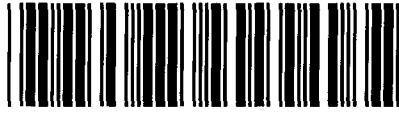


Control Number: 46150



Item Number: 86

Addendum StartPage: 0

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

RECEIVED

**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 §**

**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

2016 NOV 15 PM 3:39  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**RESIDENTS OF WOODS OF  
GREENSHORES' MOTION TO INTERVENE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The named residents of Woods of Greenshores (the "Residents") file this Motion to Intervene and would respectfully show as follows:

**I. INTRODUCTION**

The Residents seek to intervene, comment and fully participate in this proceeding pursuant to Sections 22.101 through 22.104 of the Commission's Procedural Rules. As set forth below, the Residents have a justiciable interest that may be adversely affected by the outcome of this proceeding.

**II. AUTHORIZED REPRESENTATIVE**

The name and address of the movants are:

Steve and Suzanne Stratton  
2517 Ionian Cove  
Austin, Texas 78730

Thomas and Cynthia Lee  
7308 Aemilian Way  
Austin, Texas 78730

Francis and Barbara Ainsa  
7301 Aemilian Way  
Austin, Texas 78730

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Barry and Jackie Williams  
2516 Arion Circle  
Austin, Texas 78730

Frank and Helen Kisner  
2625 Arion Circle  
Austin, Texas 78730

Joel and Tiffany Martin  
2520 Ionian Cove  
Austin, Texas 78730

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

Francis S. Ainsa, Jr.  
Ainsa, Hutson, Hester & Crews, LLP  
5809 Acacia Circle  
El Paso, Texas 79912  
Telephone: (915) 845 5300  
Fax: (915) 845 7800  
Email: [fain@acaciapark.com](mailto:fain@acaciapark.com)

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

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

A revised and corrected notice of the application was mailed by the applicant on September 19, 2016. The Residents timely filed a protest and hearing request on October 19, 2016. SOAH Order No. 1 was issued on October 25, 2016, stating that none of the Residents were parties. This Motion to Intervene is filed as a clarification to the Residents October 19, 2016, hearing request, which was intended as a request for party status in this case. To the extent that request was unclear, the Residents hereby request party status in this case. Under 16 TAC 22.104(d), if the Residents' 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>

The Residents' protest and request for hearing was intended to be considered a request to intervene as a party and filed 30 days from the date that the Residents received notice of the proposed transaction. To hold the Residents to any other standard, such as the 45 days from the date the application was filed<sup>2</sup> in July of 2016 when the Residents had no notice of any such filing would be highly prejudicial and grossly unfair to them as customers of the utility, who have a justiciable interest in who will own the water system that will serve them and the ability of that entity to provide service.

The preliminary hearing on the application is set for 10:00 a.m. on November 22, 2016. No procedural schedule has been set and no discovery has been conducted. Allowing WOGPOA to intervene at this point will not prejudice any of the parties, add additional burdens or delay the proceeding in any way. Nor will it disrupt the proceedings given that the application has recently been referred to hearing.

Finally, granting the Residents 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

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

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

and sewer service is provided by a certificate holder that meets the requirements of Texas Water Code §13.301.

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

The Residents are retail water and sewer utility customers of PK-RE Development Company, Inc. d/b/a Oak Shores Water System. The person who owns and controls PK-RE Development Company, Inc. is the same person who owns and controls the developer of the Woods of Greenshores subdivision in which the Residents reside. The sale of the facilities and transfer of the CCNs will have an adverse impact on the Residents who are customers of the water system. 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) the transferee, Undine Development, LLC, has not demonstrated that it is capable of providing continuous and adequate service to the Residents if it is not permitted to construct drain fields in Lot 50, Section 1 of the Woods of Greenshores, which is a federally protected bird preserve in which drain fields contemplated by PK-RE Development Company, Inc. are not permitted..


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

The Residents will file their protective order certifications as required by the Commission's rules.

## VI. PRAYER

The Residents respectfully that this Motion to Intervene be granted, that they be granted party status, and that they receive any and all relief to which they show themselves to be justly entitled.

Respectfully submitted,

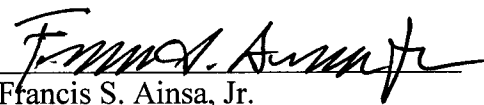
By:   
Francis S. Ainsa, Jr.

Francis S. Ainsa, Jr.  
Ainsa Hutson Hester & Crews, LLP  
El Paso, Texas 79912  
(915) 845 5300  
Fax (915) 845 7800  
State Bar No. 00949000

**ATTORNEY FOR THE NAMED  
RESIDENTS OF WOODS OF GREENSHORES**

## 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 15 day of November, 2016.

  
Francis S. Ainsa, Jr.