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

BEFORE THE STATE OFFICE OF
PUBLIC UTILITY COMMISSION
ADMINISTRATIVE HEARINGS
FILING CLERK

CITY OF FRISCO'S MOTION FOR A PROTECTIVE ORDER

COMES NOW the City of Frisco ("City") and files this Motion for Protective Order pursuant to P.U.C. Proc. R. 22.142(a). 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. 22.242.¹ The City believes the Public Utility Commission of Texas ("PUC") lacks jurisdiction over the complaint. 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.

On June 30, 2016, Ker-Seva Ltd., ADC West Ridge Villas, LP and Center for Housing Resources, Inc. jointly served Requests for Information and Requests for Admissions on the City.² On July 1, 2016, the City, the Commission Staff ("Staff") of the PUC and Ker-Seva Ltd., ADC

¹ The City incorporates the filings in this proceeding by reference to their corresponding PUC Filing Control and/or Item Numbers (e.g., "Item No. 1"). See Tex. R. Civ. P. 58. Unless otherwise noted, all docket references herein are to PUC Docket No. 45870, In Re Complaint of Ker Seva, Ltd. against the City of Frisco.

² See Item No. 12.

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West Ridge Villas, LP and Center for Housing Resources, Inc.³ (“Ker-Seva”) all filed their list of issues relating to the germane issues in this proceeding.⁴

II. ORDER OF PROTECTION REQUIRED

The City and the Staff both filed lists of issues relating to the PUC’s jurisdiction over the Complaint. Both parties question the ability of PUC to hear the Complaint. Commission Staff asks that if the PUC does have jurisdiction whether its jurisdiction is original or appellate in nature.⁵ The City asserts that the PUC does not have jurisdiction as the Complaint was filed pursuant to PUC Proc. R. 22.24 which is inapplicable to Complainant, Complainant is not an affected person, and Complainant is not a “consumer” or “qualified applicant” for service from the City.

In the Order of Referral, the PUC does not declare it has jurisdiction over the Complaint. The PUC states that “the Commission will issue and provide to SOAH a preliminary order which includes a list of issues and areas that must be addressed in this proceeding.”⁶ Thus, at this point, the PUC has not indicated if it believes it has jurisdiction over the Complaint. Further, even if it decides it has jurisdiction, the PUC has not determined what issues are relevant to this proceeding.

Because the PUC’s jurisdiction is not established and a Preliminary Order of issues to be considered by the State Office of Administrative Hearings has not been issued, the submission of discovery and the obligation to respond places an undue burden on the City. The affidavit of the City’s Deputy City Manager, Henry J. Hill, clearly states that the production of discovery will

³ The City continues to assert that ADC West Ridge Villas, LP and Center for Housing Resources, Inc. are not parties to this proceeding. Frisco has not been informed of same by the PUC and the Order of Referral does not list them as complainants. See Item No. 10.

⁴ Item Nos. 13, 15, and 16.

⁵ Item No. 13.

⁶ Item No. 10.

place an undue burden on the City.⁷ The necessity to use public resources on the Complaint when the scope of the PUC's inquiry, if any, is still undefined is wasteful, unduly burdensome, and patently prejudicial to the City. As such, the City requests that discovery not be allowed or abated in this matter until a Preliminary Order and a procedural schedule has been issued in this case.

Further, the PUC has not granted any interventions for either ADC West Ridge Villas, LP or Center for Housing Resources, Inc. Pursuant to PUC Proc. R. 22.141(a), only "parties" may obtain discovery. As neither ADC West Ridge Villas, LP nor Center for Housing Resources, Inc. are parties to this proceeding, the City should be protected from discovery requests propounded by ADC West Ridge Villas, LP and/or Center for Housing Resources, Inc.

III. Conclusion and Prayer

The City respectfully requests:

- (1) An order of protection protecting the City from the obligation to respond to any discovery responses until a Preliminary Order and a procedural schedule has been issued in this case.
- (2) An order of protection protecting the City from responding to any discovery request of ADC West Ridge Villas, LP.
- (3) An order of protection protecting the City from responding to any discovery request of Center for Housing Resources, Inc.
- (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)

⁷ Exhibit A, attached hereto and incorporated herein for all purposes.

Abernathy Roeder Boyd & Hullett, P.C.

Richard Abernathy

State Bar No. 00809500

1700 Redbud Blvd., Suite 300

McKinney, Texas 75069

(214) 544-4000

(214) 544-4040 (Fax)



ARTURO D. RODRIGUEZ, JR.

State Bar No. 00791561

ATTORNEYS FOR THE CITY OF FRISCO

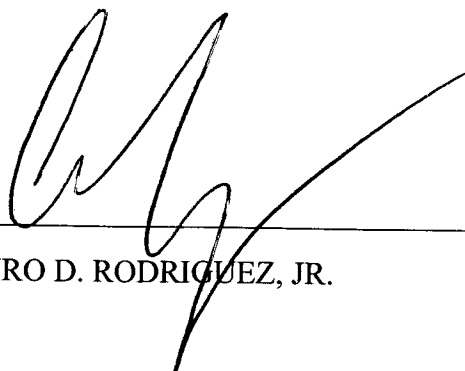
CERTIFICATE OF SERVICE

I hereby certify that on this 11th 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 15th 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

Mr. Leonard Dougal
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000
(512) 236-2002 Fax

A handwritten signature in black ink, appearing to read 'Arturo D. Rodriguez, Jr.', is written over a horizontal line.

ARTURO D. RODRIGUEZ, JR.

**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**

AFFIDAVIT OF HENRY J. HILL

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

BEFORE ME, the undersigned authority, personally appeared Henry J. Hill, known to me to be the person who subscribed her name below, who, being by me first duly sworn did depose on her oath as follows:

1. I am over 18 years of age, have not been convicted of a crime, and I am of sound mind.
2. The City of Frisco, Texas ("City") employs me as Deputy City Manager. I am capable of making this Affidavit, and personally acquainted with the facts herein stated.
3. The City received the complaint of Ker-Seva Ltd. The City asserts that the Public Utility Commission of Texas ("PUC") does not have jurisdiction over the Complaint as explained by the City's legal counsel.
4. The City has received discovery requests from Ker-Seva Ltd., ADC West Ridge Villas, LP and Center for Housing Resources, Inc.
5. The PUC has not listed any issues governing this case or issued a Preliminary Order.
6. Responding to any discovery requests filed by any party when the issues relevant to the proceeding are not established places an undue burden on City staff. City staff will need to be pulled from their daily duties in order to devote time to pulling documents and responding to discovery requests.
7. Further, many of Ker-Seva Ltd., ADC West Ridge Villas, LP and Center for Housing Resources, Inc. discovery requests are not limited in time or scope.
8. We have just received the document request and are evaluating the number of staff time hours it may require. However, it appears it will take a substantial amount of hours to complete. Further, the City will need to expend public funds for legal counsel to review and produce the documents and respond to discovery.

EXHIBIT A

9. The need to produce discovery and expend public funds while the relevant issues in this case are not established places an undue burden on the City, its staff, and the unnecessarily expends public resources.
10. Further affiant sayeth not.

1/12/16

Subscribed to and sworn to before me, the undersigned authority on this the 11th day of July 2016.

Heather Jewell
Notary Public in and for
the State of Texas

