

Control Number: 46150



Item Number: 141

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SOAH DOCKET NO. 473-17-0685  
PUC DOCKET NO. 46150

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APPLICATION OF PK-RE § BEFORE THE STATE OFFICE  
DEVELOPMENT COMPANY, INC. §  
D/B/A OAK SHORES WATER SYSTEM § OF  
AND UNDINE DEVELOPMENT LLC §  
FOR SALE, TRANSFER, OR MERGER §  
OF FACILITIES AND CERTIFICATE § ADMINISTRATIVE HEARINGS  
RIGHT IN TRAVIS COUNTY §

**SETTLEMENT AGREEMENT**

COMES NOW Undine Texas, LLC ("Undine"), and with the consent of the parties to this proceeding, files this Settlement Agreement.

Respectfully submitted,

LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Facsimile)

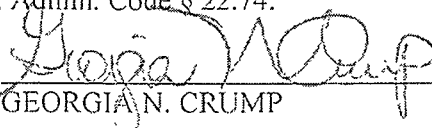
  
\_\_\_\_\_  
GEORGINA N. CRUMP  
State Bar No. 05185500

JAMIE L. MAULDIN  
State Bar No. 24065694

ATTORNEYS FOR UNDINE DEVELOPMENT  
COMPANY, LLC

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on October 30, 2017 in accordance with 16 Tex. Admin. Code § 22.74.

  
\_\_\_\_\_  
GEORGINA N. CRUMP

141

## SETTLEMENT AGREEMENT

This Unanimous Settlement Agreement (“Settlement Agreement”) is entered into by and between Undine Development Company, LLC (“Undine”), PK-RE Development Company, Inc. d/b/a Greenshores Utility Services and d/b/a Oak Shores Water System (“PK-RE”), Cynthia and Scott Smiley, Woods of Greenshores Property Owners Association, Inc., Alexander “Barry” Williams, Greenshores on Lake Austin Property Owners Association, Inc., (collectively, the “Intervenors”), and the Staff of the Public Utility Commission of Texas (“Staff”), all together referred to as the “Signatories” or individually as a “Signatory.”

WHEREAS, on July 11, 2016, PK-RE and Undine filed an application with the Public Utility Commission of Texas (“Commission”) for approval of the sale, transfer, and merger of facilities and certificate rights in Travis County (“STM”); and

WHEREAS, PK-RE and Undine seek Commission approval of a sale and transfer whereby (a) Undine will acquire all of PK-RE’s water and sewer assets, and (b) water and sewer Certificates of Convenience and Necessity (“CCN”) Nos. 12407 and 20948 will transfer from PK-RE to Undine (“STM Application”); and

WHEREAS, the Commission docketed the STM Application as Docket No. 46150;

WHEREAS, on October 13, 2016, the Commission referred Docket No. 46150 to the State Office of Administrative Hearings (“SOAH”) for hearing; and

WHEREAS, Cynthia and Scott Smiley, Woods of Greenshores Property Owners Association, Inc., Greenshores on Lake Austin Property Owners Association, Inc., and the Staff sought intervention and were granted party status in Docket No. 46150; and

WHEREAS, on October 12, 2016, PK-RE filed with the Commission a Statement of Intent to Increase Rates to change utility rates under Water CCN No. 12407 and Sewer CCN No. 20948, in Travis County, Texas (“Rate Application”); and

WHEREAS, on January 18, 2017, Commission Order No. 5 deemed the application and notice sufficient but suspended the rates requested by PK-RE for 265 days from March 19, 2017, to December 9, 2017; and

WHEREAS, the Commission docketed the Rate Application as Docket No. 46333; and

WHEREAS, on January 24, 2017, the Commission referred the Rate Application to SOAH for hearing; and

WHEREAS, Undine, Cynthia and Scott Smiley, Woods of Greenshores Property Owners Association, Inc. (“Woods of Greenshores”), Alexander “Barry” Williams, Greenshores on Lake Austin Property Owners Association, Inc. (“Greenshores on Lake Austin P.O.A.”), and the Staff sought intervention and were granted party status in Docket No. 46333; and

WHEREAS, the Rate Application docket has been indefinitely suspended to allow the parties to undertake settlement discussions; and

WHEREAS, Signatories engaged in settlement discussions in both Docket Nos. 46150 and 46333, and have reached agreement on all issues related to both pending dockets; and

WHEREAS, the Signatories represent diverse interests and the Unanimous Settlement Agreement resolves the issues in Docket No. 46150 and Docket No. 46333 in a manner that the Signatories agree is consistent with the public interest; and

NOW, THEREFORE, in consideration of the mutual agreements and covenants established herein, the Signatories, through their undersigned representatives, agree to the following Settlement Terms as a means of resolving the STM Application and the Rate Application pending before the Commission without the need for additional litigation:

