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**PUC DOCKET NO. 46150**  
**SOAH DOCKET NO. 473-16-0685.WS**

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**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  
FILING CLERK  
**PUBLIC UTILITY COMMISSION**  
**OF TEXAS**

**PRELIMINARY ORDER**

PK-RE Development Company, Inc. d/b/a Oak Shores Water System and Undine Development, LLC filed an application for the sale of facilities and certificate rights in Travis County. This preliminary order identifies the issues that must be addressed.

Undine Development is seeking to acquire certificated service area of Oak Shores (certificates of convenience and necessity numbers 12407 and 20948) and corresponding water utility facilities. The area to be sold currently includes 220 customers over a service area of approximately 372 acres.

The application was filed on July 11, 2016, and was deemed sufficient by the Commission administrative law judge on August 11, 2016. Numerous parties, including the Greenshores on Lake Austin Property Owners' Association, Inc., filed letters of protest and requested a hearing. These parties have not yet filed motions to intervene, and so have not been granted intervenor status in this docket. This docket was referred to the State Office of Administrative Hearings (SOAH) on October 13, 2016.

Oak Shores and Undine Development were directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by October 24, 2016. Commission Staff and Greenshores on Lake Austin Property Owners' Association timely filed a list of issues. Neither Oaks Shores nor Undine Development filed a list of issues.

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**I. Issues to be Addressed**

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.<sup>1</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. What is the effective date of the proposed sale?
2. Has the purchaser demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the purchaser? TWC § 13.301(b) and 16 TAC §§ 24.109(b), 24.112(b).
  - a. If the purchaser has not demonstrated adequate financial capability, should the Commission require that it provide financial assurance to ensure continuous and adequate utility service provided? TWC § 13.301(c), 16 TAC § 24.109(c).
  - b. If the Commission requires the purchaser to provide financial assurance, what form and amount of financial assurance should the Commission should require?
3. Will approving the proposed sale serve the public interest? TWC § 13.301(d), (g) and 16 TAC § 24.112(c)(5).
  - a. Did the purchaser provide the required notice? TWC § 13.301(k), 16 TAC § 24.109(l).
  - b. Is the purchaser capable of rendering adequate and continuous service to every customer within the certificated area, taking into account the factors under TWC § 13.246(c) and 16 TAC § 24.112(c)(5)(B)? TWC § 13.251.
    - i. Is the service currently provided to the requested area adequate? TWC § 13.246(c)(1).

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<sup>1</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2016).

- ii. Is additional service needed in the requested area? Have any landowners, prospective landowners, tenants, or residents requested service? If so, has the requested service been provided? TWC § 13.246(c)(2).
- iii. What is the effect of approving the proposed sale on the purchaser, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area? TWC § 13.246(c)(3).
- iv. Taking into consideration the current and projected density and land use of the area, does the purchaser have the ability to provide adequate service and meet the Texas Commission on Environmental Quality's (TCEQ) standards? TWC § 13.246(c)(4).
- v. Is it feasible to obtain service from an adjacent retail public utility? TWC § 13.246(c)(5).
- vi. Is the purchaser able to pay for facilities necessary to provide continuous and adequate service to the requested area? TWC § 13.246(c)(6).
- vii. Is the purchaser financially stable considering, if applicable, the adequacy of the debt-equity ratio of the purchaser if the proposed sale is approved? TWC § 13.246(c)(6).
- viii. What is the effect of approving the sale on environmental integrity? TWC § 13.246(c)(7).
- ix. What is the probable improvement of service or lowering of cost to consumers in the requested area resulting from approval of the proposed sale? TWC § 13.246(c)(8).
- x. What is the effect on the land to be included in the amended certificated area? TWC § 13.246(c)(9).

- c. What is the experience of the purchaser as a utility service provider? 16 TAC § 24.112(c)(5)(C).
  - d. Does the purchaser have a history of noncompliance with the requirements of the Commission, TCEQ, or the Texas Department of State Health Services or mismanagement or misuse of revenues as a utility service provider? TWC § 13.301(e)(3), 16 TAC § 24.112(c)(5)(D).
  - e. Have the conditions of any judicial decree, compliance agreement, or other enforcement order not been substantially met? 16 TAC § 24.112(c)(5)(B).
  - f. Has the purchaser failed to comply with any orders of the Commission? 16 TAC § 24.109(e)(5)(A).
  - g. Does the purchaser have the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to customers of the water or sewer system? TWC § 13.301(e)(4), 16 TAC § 24.112(c)(5)(E).
  - h. Was the water system partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges as provided by TWC § 13.301(j), 16 TAC § 24.109(k)? If so, has the disclosure required by TWC § 13.301(j), 16 TAC § 24.109(k) been provided?
4. Does the seller currently retain any customer deposits? 16 TAC § 24.112(d). If so, what is the total amount of customer deposits retained? Does the seller have proper records to allow deposits and any unpaid interest to be returned? Will customer deposits be returned to customers or transferred to the purchaser in accordance with 16 TAC § 24.112(d)?
5. Does the water system being purchased have any deficiencies or problems that need correction to be in compliance with the rules of the Commission or TCEQ? If so, what are those deficiencies or problems? How and when will those deficiencies or problems be

corrected? Does the purchaser have access to adequate financial resources to timely correct those deficiencies and problems?

6. What is the precise boundary of the service area that is the subject of the purchasers' application?

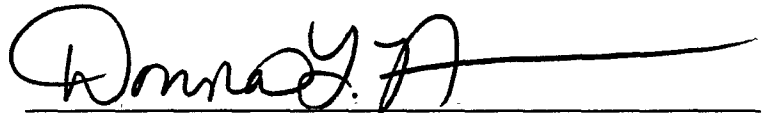
This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

## **II. Effect of Preliminary Order**

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the 14<sup>th</sup> day of November 2016.

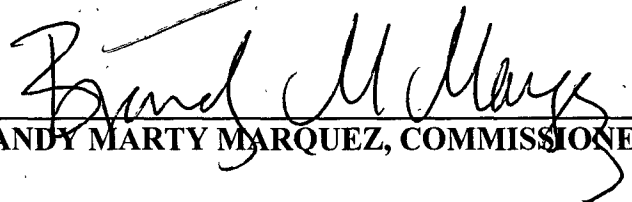
PUBLIC UTILITY COMMISSION OF TEXAS



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KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER