



Control Number: 46150



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

2016 NOV -9 PM 4: 07

APPLICATION OF PK-RE §  
DEVELOPMENT COMPANY, INC. dba §  
OAK SHORES WATER SYSTEM AND §  
UNDINE DEVELOPMENT, LLC FOR §  
SALE, TRANSFER OR MERGER OF §  
FACILITIES AND CERTIFICATE §  
RIGHTS IN TRAVIS COUNTY §

PUBLIC UTILITY COMMISSION  
BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**GREENSHORES ON LAKE AUSTIN PROPERTY  
OWNERS' ASSOCIATION, INC.'S  
MOTION TO INTERVENE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Greenshores on Lake Austin Property Owners' Association, Inc. ("Greenshores") files this Motion to Intervene and would respectfully show as follows:

**I. INTRODUCTION**

Greenshores seeks to intervene, comment and fully participate in Public Utility Commission Docket No. 46150/SOAH Docket No. 473-17-0685.WS pursuant to Sections 22.101 through 22.104 of the Commission's Procedural Rules. As set forth below, Greenshores has a justiciable interest that may be adversely affected by the outcome of this proceeding.

**II. AUTHORIZED REPRESENTATIVE**

The name and address of the movant is:

Greenshores on Lake Austin Property Owners' Association, Inc.  
c/o David Yeager  
P.O. Box 92649  
Austin, Texas 78709

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Greenshores authorized representative for service of all pleadings and other documents in this docket and legal representative is:

John J. Carlton  
The Carlton Law Firm P.L.L.C.  
2705 Bee Cave Road, Suite 200  
Austin, Texas 78746  
Telephone: (512) 614-0901  
Fax: (512) 900-2855  
Email: [john@carltonlawaustin.com](mailto:john@carltonlawaustin.com)

All pleadings, motions and other documents in this proceeding should be served on Greenshores' representative.

### **III. TIMELINESS OF INTERVENTION**

The applicant, PK-RE Development Company, Inc. dba Oak Shores Water System and Undine Development, LLC ("Applicant"), filed an application on July 11, 2016. The Commission issued an order declaring the application administratively complete on August 11, 2016. However, a revised and corrected notice of the application was not mailed by Applicant until September 19, 2016. Greenshores timely filed a protest and hearing request on October 18, 2016. But SOAH Order No. 1 was issued on October 25, 2016, stating that none of the protestors were parties. This Motion to Intervene is filed as a clarification to Greenshores' October 18, 2016, hearing request, which was intended as a request for party status and to intervene in this case. To the extent that request was unclear, Greenshores' hereby requests intervention and party status in this case. Under 16 TAC 22.104(d), if Greenshores' protest and hearing request is not deemed a request for intervention and this Motion to Intervene is considered untimely, the presiding officer is required to consider:

- (A) any objections that are filed;
- (B) whether the movant had good cause for failing to file the motion within the time prescribed;
- (C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;
- (D) whether any disruption of the proceeding might result from permitting late intervention; and

(E) whether the public interest is likely to be served by allowing the intervention.<sup>1</sup>

In good faith, Greenshores filed its protest and request for hearing, which was intended to be considered a request to intervene as a party and was filed 30 days from the date that Greenshores received notice of the proposed transaction. To hold Greenshores to any other standard, such as the 45 days from the date the application was filed or deemed filed<sup>2</sup> in July and August of 2016, respectively, when Greenshores had no notice of any such filing would be highly prejudicial and grossly unfair to the customers of the utility, who have a justiciable interest in which company will own the water and sewer systems that will serve them and the ability of that company to provide service.

The preliminary hearing on the application is set for 10:00am on November 22, 2016. No procedural schedule has been set and no discovery has been conducted. Allowing Greenshores to intervene at this point will not prejudice any of the parties, will not add additional burdens and will not delay the proceeding in any way. Nor will allowing Greenshores to intervene disrupt the proceedings given that the application was only referred to hearing on October 13, 2016.

Finally, granting Greenshores party status as an intervenor will serve the public interest by allowing customers of the utility systems to protect their interests by ensuring that their water and sewer service is provided by a certificate holder that meets the requirements of Texas Water Code §13.301.

