Item No. 1963 consisted of two filings, Mr. Ludwig's Request to Comment and Mayfair South HOA's Motion to Intervene.<sup>12</sup> Mayfair South HOA's Motion to Intervene appears to have been added to Item No. 1963 at some point after May 1, 2020. And, Mr. Ludwig's initial filing was removed from the interchange in the morning of May 8 as this objection was being drafted.

In addition to Undine's challenge to the precise timing of the filing of Mayfair South HOA's Motion to Intervene, Undine challenges the authenticity of the Motion because the

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However, Undine printed that document prior to its disappearance and includes it here as Attachment 2. As can be seen from this document, Mr. Ludwig's first filing was a comment only.

<sup>9</sup> See <http://interchange.puc.texas.gov/Search/Documents?controlNumber=50200&itemNumber=1963> (Item No. 1963) (Howard Ludwig's Request to Comment was apparently added after several other filings made on May 1, 2020, yet possibly retrofitted with a filing date of April 20, 2020).

<sup>10</sup> *Id.*

<sup>11</sup> This document has now disappeared from the interchange.

<sup>12</sup> However, as of May 8, there is only one document at Item No. 1963, Mr. Ludwig's initial filing having disappeared on May 8 between 8:45 a.m. and 10:00 a.m. when the interchange was checked by Undine's counsel.

document appears to be an altered version of Howard Ludwig's Request to Comment. The two documents feature similarities, such as precisely the same time stamp, the same hand-written interchange number on the bottom right-hand corner, and the same handwriting for Mr. Ludwig. However, Mayfair South HOA's Motion to Intervene features the following changes without explanation: (1) a different person's handwriting, purporting to designate Mr. Ludwig as the representative for Mayfair South HOA; (2) the request to comment box has been poorly covered; and (3) the request to intervene box has been checked.<sup>13</sup>

Undine has concluded that Howard Ludwig's Request to Comment was altered by an unspecified person to make it appear as a Motion to Intervene on behalf of Mayfair South HOA. Additionally, Undine was not served with this document; the motion was added to the interchange in the same entry as Howard Ludwig's Request to Comment without any notice to Undine, and the date of the filing is unknown. Therefore, Undine has no way of determining the validity of the date of the filing. The entirety of the circumstances surrounding these filings—their appearances and disappearances—is unprecedented and never before experienced by counsel for Undine.

For the foregoing reasons, Undine requests that the ALJs deny Mayfair South HOA's Motion to Intervene.

### **III. OBJECTIONS**

Undine objects to Mayfair South HOA's Motion to Intervene because it does not comply with the Commission's rules, as set forth below:

#### **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

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<sup>13</sup> Compare Attachment 1, Mayfair South HOA's Motion to Intervene, to Attachment 2, Howard Ludwig's Request to Comment.

prehearing conference.<sup>14</sup> As previously mentioned in detail, Undine is unsure of when Mayfair South HOA's Motion to Intervene was filed or uploaded to the interchange; however, Undine has reason to believe that it was not filed until after the April 21, 2020 deadline, potentially on May 1, 2020. Undine objects to Mayfair South HOA's Motion to Intervene because Mayfair South HOA filed its Motion after April 21, 2020, in violation of SOAH Order No. 1.

Under 16 TAC § 22.104(d), in considering a motion to intervene that has not been timely filed, the ALJ shall consider:

(A) any objections that are filed; (B) whether the movant had good cause for failing to file the motion within the time prescribed; (C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention; (D) whether any disruption of the proceeding might result from permitting late intervention; and (E) whether the public interest is likely to be served by allowing the intervention.

Mayfair South HOA has not demonstrated good cause for its late filing. Due to the circumstances described in detail above, Mayfair South HOA's Motion to Intervene should not even be treated as an authentic filing, much less a timely one. Further, if Mayfair South HOA had good cause to file its Motion to Intervene after the deadline, it could have filed a pleading establishing any such excuse. However, Mayfair South HOA never provided such pleading.

Granting Mayfair South HOA's Motion to Intervene would prejudice and burden the other parties in this proceeding. Mayfair South HOA's untimely filing, featuring other deficiencies previously described in this pleading, has already burdened parties in this proceeding and denied due process to Undine. Undine has been burdened with addressing Mayfair South HOA's disregard for the SOAH ALJ's clear orders and filing procedures. Additionally, granting Mayfair South HOA's Motion to Intervene would prejudice all other parties who filed motions to intervene during the prescribed period.

The public interest will not be served by granting Mayfair South HOA's intervention. Granting Mayfair South HOA's untimely intervention sets a standard in this case that the ALJ's

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<sup>14</sup> SOAH Order No. 1 at 3.

orders and the procedural schedule are merely voluntary. All parties in this proceeding should be treated equally and should be held to the same standards.

