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PUBLIC UTILITY COMMISSION  
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**P.U.C. DOCKET NO. 46150  
SOAH DOCKET NO. 473-17-0685.WS**

<b>APPLICATION OF PK-RE</b>	<b>§</b>	<b>PUBLIC UTILITY</b>
<b>DEVELOPMENT COMPANY, INC. dba</b>	<b>§</b>	<b>COMMISSION</b>
<b>OAK SHORES WATER SYSTEM AND</b>	<b>§</b>	<b>OF TEXAS</b>
<b>UNDINE DEVELOPMENT, LLC FOR</b>	<b>§</b>	
<b>SALE, TRANSFER OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN TRAVIS COUNTY</b>	<b>§</b>	

**LIST OF CONTESTED ISSUES  
REQUEST FOR A PUBLIC HEARING  
SUBMITTED BY RESIDENTS OF  
WOODS OF GREENSHORES**

Pursuant to the Order of Referral filed on October 13, 2016 by the Public Utility Commission of Texas (the "Commission"), the below named residents of Woods of Greenshores (collectively the "Residents") hereby file their list of contested issues and their request for a public hearing regarding the sale of the Oak Shores Water System by PK-RE Development, Inc. ("PK-RE") to Undine Development, LLC ("Undine") and in support thereof would show the Commission as follows:

**I. Relevant Factual Background**

1. The following persons are permanent residents in Woods of Greenshores:

Steve and Suzanne Stratton

2517 Ionian Cove  
Austin, Texas 78730  
Daytime Phone: (512) 659 7624  
Thomas and Cynthia Lee  
7308 Aemilian Way  
Austin, Texas 78730  
Daytime Phone: (512) 659-2085

Francis and Barbara Ainsa  
7301 Aemilian Way  
Austin, Texas 78730  
(512) 432-7305

Barry and Jackie Williams  
2516 Arion Circle  
Austin, Texas 78730  
Daytime Phone: (310) 200 1682

Frank and Helen Kisner  
2625 Arion Circle  
Austin, Texas 78730  
Daytime Phone: (808) 494 8101

Joel and Tiffany Martin  
2520 Ionian Cove  
Austin, Texas 78730  
Daytime Phone: (512) 284 4064

2. The rights and obligations of the Residents are set forth in a Declaration of Covenants, Conditions and Restrictions (the "Declaration") that appears of record under Document No. 20099163 in the Official Public Records of Travis County, Texas. Woods of Greenshores, Ltd. (WOG, Ltd.) is the Declarant that filed the Declaration. The rights and obligations of the Declarant are also set forth in the Declaration.

3. WOG, Ltd. is a Texas limited partnership. WOG, Ltd. operates through its general partner is R2 Development, Inc. (“R2”). Russell Eppright (“Mr. Eppright”) owns or controls R2 and is also a limited partner in WOG, Ltd. At the time the Declaration was filed, WOG, Ltd. was the owner of all residential lots, one nonresidential lot and all Common Areas within Woods of Greenshores. Subsequently, WOG, Ltd. sold the residential lots to builders or individuals and retained ownership of the Common Areas.

4. The Residents receive water and waste water services from PK-RE. Mr. Eppright is President of and owns or controls PK-RE. Persons who reside outside of Woods of Greenshores also receive water and wastewater services from PK-RE.

5. PK-RE has demonstrated that it is only marginally able to operate the water systems to meet the needs of approximately 220 existing homes in the neighborhoods served. During the last two years, PK-RE usually extracted 2.5 million gallons of water a month from Lake Austin, and ‘lost’ 40% of that volume every month. Although the last 6 months’ losses were reduced to only 30% lost, through the efforts of a new plant operator, those statistics remain well above both national and state averages. PK-RE has failed to make capital improvements that are necessary to stem the losses of water. As a result, the Residents suffer from the financial losses incurred by PK-RE.

6. During 2015, the Residents received numerous “stop outdoor watering” notices and boil water notices due to PK-RE’s infrastructure inability to meet the demands of its customers. In response to a complaint filed with the PUC in 2015, PK-RE advised the PUC that

the 4 inch lines that draw water from Lake Austin would be replaced with 6 inch lines, if funds are available, in order to increase the amount of water in the system. No such improvements have been made. PK-RE has been unable to make necessary improvements because Oak Shores Water System is not operating at a profit and the owner, Mr. Eppright, will not contribute additional capital or borrow funds to make the necessary improvements.