#### **IV. JUSTICIABLE INTEREST**

The members of Greenshores are retail water and sewer utility customers of PK-RE Development Company, Inc. d/b/a Oak Shores Water System. The owner of PK-RE Development Company, Inc. is also the developer of the Greenshores on Lake Austin

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<sup>1</sup> 16 TAC 22.104(d)

<sup>2</sup> 16 TAC 22.104(b)

subdivision. The sale of the facilities and transfer of the CCNs will have an adverse impact on the customers of the water system, including the members of Greenshores. In particular,

- 1) the transferee, Undine Development, LLC, has not demonstrated that it is capable of providing continuous and adequate service, including its ability to meet the standards of the Commission and the Texas Commission on Environmental Quality for providing water and sewer service;
- 2) the transferee, Undine Development, LLC, has not demonstrated that it has the financial ability to pay for the improvements that are necessary to provide continuous and adequate service to the water and sewer systems;
- 3) the transferee, Undine Development, LLC, has not demonstrated that it has the financial stability to provide continuous and adequate service to the water and sewer systems;
- 4) the transferee, Undine Development, LLC, has not demonstrated that it will provide a probable improvement of service or lowering of cost to consumers; and
- 5) in fact, considering that PK-RE has filed an application for a rate increase for the water and sewer systems (PUC Docket No. 46333), the transfer of the CCNs to Undine will actually result in higher rates for the customers of the water and sewer systems, including the members of the Greenshores unless conditions are established in an order approving the transfer that adjust the rate base for the water and sewer systems downward via an acquisition adjustment to reflect the proper rate base upon which Undine may earn return.

#### **V. PROTECTIVE ORDER CERTIFICATIONS**

Greenshores hereby files its protective order certifications as required by the Commission's rules and requests access to the confidentially filed portions of the application filed by Applicants.

#### **VI. PRAYER**

Greenshores respectfully requests that this Motion to Intervene be granted, that Greenshores be granted party status, and that Greenshores receive any and all relief to which it shows that is justly entitled.

Respectfully submitted,

By:   
John J. Carlton

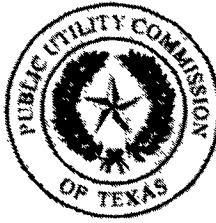
John J. Carlton  
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Austin, Texas 78746  
(512) 614-0901  
Fax (512) 900-2855  
State Bar No. 03817600

ATTORNEY FOR GREENSHORES ON LAKE  
AUSTIN PROPERTY OWNERS'  
ASSOCIATION, INC.

#### **CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 9<sup>th</sup> day of November, 2016.

  
John Carlton



## Protective Order or Confidential Filing Certification

### If confidential information is subject to a Protective Order

I certify my understanding that the Protected Materials and/or Highly Sensitive Protected Material are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials and/or Highly Sensitive Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials and/or Highly Sensitive Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 46150. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials and/or Highly Sensitive Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

Signature

John J. Carlton

Printed Name

Greenshores on Lake Austin Property Owners Association, Inc.

Party Represented

November 9, 2016

Date

I also certify that I am eligible to have access to Highly Sensitive Protected Materials under the terms of the Protective Order in this docket.

Signature

John J. Carlton

Printed Name

Greenshores on Lake Austin Property Owners Association, Inc.

Party Represented

November 9, 2016

Date

### If confidential information is not subject to a Protective Order

I certify my understanding that the Confidential Materials provided to me may not be disclosed to anyone except as required by the provisions of the Texas Public Information Act, Texas Government Code Chapter 552, or other applicable law or court order.

Signature

Printed Name

Staff job title

Date



## Protective Order or Confidential Filing Certification

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Jay Joyce  
Signature  
Jay Joyce  
Printed Name

Greenshores on Lake Austin Property Owners Association, Inc.

11/8/16  
Party Represented  
Date

I also certify that I am eligible to have access to Highly Sensitive Protected Materials under the terms of the Protective Order in this docket.

Jay Joyce  
Signature  
Jay Joyce  
Printed Name

Greenshores on Lake Austin Property Owners Association, Inc.

11/8/16  
Party Represented  
Date

### If confidential information is not subject to a Protective Order

I certify my understanding that the Confidential Materials provided to me may not be disclosed to anyone except as required by the provisions of the Texas Public Information Act, Texas Government Code Chapter 552, or other applicable law or court order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Staff job title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date