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PUBLIC UTILITY COMMISSION  
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FORMAL COMPLAINT OF KER-SEVA  
LTD. AGAINST THE CITY OF FRISCO  
RFI, TEXAS

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BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS

**KER-SEVA, LTD., ADC WEST RIDGE, L.P. AND CENTER FOR HOUSING  
RESOURCES, INC.'S RESPONSE TO MOTION BY THE CITY OF FRISCO FOR  
REMOVAL OF KER-SEVA, LTD. AS A PARTY**

NOW COMES, Complainants Ker-Seva, Ltd., ADC West Ridge, L.P., and Center for Housing Resources, Inc. ("Complainants") and file this Response to Motion by the City of Frisco for Removal of Ker-Seva, Ltd. as a Party, and would respectfully show as follows:

**I. Background**

At the time of filing of the initial complaint on April 19, 2016, Ker-Seva Ltd. owned approximately 8.5 acres of land in Collin County, Texas within the City of Frisco's (the "City" or "Frisco") water and sewer certificates of convenience and necessity ("CCNs") and extraterritorial jurisdiction ("ETJ"). The property was made up of three lots, Lots 1, 2 and 3. The 8.5 acre property is subject to an Annexation Agreement as well as a Development Agreement with the City. Those agreements include requirements related to the provision of utility services to the property. Ker-Seva, Ltd. developed Lot 1 and constructed certain water and sewer utility lines required by Frisco which were stubbed out for the future development of the remainder of the property. In its April 19, 2016 complaint, Ker-Seva Ltd. asserted that the City refused to provide sewer and water utility services to Lot 2. After filing the complaint, and with uncertainties surrounding the provision of utility services to Lot 2, Ker-Seva Ltd. sold Lot 2 to Complainant ADC West Ridge, L.P., whose general partner is a wholly-owned subsidiary of Complainant Center for Housing Resources, Inc. Amended complaints were filed on June 17,

2016, and July 1, 2016, to, among other reasons, include Complainants ADC West Ridge, L.P., and Center for Housing Resources, Inc. as parties.

On July 29, 2016, a prehearing conference was convened. Ker Seva Ltd., ADC West Ridge, L.P., and Center for Housing Resources, Inc. were admitted as parties.<sup>1</sup>

## **II. Argument**

On October 31, 2016, over six months after filing the original complaint, over four months after being made aware of the status of the property referenced in the original complaint, and three months after the preliminary hearing wherein appearances were made and parties admitted, the City of Frisco, after submitting over one hundred requests for information and requests for admission against Complainants, now seeks removal of Ker-Seva, Ltd. as a party. Frisco argues that Ker-Seva Ltd. does not meet the requirements found in PUC Rule 22.103 for intervenors to join already existing proceedings. Ker Seva Ltd., however, is not an intervenor.

The PUC recognizes four different types of parties (1) applicants or complainants, (2) respondents, (3) intervenors, and (4) commission staff.<sup>2</sup> An applicant is defined as “a person, including commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.”<sup>3</sup> A respondent is “a person under the commission’s jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.”<sup>4</sup> An intervenor is “a person other than the applicant, respondent, or the commission staff representing the public interest, who is permitted by this chapter or by ruling of the presiding officer to become a party

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<sup>1</sup> SOAH Order No. 3 (Aug. 2, 2016).

<sup>2</sup> 16 Tex. Admin. Code § 22.102(a) (“TAC”).

<sup>3</sup> 16 TAC § 22.2(5).

<sup>4</sup> *Id.* § 22.2(40).

to a proceeding.”<sup>5</sup> Ker Seva Ltd. is an applicant seeking action from PUC, and is an already admitted party in this proceeding. Ker-Seva, Ltd. is not subject to Rule 22.103 pertaining to intervenors. Frisco’s Motion must be denied for this reason alone.

Moreover, Ker-Seva, Ltd. has a “justiciable interest which may be adversely affected by the outcome of this proceeding.” Texas courts, in examining whether a party seeking to intervene has a “justiciable interest” have held that such an interest exists “when his interests will be affected by the litigation.”<sup>6</sup> A “justiciable interest” is one that is “more than a mere contingent or remote interest.”<sup>7</sup> Ker-Seva Ltd.’s interest in the outcome is neither “contingent” or “remote,” as a finding by PUC that Ker-Seva Ltd. was denied utility services to its property by Frisco will have a direct impact on Ker-Seva Ltd. and its options to pursue any available remedies.

### **III. Prayer**

Ker-Seva Ltd. is an already admitted party in this proceeding. In its motion seeking to dismiss Ker-Seva Ltd. as a party, Frisco improperly considers Ker-Seva Ltd. to be an intervenor and cites to Rule 22.103. Frisco’s motion is deficient and without merit. Complainants respectfully request that the ALJs issue an order denying the City’s Motion for Removal of Ker-Seva Ltd. as a Party.

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<sup>5</sup> *Id.* § 22.2(25) (emphasis added).

<sup>6</sup> *In re Estate of Webb*, 266 S.W.3d 544, 548 (Tex.App.—Fort Worth 2008, pet. denied).

<sup>7</sup> *Id.*

Respectfully submitted,

JACKSON WALKER L.L.P.

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## **CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing document was served as shown below on  
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