7. Greenshores Utility Services sent a Memorandum dated June 23, 2016, in which the following information was presented:

"PK-RE Development Company, Inc. d/b/a Greenshores Utility Services ("Greenshores"), water supplier to the Utility Customers in the Greenshores and Oak Shores water systems ("the Utility"), hereby notifies its customers of implementation of Stage 3 mandatory water-use restrictions (restricted watering to only 1 day per week) in response to equipment maintenance and continued customer demand on its water system. As a result of this notification, the Utility is notifying all Utility customers of implementation of mandatory watering restrictions in accordance with its approved Drought Contingency Plan."

As of the date this document is being filed, Stage 3 mandatory water restrictions are still in effect for Woods of Greenshores even though such restrictions are not in effect in the City of Austin.

8. In its June 2016 Memorandum, PK-RE admitted it implemented Stage 3 Water Restrictions because of "equipment maintenance and due to continued customer demand on its

water system.” It is clear that equipment maintenance and/or continued customer demand or both have required restrictions greater than those required by the City of Austin.

9. The concern over the inability to meet “customer demand” by R2 and WOG, Ltd., both of which are controlled by Mr. Eppright, who is also the owner of PK-RE is heightened by information in an inactive permit on file with the City of Austin (Permit 2015-085950C, Case Number C8J-2015-0156) for a new section within the Woods of Greenshores, known as Section 2. This is an area which falls within CCNs 12407 and 20948. In update under AWU-Utility Development Service Review, the following note is included as WW1: “The landowner intends to serve each lot with a connection to PK-RE. INC’s water and wastewater utility systems. The landowner must provide written evidence that the service provider will provide water and wastewater utility service to each lot for the proposed land use and in accordance with the City of Austin utility design criteria. The landowner must post fiscal with the utility service provider if required.”

10. These plans described above (City of Austin Permit 2015-085950C, Case Number C8J-2015-0156), identify the requirement to install a FORCEMAIN sewage pumping line from the current “pump and haul” station in Woods of Greenshores to the Oak Shores Waste Water Treatment Plant (CCN 20948). The “September 19, 2016 Notice to Current Customers, Neighboring Systems and Cities” only indicates “current customer water rates will remain unchanged,” and does not state whether customer wastewater rates will remain unchanged, increase or decrease.

11. PK-RE has been seeking to install drip irrigation lines (drain fields) in Lot 50 of the Woods of Greenshores pursuant to an amended TCEQ permit (WG 00142800) even though the drain fields are located in a bird preserve created by Fish and Wildlife Permit No. TE-029780-2 and not allowed under the terms of the Fish and Wildlife Permit. PK-RE, through Mr. Eppright, misrepresented information in the application to amend its TCEQ permit and failed to disclose the existence of the Fish and Wildlife Permit. The Residents understand that PK-RE is taking the position that it needs to be able to install drain fields in Lot 50 in order for WOG, Ltd. or some other developer to develop Section 2, which is currently not platted. The Association and certain residents of Woods of Greenshores have filed a petition with the TCEQ asking that it revoke the provisions in the amended Permit that allow drain fields in Lot 50. The Residents also understand that Travis County will not allow drain fields in Lot 50 because it is a bird preserve.

12. On or about June 20, 2016, PK-RE filed an application with the PUC to sell the assets of PK-RE to Undine (the "Application"). The Application does not disclose whether PK-RE and its proposed assignee, Undine, will be able to continuously and adequately serve the residents of Woods of Greenshores if Section 2 cannot be developed because Lot 50 cannot be used for drain fields. The Application does not disclose whether PK-RE and its proposed assignee, Undine, will be able to continuously and adequately serve the residents of Woods of Greenshores if a force main cannot be installed to take waste water from Woods of Greenshores to the Oak Shores Treatment Plant. The Notice to Current Customers, dated September 19,

2016, states that current customer water rates will remain unchanged. This statement is inconsistent with the fact that on September 13, 2016, PK-RE gave notice that it is applying for a rate increase.

