



Control Number: 45870



Item Number: 15

Addendum StartPage: 0

SOAH DOCKET NO. 473-16-4619.WS  
PUC DOCKET NO. 45870

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

§  
§

BEFORE THE STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

2016 JUL -1 11:13  
FILING CLERK

**CITY OF FRISCO'S LIST OF ISSUES AND  
NOTICE OF APPEARANCE**

COMES NOW the City of Frisco ("City") and files this List of Issues pursuant to the Order of Referral filed on June 14, 2016, and Notice of Appearance in this docket. In support thereof, the City shows the following:

**I. Background**

On April 19, 2016, Ker-Seva Ltd. ("Complainant") filed a complaint ("Complaint") against the City pursuant to PUC Proc. R. 22.242. The City believes the Public Utility Commission of Texas ("PUC") lacks jurisdiction over the complaint pursuant to PUC Proc. R. 22.242. Notwithstanding the PUC's lack of jurisdiction, the City strongly denies the allegations in the Complaint. The property that is the subject of the Complaint is located within the certificate of convenience and necessity held by the City. In order to received utility service from the City, the City requires certain conditions be met prior to receiving water and/or sewer service. Complainant did not meet those conditions. Complainant is not a consumer and not a quailed applicant for service from the City.

On June 14, 2016, an order was entered setting a deadline of July 1, 2016, for filing a list of issues. The Order of Referral clearly and unambiguously listed only Ker-Seva Ltd. as the subject of the complaint. On June 17, 2016, two additional parties, ADC West Ridge Villas, LP and Center for Housing Resources, Inc., sought to presumably join in the complaint. However, the City has not had the opportunity to present any argument or evidence to the PUC regarding the inapplicability of the complaint to the two additional parties. As such, the misrepresentations

15

asserted by ADC West Ridge Villas, LP and Center for Housing Resources, Inc. should not be confused with the issues in this case alleged by the Complainant. The Complaint concerns only one entity that has not qualified for service from the City. However, it should likewise be noted that neither ADC West Ridge Villas, LP nor Center for Housing Resources, Inc. qualify for service from the City.

## **II. Notice of Appearance**

Arturo D. Rodriguez, Jr., pursuant to PUC Proc. R. 22.101(a) hereby enters an appearance as counsel on behalf of the City in this docket. Accordingly, documents filed in this case, orders, service, and correspondence to the City of Frisco should be directed to:

Arturo D. Rodriguez, Jr.  
Russell & Rodriguez, LLP  
1633 Williams Drive, Suite 200  
Georgetown, Texas 78628  
(512) 930-1317  
(866) 929-1641 (Fax)  
Email: arodriguez@txadminlaw.com

## **III. List of Issues**

### **A. THRESHHOLD LEGAL ISSUES:**

The City proposes the following list of threshold jurisdictional issues which must be briefed and decided before other issues are heard in this docket. Said issues are as follows:

1. Does the PUC have jurisdiction over a water/sewer complaint filed pursuant to PUC Proc. R. 22.242?
2. Is the City of Frisco an electric utility or telecommunications utility subject to PUC Proc. R. 22.24?
3. Is Ker-Seva Ltd. an “affected person” as defined by PURA § 11.003?
4. Does the PUC have jurisdiction over this matter as Ker-Seva Ltd. is no longer an “affected person”?

The City proposes the following list of other threshold issues which must be briefed and decided before other issues are heard in this docket, if the Commission finds it has jurisdiction to hear the Complaint over City's objections. Said issues are as follows:

5. Is Ker-Seva Ltd. a "consumer" for which the City of Frisco is obligated under its CCN to provide continuous and adequate service pursuant to Tex. Water Code § 13.250?
6. Is Ker-Seva Ltd. a "qualified applicant for service" from the City of Frisco as required by PUC Subst. R. 24.114?
7. Does the City of Frisco have any obligation to provide continuous and adequate service to a "qualified applicant"?

EXPLANATION:

Relating to questions 1 and 2 above, the Complaint has apparently been referred pursuant to PUC Proc. R. 22.242. However, said rule is applicable only to complaints against any "electric utility or telecommunications utility." In order to afford the City its due process rights, it is imperative that the PUC establish if a complaint under PUC Proc. R. 22.242 is applicable. If the City is neither an electric utility or telecommunications utility, then the complaint pursuant to PUC Proc. R. 22.242 should be dismissed.

