



Control Number: 45870



Item Number: 7

Addendum StartPage: 0

RECEIVED

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

§
§

PUBLIC UTILITY
COMMISSION OF TEXAS

2016 MAY 17 AM 11:22
PUBLIC UTILITY COMMISSION
FILING CLERK

KER-SEVA LTD.'S RESPONSE TO CITY OF FRISCO'S MOTION TO DISMISS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Complainant Ker-Seva Ltd. ("Complainant"), and files this Response to the City of Frisco's Motion to Dismiss pursuant to PUC Procedural Rule 22.77, and would respectfully show as follows:

INTRODUCTION

Complainant has sought retail water and sewer service from the City of Frisco, Texas ("City" or "Frisco") for its property located within Frisco's extra-territorial jurisdiction on numerous occasions but has been repeatedly denied service. Complainant contends Frisco's actions amount to a failure to provide continuous and adequate service within its water certificate of convenience and necessity ("CCN") No. 11772 and sewer CCN No. 20591. Complainant filed the Complaint after completing the informal complaint process and upon the recommendation of the Consumer Protection Division.¹

Frisco raises several, meritless issues with the Complaint in its Motion to Dismiss ("Motion"). The PUC has jurisdiction over the Complaint pursuant to Texas Water Code §§ 13.250 and 13.254. The Complaint properly states a claim against Frisco for failing to comply with its duty to provide continuous and adequate service. The Complaint was properly filed pursuant to the PUC's procedural rules. Because the PUC has jurisdiction over this Complaint,

¹ See Exhibit "A" hereto.

the Complaint properly states a claim, and there was no procedural error in the filing of the Complaint, Frisco's Motion should be denied.

ARGUMENTS AND AUTHORITIES

A. PUC's Jurisdiction over the Complaint

The PUC has jurisdiction over CCNs, and the Texas Water Code requires "any retail public utility that possesses . . . [a CCN] shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas."² The PUC may revoke or amend a CCN if the PUC finds that the CCN holder has "failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate."³ The PUC's rules further emphasize this duty and the PUC's authority: "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"⁴ After notice and a hearing, the 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.⁵

Finally, the PUC's rules require that "every retail public utility shall serve each qualified service applicant within its certificated area as soon as practical after receiving a completed application."⁶ Where service requires a tap but not line extensions, construction, or new facilities, service should be connected within five working days.⁷ Where construction is required, the retail public utility is required to provide a written explanation of the construction

² Tex. Water Code § 13.250(a).

³ Tex. Water Code § 13.254(a)(1).

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

⁵ 16 TAC § 24.114(b).

⁶ 16 TAC § 24.85(a).

⁷ 16 TAC § 24.85(a)(4).

required and an expected date of service.⁸ When failure to provide service within certain time frames constitutes a refusal to provide service, the PUC may assess administrative penalties, revoke the CCN, or grant a CCN to another retail public utility to serve the applicant.⁹

Frisco insists that these substantive rules do not apply to it because it is a municipal corporation excluded from the definition of a water and sewer utility. Subchapter E, Chapter 24 of the PUC's rules is applicable only to water and sewer utilities *unless otherwise noted*.¹⁰ The rules cited herein apply to "retail public utilities" which include municipal corporations.¹¹

Frisco contends that the CPD found that these rules do not apply to it and reference a January 27, 2016, letter in which the CPD indicated it did not believe there were any violations of "Substantive Rules" that would support PUC action. However, after additional information was submitted to the CPD, it concluded on February 12, 2016, that Frisco "may be delaying the process which would allow you to obtain water service" and recommended that the formal Complaint be filed.

Finally, Frisco contends that Complainant is not a "qualified applicant" for service because infrastructure does not exist to serve the property. First, there is infrastructure which belongs to Frisco stubbed out to the property. Second, as described above, even if no such infrastructure existed, Frisco is required to provide a written explanation of the construction required and an expected service date.¹² Moreover, Complainant is not refusing to construct any additional required infrastructure. Rather, Frisco is intentionally delaying the process and obstructing Complainant's efforts to clarify exactly what is needed and how it can be constructed in a manner that is physically possible, efficient, and reasonable, and also in compliance with

⁸ 16 TAC § 24.85(a)(5).

⁹ 16 TAC § 24.85(b).

¹⁰ 16 TAC § 24.80.

¹¹ Tex. Water Code § 13.002(19); 16 TAC § 24.3(58).

¹² 16 TAC § 24.85(a)(5).

Frisco's requirements. The PUC has jurisdiction over this Complaint and should exercise that jurisdiction to require Frisco to meet its statutory obligations to provide continuous and adequate service to the property.

B. The Complaint Adequately States a Claim for Relief

As specified in the Complaint under the section "Relief Requested," the Complaint requests 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 the property. Frisco is using various tactics to delay and obscure its requirements in a manner that effectively refuses to provide service to the property. Because the Complaint adequately states a claim for relief over which the PUC has jurisdiction, the Complaint should not be dismissed.

C. No Procedural Error

Frisco's final issue with the Complaint is that it was filed pursuant to PUC Procedural Rule 22.242. Although the language of Rule 22.242 refers to electric and telecommunication utilities, the Rule has not been amended since jurisdiction over CCNs was assigned to the PUC, and the PUC has, in practice, permitted complaints against retail public utilities through Procedural Rule 22.242.¹³

PRAYER

Complainant respectfully requests that Frisco's Motion to Dismiss be in all respects denied.

¹³ Proposed rule changes in PUC Docket 45116 will amend the language of Rule 22.242 to apply to "any entity regulated by the [PUC]." See *PUC Rulemaking Proceeding to Chapter 22 – Phase II – Water/Sewer Utilities*, Project No. 45116, Staff Strawman Rule Amendments to Chapter 22 (pending).

Respectfully submitted,

JACKSON WALKER L.L.P.

By: Mallory Beck
Leonard Dougal - State Bar No. 06031400
Mallory Beck - State Bar No. 24073899
100 Congress, Suite 1100
Austin, Texas 78701
E: ldougal@jw.com
E: mbeck@jw.com
T: (512) 236 2233
F: (512) 391-2112

ATTORNEYS FOR COMPLAINANT
KER-SEVA, LTD.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to PUC Rule 24.113(s), the above and foregoing pleading was served to the following, as indicated below, on the 17th day of May 2016:

Diane Callander Wetherbee
Richard M. Abernathy
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
P. O. Box 1210
McKinney, Texas 75069-1210

Via Email
dwetherbee@abernathy-law.com
rabernathy@abernathy-law.com

Sam Chang
Public Utility Commission of Texas
Attorney-Legal Division
1701 North Congress Ave.
P.O. Box 13326 (mailed)
Suite 8-100 (delivered)
Austin, Texas 78711-3326

Via Email
sam.chang@puc.texas.gov

Mallory Beck
Mallory Beck

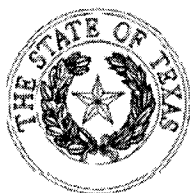
EXHIBIT “A”

Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

2/12/2016

Mr Jastinder Jawanda
Ker-Seva Ltd.
10247 Warren Parkway
Frisco TX 75035

RE: Complaint # CP2016010328

Dear Mr Jawanda:

The Customer Protection Division (CPD) of the Public Utility Commission of Texas (PUC) has received your correspondence regarding the conclusion of your informal complaint with the City of Frisco. In your complaint, you expressed concerns regarding the refusal of service you have experienced with the City of Frisco. CPD's investigation found the City of Frisco may be delaying the process which would allow you to obtain water service based on the additional information you provided and the open records request which was received by the Customer Protection Division; therefore our recommendation is that you take this matter further within the PUC.

Given that CPD has concluded the informal complaint process, you may dispute the issue further by filing a formal complaint through the commission. An informational brochure explaining the formal complaint process is enclosed.

We appreciate the opportunity to assist you. If you have any questions about filing a formal complaint, please feel free to call toll-free at 1-888-782-8477.

Sincerely,

Customer Protection Division
Public Utility Commission of Texas

cc: City of Frisco



Printed on recycled paper

An Equal Opportunity Employer