Settlement Terms

1. Within seven (7) days from the effective date of this Settlement Agreement, Intervenor Cynthia and Scott Smiley, Alexander "Barry" Williams, Woods of Greenshores, and Greenshores on Lake Austin P.O.A., shall file a statement of non-opposition to the STM Application in Docket No. 46150 to the acquisition of PK-RE's assets by Undine and the transfer of CCN Nos. 12407 and 20948 to Undine as described in this Unanimous Settlement Agreement and shall thereafter refrain from voicing opposition, either written or verbal, absent a material change in the proposed STM. Staff agrees to support the approval by the Commission of the STM Application.
2. Pursuant to the STM Application, upon approval of same by the Commission and (i) completion of Undine's due diligence review of the PK-RE systems, (ii) the execution of a mutually agreeable definitive document between Undine and PK-RE, and (iii) the satisfaction of customary closing conditions, Undine will acquire all of PK-RE's water and sewer assets for a price not to exceed \$1.8 million. Any capital costs related to PK-RE's water and sewer systems incurred post-close of the STM will not be subject to the terms of this Settlement Agreement. Undine further agrees that said \$1.8 million price less further accumulated depreciation shall be the maximum Undine or any successor in interest shall seek to include as part of the rate base of the utility for assets acquired from PK-RE for any stand-alone rate application including the PK-RE systems. If a future rate case application filed on a consolidated basis results in lower rates for the customers of PK-RE's systems, this limitation on the rate base amount will not apply. Undine will provide notice of the closing of the transaction to all Signatories by either mail or email.
3. Upon approval of the STM Application by the Commission and the closing of the transaction between Undine and PK-RE, Water CCN No. 12407 and Sewer CCN No. 20948 will transfer from PK-RE to Undine. Thereafter, and at Undine's discretion, Undine may file for Commission approval to transfer either or both of the CCNs and the utility assets associated with such CCNs from Undine Development Company, LLC to another affiliated Undine entity. Undine represents that these future CCN and asset transfers will not change the ultimate ownership or any management of the systems nor will they change the operations of the systems, and they will have no impact on the services to be provided by Undine. Intervenor agree to not oppose such filings by

- Undine provided that the transfer does not increase the rates in effect for or impair the service provided to the customers of the PK-RE systems.
4. Greenshores on Lake Austin P.O.A. shall convey to Undine a utility easement across Lot 12 Block 3 Phase 2; Lot 13 Block 3 Phase 3; and Lot 14 Block 3 Phase One, being common areas of Greenshores on Lake Austin P.O.A. The form and terms of this easement will be agreed upon as soon as possible and a condition to the closing in the definitive sale agreement between PK-RE and Undine will be for such agreed upon easement to have been executed and delivered in escrow to counsel for Greenshores on Lake Austin P.O.A. Upon receipt of notice from Undine that the transaction with PK-RE has closed, the easement shall be provided to Undine, at no cost to Undine in a form and at a location acceptable to and approved by Greenshores on Lake Austin P.O.A. prior to execution, provided that Undine shall bear all costs of preparing and filing the easement document.
  5. PK-RE and Undine have conferred regarding their plans for the design and construction of a wastewater force main for the conveyance of wastewater from the existing lift station in the Woods of Greenshores to the existing wastewater treatment plant in Greenshores on Lake Austin, and, subject to receipt of necessary approvals from the City of Austin, Travis County, and any other regulatory body requiring permits or approvals for the project, Undine will construct and operate such a force main in lieu of “pump-and-haul” from the lift station prior to connecting any lots in Section 2 of Woods of Greenshores to the existing wastewater system.
  6. In the event that Undine irrevocably commits to construct a wastewater force main for the transmission of wastewater from the existing lift station in Woods of Greenshores to the existing wastewater treatment plant in Greenshores on Lake Austin in a location that crosses land owned by Greenshores on Lake Austin P.O.A., Greenshores on Lake Austin P.O.A. shall convey to Undine a utility easement for the construction and operation of a said wastewater force main. If Undine irrevocably commits to construct said wastewater force main, the form and terms of this easement will be agreed upon as soon as possible and a condition to the closing in the definitive sale agreement between PK-RE and Undine will be for such agreed upon easement to have been executed and delivered in escrow to counsel for Greenshores on Lake Austin P.O.A. The easement shall be provided to Undine in a form and at a location acceptable to and approved by Greenshores on Lake Austin P.O.A. prior to execution, at no cost to Undine, provided that Undine shall bear all costs of preparing and filing the easement document. This paragraph shall not be construed to modify Undine’s obligation to construct a force main as provided in paragraph 5 even if it decides not to construct the force main on land owned by Greenshores on Lake Austin P.O.A.
  7. PK-RE clarifies that the flows of any conventional gravity wastewater system will be transmitted to the existing wastewater treatment plant in Greenshores on Lake Austin and not transmitted to the wastewater treatment plant in Woods of Greenshores referenced in Section 6.02 of the Greenshores Annexation and Development Agreement (“Annexation Agreement”), dated January 24, 2005, by the City of Austin and PK-RE. All Signatories agree that they will not argue in any legal proceeding that a new wastewater treatment

plant in the Woods of Greenshores should have been or should be built in lieu of a force main for the transmission of wastewater from the existing lift station in Woods of Greenshores to the existing wastewater treatment plant in Greenshores on Lake Austin. However, nothing in this paragraph shall be construed as precluding any Signatory from arguing that PK-RE's present practice of "pump-and-haul" from the existing lift station in Woods of Greenshores to the existing wastewater treatment plant in Greenshores on Lake Austin is unreasonable and impermissible as a general matter or specifically in view of Section 6.02 of the Annexation Agreement.

