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October 31, 2006

Via Federal Express 8494 2626 4640

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

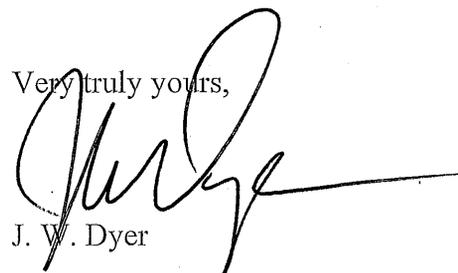
**RE: SOAH Docket No. 582-06-1766; Victoria Palms Resort, Inc. v. City of Donna, Texas;
Before the Texas Commission on Environmental Quality**

Dear Ms. Castañuela:

In reference to the above-described matter, you will find enclosed an original and twelve (12) copies of Applicant, Victoria Palms Resort, Inc.'s Request to Abate Action and Exceptions to Proposal for Decision and Order. Please file the original document and eleven (11) of the copies in your usual manner, file stamp the extra copy, and return it to this office in the envelope we have provided for your convenience.

Thank you for your attention to this matter. If you should have any questions, please do not hesitate to call.

Very truly yours,



J. W. Dyer

JWD/ca
Enclosures

cc: See attached mailing list

CHIEF CLERKS OFFICE
2006 NOV -1 PM 2:54
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

a: Victoria Palms/TCEQ/Corresp/SOAHClerk ltr7/JWD/ca

SOAH DOCKET NO. 582-06-1766
TCEQ DOCKET NO. 2005-2091-UCR

Mailing List

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Judge Gary W. Elkins
Administrative Law Judge
State Office of Administrative Hearing
300 West 15th Street, Room 504
Austin, Texas 78711-3025

**BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS**

VICTORIA PALMS RESORT, INC.,
Applicant

VS

CITY OF DONNA, TEXAS,
Respondent

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§

TCEQ DOCKET NO. 2005-2091-UCR
SOAH DOCKET NO. 582-06-1766

CHIEF CLERK'S OFFICE
2006 NOV - 16 PM 2:54
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**APPLICANT, VICTORIA PALMS RESORT, INC.'S
REQUEST TO ABATE ACTION AND
EXCEPTIONS TO PROPOSAL FOR DECISION AND ORDER**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW Applicant, Victoria Palms Resort, Inc. ("*Victoria Palms*"), in the above-styled and numbered administrative proceeding, and files this its Request to Abate Action and Exceptions to the Proposal for Decision and Order submitted by the Administrative Law Judge dismissing Victoria Palms' First Amended Complaint and Petition for Review against City of Donna, Texas ("*Donna*"). Victoria Palms would show as follows:

REQUEST TO ABATE ACTION

1. Victoria Palms asks the Commission to abate this action and refrain from setting this matter for hearing before the Commission for a period of sixty (60) days to allow the parties to pursue on going settlement negotiations. Both Victoria Palms and Donna are actively discussing settlement of this case. An abatement for this short period of time would allow the parties to continue these negotiations without incurring additional attorney's fees and costs which, in the event of settlement, would prove unnecessary. Such action would also conserve the Commission's

resources and time which, in the event of settlement, would be expended on a moot issue. This request is not made for delay but so that justice may be done.

EXCEPTIONS TO PROPOSAL FOR DECISION

2. Victoria Palms excepts to the Proposal for Decision ("*PFD*") and Proposed Order ("*Order*") issued by the Administrative Law Judge ("*ALJ*") on October 12, 2006.

3. The PFD and Order misstate the matter in controversy in this case. In Finding of Fact No. 12 and in the body of the PFD, the ALJ erroneously concludes that Victoria Palms is seeking the same relief in this case as previously sought by Victoria Palms in 2003. However, the previous claim brought by Victoria Palms against Donna is distinct from and did not involve the recent rate increase from which Victoria Palms now seeks relief. On October 1, 2005, Donna increased its water and sewer rates without providing notice to Victoria Palms, in violation of Tex. Water Code § 13.187, which requires that a statement of intent be delivered to each rate payer at least 60 days before the date of the proposed change. To argue that Victoria Palms must be clairvoyant and anticipate that an ordinance approved in 2000 will result in the specific rate increase made effective in 2005 is ludicrous. Victoria Palms cannot, and has no basis to, challenge a specific rate increase until it is actually implemented. In this case, as soon as Victoria Palms learned of the rate increase, it acted. The previous Application/Petition had nothing to do with the 2005 rate increase. Victoria Palms' present claims are distinct from the 2003 proceeding because Victoria Palms could not have prosecuted a claim for a 2005 rate increase, which had not yet occurred, in the previous proceeding.

4. Neither the Commission nor Donna has ever cited any authority for the proposition that only decisions of the Travis County District Courts, the Third Court of Appeals and the Texas Supreme Court bind the Commission. This Commission is faced with the situation where four

separate appellate courts have barred litigants from pursuing their claims in state court and directed that jurisdiction lies with the Commission. The Commission, for its part, has never articulated a persuasive argument for its position that it has no jurisdiction given the clear terms of the relevant statutes which grant the Commission appellate jurisdiction over Donna's rate orders. Victoria Palms reurges its previous briefing set forth in "Applicant, Victoria Palms Resort, Inc's Response To City of Donna, Texas' Motion To Dismiss For Lack of Subject Matter Jurisdiction and Objection to Applicant's Complaint", and in "Applicant, Victoria Palms Resort Inc's Brief (ORDER NO. 1)" on file herein. If the Courts will not exercise jurisdiction, and the Commission will not exercise jurisdiction, then the statute, Tex. Water Code 13.042 (d), is without any meaning to an aggrieved litigant like Victoria Palms, and cities like Donna can arbitrarily set rates for essential water service without any limitation or oversight. This is clearly not the law as applied to the facts of this case.

PRAYER

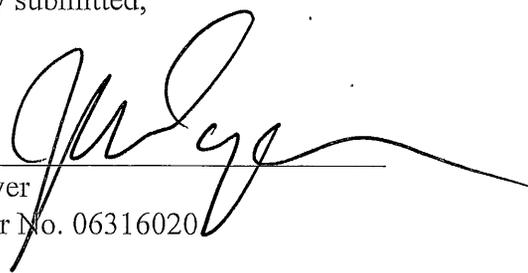
Based on all of the foregoing arguments and authorities, Victoria Palms respectfully requests that the Commission refrain from setting this matter for hearing for a period of sixty (60) days and that its exceptions to the Proposal for Decision and Order be noted for the record, and that the Commission deny the Proposal for Decision and Order. Victoria Palms prays for all relief to which it may be entitled.

Respectfully submitted,

By: _____

J. W. Dyer

State Bar No. 06316020

A handwritten signature in black ink, appearing to read 'J. W. Dyer', written over a horizontal line. The signature is fluid and cursive, extending to the right of the line.

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**ATTORNEY IN CHARGE FOR APPLICANT,
VICTORIA PALMS RESORT, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **Applicant, Victoria Palms Resort, Inc.'s Request to Abate Action and Exceptions to Proposal for Decision and Order** was forwarded to the following parties of record on the 31 day of October 2006, in the manner indicated below:

Via CMRRR No. 7005 2570 0001 7669

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Via CMRRR No. 7005 2570 0001 6689 7621

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Via Federal Express No. 8494 2626 4673

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