13. The Residents are also concerned that certain critical information regarding Undine's capabilities has been marked Confidential and is not available for review. Exhibit E, which is evidence of financial, managerial and technical capabilities, has been marked confidential. How can the Residents evaluate Undine's capabilities from a financial and managerial standpoint when this information is being withheld. Also, Exhibit G, which is financial information, is also marked Confidential. The facilities owned and operated by PK-RE are in need of capital improvements. The Residents do not have any way to evaluate Undine's financial ability when the information in Exhibits E and G is being withheld.

14. The Residents protest the Application because:

(a) It does not disclose whether Undine can continuously and adequately serve the Residents if it is not allowed to install drain fields in Lot 50; and,

(b) It does not disclose whether Undine intends to replace the 4 inch water lines with 6 inch water lines; and,

(c) It does not disclose whether Undine has the financial capacity to continuously and adequately serve the Residents; and,

(d) It does not disclose whether Undine has the managerial expertise to continuously and adequately serve the Residents; and,



(e) It does not disclose whether Undine will seek to prosecute the rate case filed by PK-RE.

(f) It does not disclose whether Undine will be able to continuously and adequately serve the Residents if a force main cannot be constructed to take waste water from the holding tank in Woods of Greenshores to the Oak Shores treatment plant.

## **II. List of Issues to be addressed by the Commission**

15. The Residents propose that the Commission address the following issues:

(a) If the application is approved, whether Undine will promptly make the necessary capital improvements to the water system (replace the 4 inch line with a 6 inch line) to insure that it can meet the demands of the Residents and other customers.

(b) If the Application is approved, whether Undine intends to prosecute the rate case that has been filed by PK-RE even though the notice to customers states that water rates will remain unchanged.

(c) If the Application is approved, whether Undine can continuously and adequately serve the Residents if it not permitted to install drain fields in Lot 50.

(d) If the Application is approved, whether Undine can continuously and adequately serve the Residents if it is unable to obtain an easement from Travis County to connect a force main with the Oak Shores waste treatment plant.

(e) Whether the Commission should prohibit the development of Section 2 of the Woods of Greenshores until Undine has demonstrated that the water and waste water

system can continuously and adequately serve the Residents and the residents of the approximately 50 homes to be constructed in Section 2.

### **III. List of Contested Issues**

15. The Residents request the Commission to submit the following contested issues to an administrative law judge:

(a) Whether the Fish and Wildlife Permit precludes PK-RE from using Lot 50 for the drain fields described in amended TCEQ Permit No. WQ00142800; and,

(b) Whether, under the Declaration, WOG, Ltd. can grant a conservation easement to Travis County to enable PK-RE to construct drain fields in the bird preserve on Lot 50 even though WOG, Ltd is no longer the owner of Lot 50.

### **IV. Request for a Public Hearing**

16. The Residents have provided their names, addresses and daytime telephone numbers in paragraph 1 above.

17. The Applicant is PK-RE Development Company, Inc. dba Oak Shores Water System. The Application is docketed under No. 46150 and pertains to CCN Numbers 12407 and 20948.

18. The Residents request a public hearing.

19. The Residents oppose PK-RE's attempts to construct drain fields in the bird preserve on Lot 50. The Fish and Wildlife Permit does not allow for drain fields in the bird

preserve on Lot 50. Neither WOG, Ltd., nor R2 nor PK-RE ever disclosed to any of the Residents that drain fields were planned for construction in the bird preserve.

20. The Application does not disclose whether Undine will be capable of continuously and adequately serving the residents of Woods of Greenshores if it cannot construct drain fields in the bird preserve in Lot 50.

21. The Association would withdraw its request for a hearing if:

(a) PK-RE and its proposed assignee, Undine, permanently abandon all efforts to construct drain fields in the bird preserve in Lot 50; and,

(b) PK-RE and its proposed assignee, Undine, join in the petition filed by the Association with the TCEQ to revoke all provisions in the amended permit authorizing PK-RE to construct drain fields in the bird preserve in Lot 50; and,

(c) WOG, Ltd. and its proposed assignee, Undine, permanently abandons all efforts to grant Travis County a conservation easement over Lot 50 without the prior written consent of the Association; and,

(d) The Commission grants the relief requested by the Woods of Greenshores Property Owners Association, Inc.; and,

