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SOAH DOCKET NO. 473-17-2285.WS
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APPLICATION OF PK-RE §
DEVELOPMENT COMPANY, INC. DBA §
GREENSHORES UTILITY SERVICES §
AND DBA OAK SHORES WATER §
SYSTEM FOR AUTHORITY TO §
CHANGE RATES AND TARIFFS IN §
TRAVIS COUNTY §

PUBLIC UTILITY COMMISSION
OF TEXAS

**COMMISSION STAFF'S RESPONSE TO PK-RE DEVELOPMENT COMPANY D/B/A
OAK SHORES WATER SYSTEM'S MOTION FOR INTERIM RATES**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to PK-RE Development Company, Inc. d/b/a Greenshores Utility Services and d/b/a Oak Shores Water System's (PK-RE) Motion for Interim Rates. In support thereof, Staff would show the following:

I. Background

On October 12, 2016, PK-RE Development Company, Inc. d/b/a Greenshores Utility Services and d/b/a Oak Shores Water System (PK-RE) filed an application to change rates and tariffs in Travis County. On February 14, 2017, the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) issued SOAH Order No. 1, suspending the effective date of the rates until December 9, 2017. On March 7, 2017, PK-RE filed a Motion for Interim Rates (Motion), claiming that the suspension of the effective date for the full 265 days works a financial hardship on PK-RE.¹ At the prehearing conference held on March 16, 2017, the ALJ required intervenors to file responses to the Motion by March 23, 2017, and Staff by March 27, 2017. Accordingly, this pleading is timely filed.

II. Staff's Response

Pursuant to 16 Tex. Admin. Code § 24.29(d) (TAC), "Interim rates may be established by the commission ... where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could

¹ Motion for Interim Rates at 2 (Mar. 7, 2017) (Motion).

result in an unreasonable economic hardship on the utility."² In its motion, PK-RE claims that such hardship exists because its current rates do not cover operating costs, causing Mr. Eppright, the owner of PK-RE, to invest \$345,000 since January 2014 for operating expenses and state regulation compliance.³ PK-RE has taken out loans for \$2.22 million from OmniBank, N.A. to perform capital improvements, on which it owes an estimated \$1.85 million.⁴

PK-RE requests the interim rates be set at the requested Phase 1 rates as set forth in the application. PK-RE claims rates at the Phase I level are appropriate and within the range of reasonableness contemplated by the Settlement Agreement between PK-RE and its customers in 2013.⁵ The Settlement Agreement, attached as "Exhibit B" to the Motion, provides as follows:

8. PK-RE agrees that for five (5) years after the settlement date the maximum rate increase it may seek in future rate applications to TCEQ will be 5% annually. The 5% increase in revenues cap will be cumulative. . .

The Phase I rates represent a 20% increase from current rates.⁶

PK-RE has not demonstrated an "unreasonable economic hardship on the utility." The relief request by PK-RE actually creates an unreasonable hardship on the ratepayers. Instead of asking for incremental increases, as contemplated by the 2013 Settlement Agreement, PK-RE is now asking for all the increments proposed over successive 5 year periods at once, thereby exposing the customers to rate shock. PK-RE made the business decision to file its application in October 2016. Under the terms of the Settlement Agreement, PK-RE would have been eligible to file for rate increases as early as September 2014. PK-RE waited over 2 years to file its application, but contends now that it cannot wait 265 for rates requested at a level accumulated over 5 years. PK-RE's decision to delay filing its rate application, rather than seeking incremental rate increases, should not be borne by customers all at once, especially for rates that are presently unsubstantiated.

² 16 TAC § 24.29(d).

³ Motion at 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

PK-RE's application raises complex issues related to invested capital, including the reasonableness of PK-RE's decision to use pump and haul operations to transport raw sewage from the Woods of Greenshores development to PK-RE's existing sewage treatment plant. PK-RE states that \$2.2 million was borrowed to fund capital improvements, but the force main line required to connect the Woods of Greenshores development to the sewage treatment plant was never installed. The ALJ's decision to suspend the effective date until December 9, 2017 protects customers and allows for thorough discovery and a full evidentiary hearing to determine the reasonableness of the requested Phase 1 rates in a timely fashion. PK-RE has not demonstrated an unreasonable economic hardship on the utility for the duration of this proceeding, and therefore a hearing on interim rates is not necessary or appropriate at this time.

Further, the language of the Settlement Agreement states that the maximum rate increase PK-RE "*may seek* in future rate applications will be 5% annually. The 5% increase in revenues cap will be cumulative. . ." While the Settlement Agreement allows PK-RE to seek those rates, it does not guarantee those rates or their reasonableness. At most, the Settlement Agreement sets an upper limit on the amount that may be requested. Only the Commission may determine the reasonableness of the requested Phase 1 level rates, and no such determination has been made at this time. PK-RE's Motion for interim rates at the Phase 1 level should be denied.

Finally, in the event that PK-RE's Motion is granted in whole or in part, all amounts received by PK-RE in excess of currently-approved rates should be deposited into an escrow account pursuant to 16 TAC § 24.29(e)(3). In making a determination as to whether interim rates are appropriate, the Commission may require that all or part of the requested rate increase be deposited in an escrow account.⁷ Pursuant to 16 TAC § 24.29(f), PK-RE would be required to refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the Commission in a reasonable number of monthly installments. PK-RE has indicated that interim rates would be used to "cover its operating costs" rather than deposited into an escrow account.⁸ To ensure PK-RE's ability to account for customer refunds or credits in the event its requested rate increase is denied, all amounts received by PK-

⁷ 16 TAC § 24.29(e).

⁸ Motion at 2.

RE in excess of currently-approved rates should be deposited into an escrow account pursuant to 16 TAC § 24.29(e)(3).

III. Conclusion

Staff respectfully requests that the Motion be denied and no hearing granted.


Dated: March 27, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on March 27, 2017, in accordance with 16 TAC § 22.74.



Ralph J. Daigneault