8. As currently undeveloped lots in Section 2 of Woods of Greenshores are developed, Undine will obligate the current owner and developer, Woods of Greenshores, Ltd., or any subsequent assigns from or through Woods of Greenshores, Ltd., to contribute to the wastewater utility the amount of \$10,000/lot on the date that any individual lot is sold (i.e., title is transferred) or prior to a lot receiving a water or sewer (wastewater) tap if that lot is not sold to another entity, as a developer contribution to reduce utility infrastructure costs. Selling the entirety of Section 2 of Woods of Greenshores to a third party does not signify or represent the sale of "any individual lot" as used in this Settlement Agreement. If the estimated number of lots changes (currently estimated to be 46 lots), the amount of the developer contribution allocated to each lot shall be adjusted upward or downward by dividing the sum of the \$460,000 by the actual number of lots to be developed. In no event shall the amount received from Woods of Greenshores, Ltd. or subsequent assignees be less than \$460,000. Undine agrees to require Woods of Greenshores, Ltd., or its assigns, to pay the \$460,000 within five (5) years of the STM closing date. Undine agrees to account for the expenditures of the developer contribution on its books and records as a Contribution in Aid of Construction ("CIAC") in a manner consistent with NARUC accounting.
9. Within ten (10) business days after the closing of the transaction between Undine and PK-RE, PK-RE shall withdraw the Rate Application in Docket No. 46333. PK-RE will provide notice of the filing of its withdrawal to Signatories by mailing or emailing a copy of the notice of withdrawal.
10. The Signatories agree that all negotiations, discussions, and conferences related to the Unanimous Settlement Agreement are subject to Texas Rule of Evidence 408 and inadmissible to prove any issues associated with either docket.
11. The Signatories agree that neither this Unanimous Settlement Agreement nor any oral or written statements made during the course of settlement negotiations may be used for any purpose other than as necessary to enforce the terms of this Unanimous Settlement Agreement or support the entry by the Commission of an order approving this Unanimous Settlement Agreement.
12. The Signatories agree that the terms of the Unanimous Settlement Agreement are interdependent and indivisible, and that if the Commission intends to enter an order that is inconsistent with this Unanimous Settlement Agreement, then any Signatory may withdraw without being deemed to have waived any procedural right or to have taken any substantive position on any fact or issue by virtue of that Signatory's entry into the Unanimous Settlement Agreement or its subsequent withdrawal.

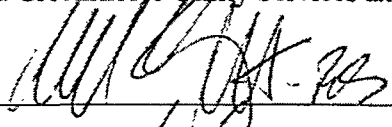
13. The Signatories agree that this Unanimous Settlement Agreement is binding on each Signatory only for the purpose of settling the issues set forth herein and for no other purposes, and except to the extent the Unanimous Settlement Agreement governs a Signatory's rights and obligations for future periods, this Unanimous Settlement Agreement shall not be binding or precedential upon a Signatory outside this proceeding.
14. Any attorneys' fees associated with the Rate Application shall not be included in any water or wastewater rates, or any other fees or assessments, that may be charged to the ratepayers (customers) located within PK-RE's service area on the effective date of this Settlement Agreement.
15. The Signatories agree that this Unanimous Settlement Agreement may be executed in multiple counterparts and may be filed with facsimile signatures.
16. This Settlement Agreement shall be effective on October 30, 2017.

UNDINE DEVELOPMENT COMPANY, LLC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

PK-RE DEVELOPMENT COMPANY, INC.  
d/b/a Greenshores Utility Services and d/b/a Oak Shores Water System

By:   
Date: 10/10/17



CYNTHIA AND SCOTT SMILEY

By: Cynthia Smiley  
Date: 10/17/2017

WOODS OF GREENSHORES PROPERTY OWNERS ASSOCIATION

By: Steve A Shatter PRESIDENT


Date: 10/11/17

ALEXANDER "BARRY" WILLIAMS

Alexander Barry Williams

Date: 10/13/2017

GREENSHORES ON LAKE AUSTIN PROPERTY OWNERS ASSOCIATION, INC.

By:  Oliver P. Zimmermann  
President, Greenshores on Lake Austin  
POA Board

Date: 10/30/17

STAFF OF THE PUBLIC UTILITY COMMISSION OF TEXAS

By: A. J. Smullen, by permission JNE  
Date: Oct. 23, 2017