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FORMAL COMPLAINT OF KER-SEVA
LTD. AGAINST THE CITY OF FRISCO,
TEXAS

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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

**COMPLAINANTS' RESPONSE TO THE CITY OF FRISCO'S MOTION FOR A
PROTECTIVE ORDER**

COMES NOW, Ker-Seva, Ltd., ADC West Ridge, L.P.¹ and Center for Housing Resources, Inc. (hereinafter, "Complainants") and file this Response to the City of Frisco's Motion for a Protective Order, pursuant to PUC Procedural Rule 22.78 and would respectfully show as follows:

Ker-Seva, Ltd. filed the Original Complaint under Texas Water Code §§ 13.250 and 13.254 and 16 Texas Administrative Code §§ 22.85 and 24.114 requesting that the Commission order the City of Frisco, Texas ("Frisco"), to provide continuous and adequate water and sewer service to its property located at 9331 Westridge Boulevard (the "Property") on which an affordable-housing complex was planned.² After purchasing the Property, ADC West Ridge, L.P. and Center for Housing Resources, Inc. joined in Ker-Seva Ltd.'s complaint in the Amended Complaint and Second Amended Complaint filed on June 17 and July 1, respectively.³

On June 30, Complainants filed and served their First Set of Requests for Information and Requests for Admission on Frisco. Complainants' requests seek information related to the provision of water and sewer service by Frisco in the area surrounding the Property and seek

¹ It was recently brought to counsel's attention that ADC West Ridge, L.P. has been incorrectly referred to as ADC West Ridge Villas, L.P. throughout this proceeding.

² Complaint (April 19, 2016).

³ Amended Formal Complaint (June 17, 2016); Second Amended Formal Complaint (July 1, 2016). Any pleading may be amended at any time pursuant to 16 Tex. Admin. Code § 22.76. There is no prohibition against adding parties by amending the pleading where such parties are appropriate complainants. *See id.*

information directly related to Frisco's refusal to provide service to the Property. Complainants' requests are targeted to information relevant to the subject matter of this proceeding. After discussing the requests with Frisco, Complainants agreed to narrow the scope of certain requests. In spite of these efforts, Frisco filed a Motion for Protective Order on July 11, 2016.⁴ This response is timely filed pursuant to 16 Tex. Admin. Code §§ 22.78 and 22.4.⁵

In its Motion for Protective Order, Frisco contends that discovery is premature because the PUC has not issued its Preliminary Order defining the issues to be addressed at the State Office of Administrative Hearings or confirmed its jurisdiction in this case. Frisco attaches an affidavit from a Frisco employee attesting that responding to the requests prior to the issuance of a preliminary order would be an "undue burden" for Frisco. As Complainants explained in their Response to Order of Referral, the PUC's jurisdiction is clear. And, while the specific issues will be clarified by the Preliminary Order, Complainants' requests are targeted to the subject matter of this case – Frisco's refusal to provide water and sewer service to the Property. The targeted requests, which were further narrowed in cooperation with Frisco, are not unduly burdensome or overly broad in scope. Furthermore, discovery is intended to be broad and can encompass anything "relevant to the subject matter in the proceeding."⁶ Therefore, there is no need to await the Preliminary Order before Frisco responds to the discovery requested in this case. Further, the PUC's procedural rules allow for discovery at any time. The mere fact that

⁴ Frisco's Motion for Protective Order (July 11, 2016). It is notable that Frisco has already refused to provide information in response to public information act requests on the grounds that it is involved in "litigation" – this PUC proceeding – but now refuses to provide the same information through discovery in this proceeding on the grounds that this proceeding is illegitimate. This is a clear attempt by Frisco to continue to delay Complainants' affordable-housing project.

⁵ 16 Tex. Admin. Code §§ 22.78 and 22.4 ("TAC").

⁶ 16 TAC § 22.141(a).

the discovery was propounded before the Preliminary Order does not make the discovery “unduly burdensome” to Frisco.

Frisco further seeks protection from requests from ADC West Ridge, L.P. and Center for Housing Resources, Inc. alleging that they are not proper parties to this matter. ADC West Ridge, L.P. and Center for Housing Resources, Inc. are complainants as defined in the PUC’s rules and are necessary parties to this proceeding and intervention is not required.⁷ After purchasing the Property, it was proper to amend the complaint and incorporate the new property owners as complainants. Regardless, Ker-Seva, Ltd., the original complainant in this case, propounded the same discovery requests as the other complainants, rendering Frisco’s request for a protective order for this reason moot.

WHEREFORE, PREMISES CONSIDERED, Complainants respectfully request that Frisco’s Motion for Protective Order be denied.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: 

Leonhard Dougal - State Bar No. 06031400

Mallory Beck - State Bar No. 24073899

100 Congress, Suite 1100

Austin, Texas 78701

E: ldougal@jw.com

T: (512) 236 2233

F: (512) 391-2112

ATTORNEYS FOR COMPLAINANTS
KER-SEVA, LTD., ADC WEST RIDGE L.P.,
AND CENTER FOR HOUSING
RESOURCES, INC.

⁷ 16 TAC §§ 22.2 and 22.104(a). Out of an abundance of caution, ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc. have filed a Motion to Intervene. *See* Motion to Intervene (July 13, 2016).

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was served as shown below on
this 5th day of July 2016:

Art Rodriguez
Russell & Rodriguez, L.L.P.
1633 Williams Dr., Bldg. 2, Suite 200
Georgetown, Texas 78268
arodriguez@txadminlaw.com
Attorney for City of Frisco

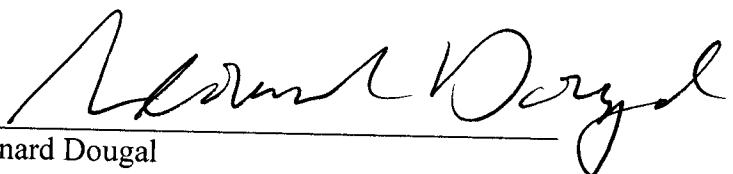
Via email and U.S. First Class Mail

Sam Chang
Attorney – Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
sam.change@puc.texas.gov
Attorney for Public Utility Commission of Texas

Via email and U.S. First Class Mail

State Office of Administrative Hearings
300 West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061- Fax

Via U.S. First Class Mail



Leonard Dougal