Because of the referral of this docket to SOAH, only the SOAH ALJs have the authority to allow a late intervention to be filed. If Mayfair South HOA's Motion to Intervene was filed after the April 21, 2020 deadline through some intervention by a third party, such does not represent an action by the SOAH ALJ, and such action should be denied. To Undine's knowledge, Mayfair South HOA has not presented a motion for leave to the SOAH ALJ to file its Motion to Intervene after the April 21, 2020 deadline.

Neither Mr. Ludwig nor Mayfair South HOA have presented evidence to satisfy the requirements in the Commission's rules for Mayfair South HOA's late intervention.<sup>15</sup> For the foregoing reasons, Undine requests that the ALJs deny Mayfair South HOA's Motion to Intervene.

**B. Failure to provide proof of authority to appear on behalf of another person.**

Under 16 Texas Administrative Code (TAC) § 22.101(a), "[t]he presiding officer may require a representative to submit proof of his or her authority to appear on behalf of another person."<sup>16</sup> Mayfair South HOA's Motion to Intervene included only the contact information for Mr. Howard Ludwig with a handwritten note next to his name (in handwriting very different from Mr. Ludwig's handwriting) purporting to designate him "as Representative of Mayfair South HOA."<sup>17</sup> Mr. Ludwig did not provide proof of his authority to undertake such representation.<sup>18</sup> No documents have been provided that would indicate any action taken by the Mayfair South HOA authorizing either the intervention or the claimed representation.

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<sup>15</sup> See 16 TAC § 22.104(d).

<sup>16</sup> 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).

<sup>17</sup> Mayfair South HOA's Motion to Intervene at 1.

<sup>18</sup> *Id.*

Undine objects to Mayfair South HOA's Motion to Intervene because the alleged representative has not provided proof of Mayfair South HOA's determination to intervene or of his authority to appear in this proceeding on behalf of the HOA, as required by 16 TAC § 22.101(a). Accordingly, Undine requests the ALJs deny Mayfair South HOA's Motion to Intervene.

**C. Failure to specify the particular persons or classes of persons the represented in this proceeding.**

Under 16 TAC § 22.101(a), "[t]he authorized representative of a party shall specify the particular persons or classes of persons the representative is representing in the proceeding."<sup>19</sup> Mayfair South HOA's Motion to Intervene included only the contact information for Mr. Howard Ludwig with a handwritten note next to his name purporting to designate him "as Representative of Mayfair South HOA."<sup>20</sup> However, Mayfair South HOA does not identify the homeowners whom it claims to represent in this proceeding. Accordingly, Undine requests the ALJs deny Mayfair South HOA's Motion to Intervene.

**D. Failure to serve.**

Mayfair South HOA's Motion to Intervene should be denied because of the complete failure to provide service as required in SOAH Order No. 1 and 16 TAC § 22.74. SOAH Order No. 1 provides that "service by electronic mail is required..."<sup>21</sup> The Commission's rule provides: "[a]t or before the time any document or pleading regarding a proceeding is submitted by a party to a presiding officer, a copy of such document or pleading shall be filed with the commission filing clerk and served on all parties."<sup>22</sup>

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<sup>19</sup> *Sw. Pub. Serv. Co.*, *supra* footnote 6, at \*1; *See also Formal Complaint of Ker-Seva Ltd., Adc W. Ridge, L.P., & Ctr. for Hous. Res., Inc. Against the City of Frisco*, 4, 2016 WL 6566222, at \*1-\*2 (Tex. S.O.A.H. Sept. 9, 2016) (Motion to intervene was denied, partially because no list of individuals seeking intervention was given).

<sup>20</sup> Mayfair South HOA's Motion to Intervene at 1.

<sup>21</sup> SOAH Order No. 1 at 5.

<sup>22</sup> 16 TAC § 22.74(a).



Mayfair HOA wholly failed to provide any service, by email or otherwise, to Undine. But for being alerted to the filing by SOAH personnel, Undine would have had no knowledge of the filing. Fair notice to Undine is required, and would have been accomplished by email service on Undine's counsel, whose email addresses are included on every filing by Undine.

No party should be put to the task of having to constantly investigate every filing on the interchange to determine if additional documents have been added to interchange items that may affect the party. The peril of being unresponsive to pleadings is exactly what is avoided by the requirement of fair notice, and prompt service, on all parties. Mayfair South HOA has violated both SOAH Order No. 1 and the Commission's rules by obscuring its filing and failing to provide the required notice to Undine. Its Motion to Intervene should be denied.

#### IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Undine requests that the ALJs sustain Undine's objections and deny Mayfair South HOA's Motion to Intervene. Undine also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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

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Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)

[gcrump@lglawfirm.com](mailto:gcrump@lglawfirm.com)  
[jmauldin@lglawfirm.com](mailto:jmauldin@lglawfirm.com)



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GEORGIA N. CRUMP  
State Bar No. 05185500

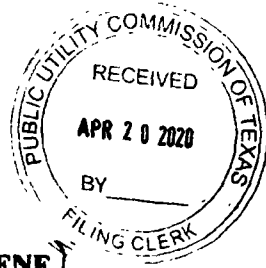
JAMIE L. MAULDIN  
State Bar No. 24065694

**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 May 8, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
\_\_\_\_\_  
GEORGIA N. CRUMP



P.U.C. DOCKET NO. 50200

**RATEPAYER COMMENTS (REQUESTS TO INTERVENE)**  
(please circle one)

If you wish to comment on, or intervene in, the proposed rate change, submit this form and 10 copies to:

Filing Clerk  
Public Utility Commission of Texas  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

CUSTOMER INFORMATION (to be completed by customers submitting comments or requests to intervene)

First Name: HOWARD Last Name: LUDWIG AS Representative  
Phone Number: 503-580-0419 Fax Number: \_\_\_\_\_  
Address, City, State: 2028 CARLISLE DR, CRAWLEY, TX 76036 Ho2  
Location where service is received: SAME  
(if different from the mailing address)

PLEASE SELECT ONE OF THE FOLLOWING:

wish to be a COMMENTER. I understand that: I am NOT a party to this case; my comments are not considered evidence in this case; and I have no further obligation to participate in the proceeding. Public comments may help inform the PUC of the public concerns and identify issues to be explored. Please provide comments below. Attach a separate page, if necessary.

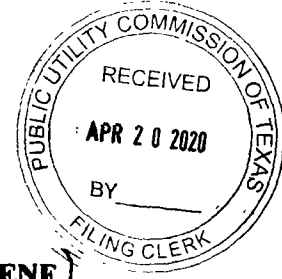
I am requesting to INTERVENE in this proceeding. As an INTERVENOR, I understand that: I am a party to the case; I am required to respond to all discovery requests from other parties; I may be required to attend hearings, and if I file testimony, I may be cross-examined in the hearing; if I file any documents in the case, I must provide a copy to every other party in the case; and I acknowledge that I am bound by the Procedural Rules of the PUC and the State Office of Administrative Hearings (SOAH).

Signature of Commenter or Intervenor: \_\_\_\_\_ Date: 4/20/2020

Si desea informacion en Espanol, puede llamar al 1-888-782-8477

Hearing- and speech-impaired individuals with text telephones may contact the PUC's Customer Assistance Hotline at 512-936-7136

1963



P.U.C. DOCKET NO. 50200

**RATEPAYER COMMENTS (REQUESTS TO INTERVENE)**  
(please circle one)

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Address, City, State: 2008 CARLISLE DR, CROWLEY, TX 76036  
Location where service is received: SAME  
(if different from the mailing address)

**PLEASE SELECT ONE OF THE FOLLOWING:**

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I am requesting to INTERVENE in this proceeding. As an INTERVENOR, I understand that: I am a party to the case; I am required to respond to all discovery requests from other parties; I may be required to attend hearings, and if I file testimony, I may be cross-examined in the hearing; if I file any documents in the case, I must provide a copy to every other party in the case; and I acknowledge that I am bound by the Procedural Rules of the PUC and the State Office of Administrative Hearings (SOAH).

Signature of Commenter or Intervenor:

Howard Ludwig Date: 4/20/2020

Si desea informacion en Espanol, puede llamar al  
**1-888-782-8477**

Hearing- and speech-impaired individuals with text telephones may contact the PUC's Customer Assistance Hotline at  
**512-936-7136**

1963

**From:** Erin Hurley <[erin.hurley@soah.texas.gov](mailto:erin.hurley@soah.texas.gov)>  
**Sent:** Thursday, May 7, 2020 2:10 PM  
**To:** Georgia Crump <[gc@protect-us.com](mailto:gc@protect-us.com)>  
**Subject:** SOAH Docket <https://protect-us.mimecast.com/s/mVPrCDk04DIAj8QCWTLCR> Docket 50200 (Undine)

Good afternoon,

A timely motion to intervene was filed in this case, and the ALJs wanted to know if you would be filing a response, and if so, when that might be.

Thank you!

**Erin Hurley**  
Legal Secretary V  
Work Lead  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> St.  
Austin, Tx 78701  
Direct Phone: (512) 475-3419  
Main Line: (512) 475-4993