Relating to questions 3 and 4 above, the Complainant must be an "affected person" to avail itself of the protections afforded by PUC Proc. R. 22.242. A determination of whether Complainant is an affected person and, if so, is it qualified for protection pursuant to PUC rules must be determined. Complainant is not a public utility, electric cooperative, a person whose utility service or rates are affected by a proceeding before the PUC, a person who is a competitor or wants to be a competitor as defined by PURA § 11.003. As such, Complainant may not avail itself of PUC Proc. R. 22.242. Any exception afforded to Complainant would clearly deprive the City of its due process rights.

Relating to questions 5 through 7, Complainant alleges that it has been denied continuous and adequate service pursuant to Tex. Water Code § 13.250. However, said section is applicable to only the provision of continuous and adequate service to “every *consumer* within its certified area” (emphasis added). By its own admission, Ker-Seva Ltd. is not a consumer. Ker-Seva Ltd. does not even own the property from which it alleges violations. Thus, the Commission must first determine if Ker-Seva Ltd. has standing to allege violations of Tex. Water Code § 13.250 when it is not a consumer and does not own the property for which it makes a complaint.

B. OTHER NON-THRESHOLD ISSUES

8. When a service request is received, but is not a completed service application, does PUC Subst. R. 24.85 apply?
9. If the threshold legal issues are not resolved in favor of Frisco, can the PUC enforce any provision of PUC Subst. R. 24.85 when the applicant is not a qualified applicant for service?

C. ISSUES NOT TO BE ADDRESSED

As explained below, the City proposes the following list issues not be addressed in this docket:

10. Any complaints alleged by ADC West Ridge Villas, LP.
11. Any complaints alleged by Center for Housing Resources, Inc.

EXPLANATION:

Regarding questions 10 and 11 above, the Complaint and Order of Referral clearly refer only to allegations made by Complainant. Complainant now intends to join two additional parties, ADC West Ridge Villas, LP and Center for Housing Resources, Inc.. There has been no opportunity for the City to provide factual information to refute the misrepresentations made by ADC West Ridge Villas, LP and Center for Housing Resources, Inc. The City can demonstrate

that neither party is an affected person and should not be afforded a hearing pursuant to PUC Proc. R. 22.242.

However, in the alternative, if the PUC does find that a complaint pursuant to PUC Proc. R. 22.242 can proceed and include ADC West Ridge Villas, LP and Center for Housing Resources, Inc. as complainants the same issues and/or questions applicable to Ker-Seva, Ltd. should be issues and/or questions applicable to ADC West Ridge Villas, LP and Center for Housing Resources, Inc.

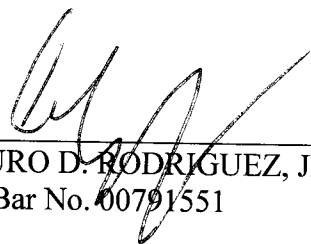
#### **IV. Conclusion and Prayer**

The City respectfully requests the Commission:

- (1) Issue an order that sets a reasonable briefing schedule for the jurisdictional threshold issues identified herein.
- (2) Dismiss the Complaint for lack of jurisdiction after consideration of the jurisdictional threshold issues.
- (3) Alternatively, if the jurisdictional issues are denied, issue an order setting a briefing schedule for the other threshold issues.
- (4) Grant the City all other and further relief to which it is justly entitled.

Respectfully submitted,

**Russell & Rodriguez, L.L.P.**  
1633 Williams Drive, Building 2, Suite 200  
Georgetown, Texas 78628  
(512) 930-1317  
(866) 929-1641 (Fax)



---

ARTURO D. RODRIGUEZ, JR.  
State Bar No. 00791551

**ATTORNEY FOR THE CITY OF FRISCO**

## CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of July, 2016, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel of record:

State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701  
(512) 475-4993  
(512) 322-2061 Fax

Mr. Sam Chang  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, Texas  
(512) 936-7261  
(512) 936-7268 Fax

Ms. Mallory Beck  
Jackson Walker, LLP  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
(512) 236-2000  
(512) 236-2002 Fax

  
\_\_\_\_\_  
ARTURO D. RODRIGUEZ, JR.