(e) Undine affirmatively demonstrates that it has the financial capability to make all necessary capital improvements to the Oak Shores Water System including the cost to replace the 4 inch lines with 6 inch lines instead of hiding behind a confidential document; and,

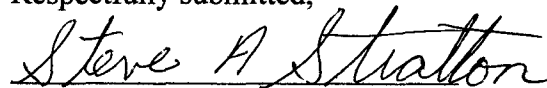
(f) Undine affirmatively demonstrates that it will promptly replace the 4 inch lines with 6 inch lines with passing the cost to the ratepayers; and,

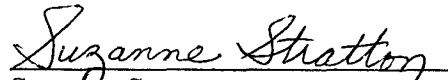
(g) Undine affirmatively demonstrates that it has the managerial expertise to properly manage the Oak Shores Water System instead of hiding behind a confidential document; and,

(h) Undine abandons the rate case started by PK-RE.


The Resident of Woods of Greenshores respectfully request the Commission to refer the contested issues to SOAH, hear the list of issues, and disapprove PK-RE's application to sell to Undine unless it can demonstrate that it that it will agree to all conditions set forth in paragraph 21 above.

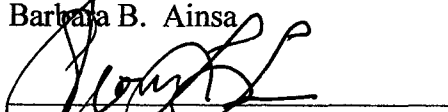
Respectfully submitted,

  
Steve Stratton

  
Suzanne Stratton

Francis S. Ainsa, Jr.

  
Barbara B. Ainsa

  
Thomas Lee.



**From:** Frank S Ainsa fain@acaciapark.com  
**Subject:** Homeowners petition  
**Date:** October 18, 2016 at 7:13 PM  
**To:** Cindy Lee (texduck7@gmail.com) texduck7@gmail.com, Thomas Lee (tlee920@gmail.com) tlee920@gmail.com



Cindy: My signature page is attached.

Thanks,

Frank

**From:** Frank S Ainsa [mailto:fain@acaciapark.com]  
**Sent:** Tuesday, October 18, 2016 6:12 PM  
**To:** Frank S Ainsa  
**Subject:** Scanned document from Frank S Ainsa (fain@acaciapark.com)

(f) Undine affirmatively demonstrates that it will promptly replace the 4 inch lines with 6 inch lines with passing the cost to the ratepayers; and,

(g) Undine affirmatively demonstrates that it has the managerial expertise to properly manage the Oak Shores Water System instead of hiding behind a confidential document; and,

(h) Undine abandons the rate case started by PK-RE.

The Resident of Woods of Greenshores respectfully request the Commission to refer the contested issues to SOAH, hear the list of issues, and disapprove PK-RE's application to sell to Undine unless it can demonstrate that it that it will agree to all conditions set forth in paragraph 21 above.

Respectfully submitted,


Steve Stratton


Suzanne Stratton


Francis S. Ainsa, Jr.


\_\_\_\_\_  
Barbara B. Ainsa

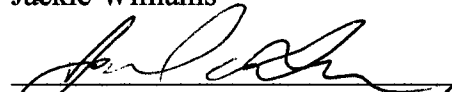
Cynthia Lee


  
Frank Kisner

  
Helen Kisner

  
Barry Williams

  
Jackie Williams

  
Joel Martin

  
Tiffany Yates Martin.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on the following person on this \_\_\_\_ day of October 2016:

Mr. Russell Eppright  
PK-RE Development, Inc.  
500 N. Capital Hwy, Bldg. 1, Suite 125  
Austin, Texas 78746

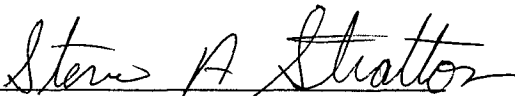
William P. McLean  
McLean & Howard, LLP  
901 S. Mopac Expressway  
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Austin, Texas 78746  
Counsel for PK-RE

List of Issues  
Request For Public Hearing  
Residents of Woods of  
Greenshores  
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Director,  
Commission Advising  
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1700 North Congress  
Austin, Texas 78711

Woods of Greenshores Property  
Owners Association, Inc.  
115 Wild Basin Road, Suite 308  
Austin, Texas 78746

  
Steve Stratton

List of Issues  
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