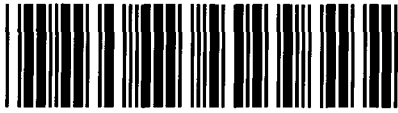


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**DOCKET NO. 46150  
SOAH DOCKET NO. 473-17-0685.WS**

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

**WOODS OF GREENSHORES PROPERTY  
OWNERS ASSOCIATION, INC.'S  
MOTION TO INTERVENE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Woods of Greenshores Property Owners Association, Inc. ("WOGPOA") files this Motion to Intervene and would respectfully show as follows:

**I. INTRODUCTION**

WOGPOA seeks 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, WOGPOA 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:

Woods of Greenshores Property Owners' Association, Inc.  
c/o Steve Stratton, President  
2517 Ionian Cove  
Austin, Texas 78709

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

87

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 WOGPOA's representative.

### III. TIMELINESS OF INTERVENTION

A revised and corrected notice of the application was mailed by the applicant on September 19, 2016. WOGPOA timely filed a protest and hearing request on October 18, 2016. 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 WOGPOA's October 17, 2016, hearing request, which was intended as a request for party status in this case. To the extent that request was unclear, WOGPOA hereby requests party status in this case. Under 16 TAC 22.104(d), if WOGPOA's 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>

WOGPOA's 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 WOGPOA received notice of the

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

proposed transaction. To hold WOGPOA to any other standard, such as the 45 days from the date the application was filed<sup>2</sup> in July of 2016 when WOGPOA 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 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 WOGPOA party status as an intervenor will serve the public interest by allowing WOGPOA to protect the interests of its members 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 WOGPOA are retail water and sewer utility customers of PK-RE Development Company, Inc. d/b/a Oak Shores Water System. PK-RE Development Company, Inc. is owned and controlled by the same person who owns and controls the developer of the Woods of Greenshores subdivision, Woods of Greenshores, Ltd. (“WOG, Ltd.”). Woods of Greenshores subdivision, Section 1, is governed by WOGPOA. 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 WOGPOA. 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

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

standards of the Commission and the Texas Commission on Environmental Quality for providing water and sewer service;

- 2) WOG, Ltd. in violation of the Declaration of Covenants, Conditions and Restrictions applicable to the Woods of Greenshores subdivision, and applicable law, granted two deeds of trust liens on Lot 49 in the subdivision to secure a loan to PK-RE Development Company to finance its operations. Lot 49 is common area and cannot be used as collateral for a loan to a third party. WOGPOA has demanded that PK-RE Development Company, Inc. cause the liens to be released but it has failed to do so. If the sale to Undine Development, LLC is approved without requiring the liens to be paid off and released or assumed and released, it will receive a benefit from an unlawful transaction. If the liens are not released, WOGPOA will file suit against Undine Development, Inc. and the lenders to invalidate the liens. Undine Development, Inc. has not demonstrated that it is capable of providing continuous and adequate service to the members of WOGPOA if the liens are not released.
- 3) PK-RE Development Company, Inc. obtained an amended permit from the Texas Commission on Environmental Quality (“TCEQ”) to construct drain fields in Lot 50 within Section 1 of the Woods of Greenshores. Lot 50 is common area and is also a federally protected bird preserve under a permit issued by the United States Fish and Wildlife Service. Lot 50 is owned of record by WOGPOA. Drain fields are not permitted in the bird preserve in Lot 50 under the permit. PK-RE Development Company, Inc. maintains that the permit contains errors and that the permit should have been drafted to allow drain fields in Section 1, Lot 50. Section 2 of the Woods of Greenshores cannot be developed without drain fields. Section 2 is currently in the application stage. Undine Development, Inc. has not demonstrated that it is capable of providing continuous and adequate service to Section 2 if it cannot construct drain fields in Section 1.

## **V. PROTECTIVE ORDER CERTIFICATIONS**

WOGPOA will file its protective order certifications as required by the Commission’s rules.

## **PRAYER**

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

Respectfully submitted,

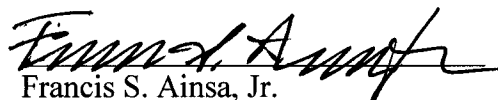
By:   
Francis S. Ainsa, Jr.

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 WOODS OF  
GREENSHORES 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 15 day of November, 2016.

  
Francis S. Ainsa, Jr.