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

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**FORMAL COMPLAINT OF KER-SEVA
LTD., ADC WEST RIDGE VILLAS, L.P.,
AND CENTER FOR HOUSING
RESOURCES, INC. AGAINST THE
CITY OF FRISCO, TEXAS**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
FILING CLERK
PUBLIC UTILITY COMMISSION
OF TEXAS**

COMPLAINANTS' RESPONSE TO ORDER OF REFERRAL

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Complainants Ker-Seva Ltd., ADC West Ridge Villas, L.P., and Center for Housing Resources, Inc. (collectively, "Complainants"), and file this Response to Order of Referral, and would respectfully show as follows:

INTRODUCTION

Complainants have been denied water and sewer service by the City of Frisco, Texas ("Frisco") in violation of Texas Water Code §§ 13.250 and 13.254 and 16 Texas Administrative Code §§ 24.85 and 24.114 to the approximately 4-acre Lot 2 with the address of 9331 Westridge Boulevard ("Lot 2"). Lot 2 is part of an approximately 8.5 acre parcel which was formerly owned entirely by Complainant Ker-Seva Ltd. (the "Property"). Lot 1 with the address of 9421 Westridge Boulevard is also part of the Property and is owned by Complainant Ker-Seva Ltd. which recently sold Lot 2 to Complainant ADC West Ridge Villas, L.P. A private school is located on Lot 1 which receives water and sewer service from the City of McKinney through facilities constructed by Frisco and paid for by a former owner of the Property. As part of the development of the private school, the former owner of the Property, Frisco, and the City of McKinney, Texas, entered into a letter agreement authorizing McKinney to use Frisco's facilities to provide water and sewer service to the school.

As part of this Formal Complaint, Frisco initially denied Complainant Ker-Seva Ltd. a single water meter and sewer connection for Lot 2 in spite of the fact that it allows McKinney to provide water and sewer service to Lot 1 through the existing facilities. Complainant Ker-Seva Ltd. made the request for service in order to initiate the process of obtaining service for the current owner of Lot 2 – ADC West Ridge Villas, L.P., which planned to construct an apartment complex for affordable housing.

More recently, Frisco denied Complainant ADC West Ridge Villas, L.P.’s request for water and sewer service to the proposed development of the affordable housing apartment complex on Lot 2 asserting additional water and sewer utility lines need to be constructed. Frisco then denied ADC West Ridge Villas, L.P.’s construction contractors’ request for temporary construction water service for Lot 2 threatening to have anyone who connected a Frisco meter to a Frisco fire hydrant located adjacent to Lot 2 arrested. Frisco further stated that no water service would be provided to Lot 2 until the “legal issues” – presumably this PUC Formal Complaint – were settled.

Frisco’s refusal to provide service in spite of the existence of water and sewer lines and other facilities, including water and sewer lines directly adjacent to Lot 2 and owned by Frisco, constitutes a denial of service in violation of the Texas Water Code and PUC rules. As this matter has now been referred to the State Office of Administrative Hearings (“SOAH”), Complainants identify herein the issues to be addressed by the SOAH judges.

ISSUES

The Order of Referral requested that the parties identify issues to be addressed and, if appropriate, to identify (1) issues which should not be addressed; and (2) threshold legal and/or policy issues which should be briefed for purposes of a preliminary order. Complainants identify the issues to be addressed in subsection A below and explain the reasoning why the PUC’s

jurisdiction neither needs to be addressed at SOAH nor constitutes a threshold legal and/or policy issue which should be briefed prior to the preliminary order. Complainants do not believe there are any issues which should not be addressed or which should be addressed through additional briefing prior to the preliminary order.

