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COMPLAINT OF KER-SEVA LTD.  
AGAINST THE CITY OF FRISCO

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PUBLIC UTILITY

COMMISSION OF TEXAS

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PUBLIC UTILITY COMMISSION  
TEXAS CLERK

### COMMISSION STAFF'S LIST OF ISSUES

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its List of Issues. In support of its List of Issues, Staff states the following:

#### I. Background

The City of Frisco provides water and sewer service under Certificate of Convenience and Necessity Nos. 11772 (water) and 20591 (sewer). Under the Texas Water Code, the City of Frisco is a "retail public utility"<sup>1</sup> but not a "water and sewer utility."<sup>2</sup> Additionally, as the holder of a certificate of convenience and necessity, the City of Frisco has a statutory obligation to "serve every consumer within its certified area and [to] render continuous and adequate service within the area or areas"<sup>3</sup> and to "furnish the service, instrumentalities, and facilities as are safe, adequate, efficient, and reasonable."<sup>4</sup>

Ker-Seva Ltd. (Ker-Seva) initiated this proceeding against the City of Frisco.<sup>5</sup> The property that has yet to receive service is located in the City of Frisco's certificated service area but outside of the City of Frisco's city limits. Ker-Seva requests that the Commission order the

<sup>1</sup> See Tex. Water Code § 13.002(19) (defining "retail public utility" as "any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.").

<sup>2</sup> See Tex. Water Code § 13.002(23) (defining "water and sewer utility" as "any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public . . .").

<sup>3</sup> Tex. Water Code § 13.250(a).

<sup>4</sup> Tex. Water Code § 13.139(a).

<sup>5</sup> Ker-Seva has subsequently amended its complaint in order to add new parties to this proceeding. According to the amended complaint, these new parties now own the property that has yet to receive service.

(3)

City of Frisco to provide water and sewer service to this property.<sup>6</sup> Ker-Seva asserts that the City of Frisco refuses to provide such service even though the Texas Water Code requires “any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.”<sup>7</sup>

In response, the City of Frisco asserts that the Commission does not have jurisdiction over this proceeding. Additionally, the City of Frisco asserts that Ker-Seva has not complied with applicable ordinances regarding the procurement of water and sewer service.<sup>8</sup> Specifically, the City of Frisco asserts that Ker-Seva must pay the cost to extend water and sewer lines to its property prior to receiving water and sewer service from the City of Frisco.<sup>9</sup> According to the City of Frisco, Ker-Seva is not a “qualified service applicant,”<sup>10</sup> as defined by the Commission’s substantive rules. Relatedly, the City of Frisco does not have to provide service unless Ker-Seva complies with all of the applicable ordinances regarding the procurement of water and sewer service.<sup>11</sup>

## **II. Staff’s List of Issues**

### **a. Preliminary Issues**

“Every retail public utility that possesses or is required to possess a certificate of convenience and necessity . . . shall furnish the service, instrumentalities, and facilities as are safe,

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<sup>6</sup> See *Complaint of Ker-Seva Ltd. against the City of Frisco*, Docket No. 45870, Ker-Seva Complaint at 1-2 (Apr. 19, 2016).

<sup>7</sup> Tex. Water Code § 13.250(a).

<sup>8</sup> Docket No. 45870, City of Frisco Motion to Dismiss and Response at 2 (May 11, 2016).

<sup>9</sup> *Id.* at 4.

<sup>10</sup> A “qualified service applicant” is defined as “an applicant who has met all of the retail public utility’s requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service . . . .” 16 Tex. Admin. Code § 24.85(a). A “retail public utility” is defined as: “Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.” 16 Tex. Admin. Code § 24.3(58).

<sup>11</sup> See 16 Tex. Admin. Code § 24.85(b).

adequate, efficient, and reasonable.”<sup>12</sup> “The Commission may enforce these statutory obligations through administrative action or civil suits, including suits for injunctive relief.”<sup>13</sup> However, the Texas Water Code expressly states that it “does not give [the Commission] power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits . . . .”<sup>14</sup>

1. Does the Commission have original jurisdiction to enforce the statutory obligations in the Texas Water Code against the City of Frisco, as the holder of a certificate of convenience and necessity, for service issues in the certificated service area but outside of city limits?

2. If the Commission does not have original jurisdiction over this proceeding, does the City of Frisco’s governing body have original jurisdiction, subject to the appellate jurisdiction of the Commission? If so, has Ker-Seva exhausted its administrative remedies at the city level and perfected its appeal?

#### **b. Other Issues**

Based on the assertions in Ker-Seva’s complaint and amended complaint and the City of Frisco’s response, Staff proposes that the following issues be considered by the Commission in this proceeding:

1. What are the City of Frisco’s ordinances, regulations, rules, and policies regarding new service?

a. In seeking new service, has Ker-Seva complied with all of these ordinances, regulations, rules, and policies, thus making it a “qualified service applicant” under the Commission’s rules?<sup>15</sup>

b. If not, what ordinances, regulations, rules, and policies must Ker-Seva comply with in order to receive service from the City of Frisco?

2. Do the City of Frisco’s ordinances, regulations, rules, and policies prohibit the

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<sup>12</sup> Tex. Water Code § 13.139(a).

<sup>13</sup> *Bexar Metropolitan Water Dist. v. Texas Comm’n on Environmental Quality*, 185 S.W. 3d 546, 553 (Tex. App.—Austin 2006, pet. denied).

<sup>14</sup> Tex. Water Code § 13.042(f).

<sup>15</sup> See 16. Tex. Admin. Code § 24.85(a) (defining “qualified service applicant”).

property in question from receiving service from pre-existing infrastructure that is adjacent to the property (i.e. the pre-existing infrastructure that serves Lot 2)?

a. If not, is there any constraint (e.g. engineering or capacity) that precludes the property in question from receiving service from the pre-existing infrastructure that is adjacent to the property?

b. What are the City of Frisco's prior practices with regard to the use of pre-existing infrastructure to provide new service?

### **III. Conclusion**

Staff requests that the Commissioner consider in this proceeding the issues identified above.

Date: July 1, 2016

Respectfully Submitted,

#### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

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**P.U.C. DOCKET NO. 45870**  
**SOAH DOCKET NO. 473-16-4619.WS**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on July 1, 2016,  
in accordance with 16 TAC § 22.74.

A handwritten signature in black ink, appearing to be 'S' followed by a long horizontal stroke.

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Sam Chang