A. Issues to Be Addressed

The only issues to be addressed in the SOAH proceeding in this case are fact issues. The following are disputed fact issues which should be addressed:

- Whether Complainants are “qualified applicants” for water and sewer service pursuant to 16 Tex. Admin. Code § 24.85(a);
- Whether Complainants’ request for service requires a tap but not line extensions, construction, or new facilities thereby requiring Frisco to provide service within five working days pursuant to 16 Tex. Admin. Code § 24.85(a)(4);
- Whether, if construction is required by Complainants, Frisco has provided a written explanation of the construction required and an expected date of service as required by 16 Tex. Admin. Code § 24.85(a)(5);
- Whether Frisco’s consideration of the type of development proposed by Complainants constitutes discrimination against Complainants and a denial of service due to the type of development proposed;
- Whether Frisco’s demand to Complainants to construct water and sewer utility lines is unreasonable to the extent that it constitutes a denial of service to a consumer within its certified area pursuant to Tex. Water Code § 13.250(a) and a failure to provide continuous and adequate service required by Tex. Water Code §§ 13.250 and 13.254;
- Whether Frisco’s demand to Complainants to construct water and sewer utility lines constitutes a denial of service to a consumer within its certified area pursuant to Tex. Water Code § 13.250(a) and a failure to provide continuous and adequate service required by Tex. Water Code §§ 13.250 and 13.254 either because (1) Frisco infrastructure exists so that line extensions are not necessary; or (2) Frisco’s designated location of the line extensions were designed in a manner to make construction of those lines impossible.

B. Issues Which Should Not be Addressed and No Threshold Legal/Policy Issues

In addition to the fact issues identified above which should be addressed at SOAH, the PUC’s jurisdiction over this matter should not be addressed at SOAH. The PUC has jurisdiction

over these matters. Thus, this is an issue that need not be addressed either in SOAH or through briefing prior to the preliminary order. Rather, the PUC should issue a preliminary order, without additional briefing, establishing its jurisdiction and referring the issues identified above to SOAH.

The PUC's jurisdiction over these matters is clear: Chapter 13, Texas Water Code, was implemented to "establish a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities."¹ The PUC is authorized to issue CCNs.² A retail public utility that possesses a CCN is required to "serve every consumer within its certified area" and to provide "continuous and adequate service within the area or areas."³ The only area in which Chapter 13 restricts the PUC's jurisdiction relates to the regulation of rates, operations, and services within the corporate boundaries of a municipality.⁴ There is no dispute that the area where Lot 2 is located is not within Frisco's corporate boundaries but instead is within Frisco's extraterritorial jurisdiction. Therefore, the PUC has jurisdiction over Frisco's CCNs and compliance therewith in this area.

The PUC's rules further emphasize the duty of a CCN holder and the PUC's authority over the CCN holder: "Any retail public utility which possesses . . . [a CCN] . . . must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area"⁵ After notice and a hearing, the

¹ Tex. Water Code § 13.001.

² *Id.* § 13.241, *et seq.*

³ *Id.* § 13.250.

⁴ *Id.* § 13.042(a).

⁵ 16 Tex. Admin. Code § 24.114(a) ("TAC").

PUC may require a retail public utility to implement financial, managerial, and technical practices to ensure continuous and adequate service is provided to any areas.⁶

Because the PUC has clear jurisdiction over the matters raised by this Complaint, there is no need for the PUC's jurisdiction to be addressed by SOAH and no need for further briefing of the PUC's jurisdiction prior to the preliminary order.

PRAYER

Complainants respectfully request that the PUC order the City of Frisco to comply with its statutory duty as the CCN-holder to provide continuous and adequate service to Lot 2. Complainants request that the PUC require the City of Frisco to provide continuous and adequate water and sewer service to Complainants' property located within Frisco's water and sewer CCNs and Frisco's ETJ in accordance with the statutory and regulatory requirements without the construction of additional infrastructure, or, in the alternative if the PUC finds additional infrastructure is required, to order Frisco to agree to a reasonable location for such additional infrastructure and an estimated cost and timeline for service.

Respectfully submitted,

JACKSON WALKER L.L.P.

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⁶ 16 TAC § 24.114(b).

CERTIFICATE OF SERVICE


I hereby certify that the above and foregoing document was served as shown below on
this 1st day of July 2016:

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