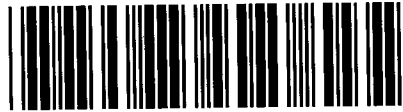




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DOCKET NO. 44490

RECEIVED

APPLICATION OF FOUNDERS §  
RESERVE COMMUNITY §  
ASSOCIATION, INC., TO OBTAIN A §  
WATER AND SEWER CERTIFICATE §  
OF RIGHTS IN MONTGOMERY §  
COUNTY, TEXAS §

PUBLIC UTILITY COMMISSION

2018 MAR 2 AM 9:00

PUBLIC UTILITY COMMISSION  
FILING CLERK

OF TEXAS

**FOUNDER'S RESERVE RESPONSE TO  
COMMISSION STAFF'S RECOMMENDATION FOR DENIAL**

Comes now Founders' Reserve Community Association, Inc. (Founder's) and files its Response to Commission Staff's Recommendation for Denial.

The PUC staff, on the basis of an unsworn statement from an accountant have stated that Founder's did not meet its burden of proof to have the above-referenced certification application granted. In a staff Memorandum attached to the Recommendation for Denial, staff accountant Leila Guerrero states Founder's did not meet its burden of proof in its initial application. Founder's finds this conclusion interesting because no hearing has been conducted or an evidentiary record compiled in this docket. Apparently, the staff ignores the fact that no member of the PUC staff is empowered to make findings of fact and conclusions of law in any docket that still remains contested between parties. While Ms. Guerrero may not have found specific documents in Founder's application which she may have relied upon in evaluating the merits of the application, no one on the staff is empowered to decide whether or not Founder's is capable of producing evidence in a contested case hearing sufficient to meet its statutory burden of proof. Only a SOAH administrative law judge or two of three PUC commissioners have this ability.

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Staff counsel has pled that Founder's does not hold various PUC permits necessary to provide utility services under a PUC-issued certificate of convenience and necessity. No identification of said permits is found in the staff's pleadings. Founder's purchases one hundred percent of its water already treated from a neighboring municipal utility district. All wastewater collected by Founder's is returned to that same municipal utility district for treatment and disposal. Neither the Water Code nor the TCEQ rules requires a utility operating in this fashion to hold any permits issued by that agency.

The remedy sought by the PUC staff in this docket is beyond the authority of a PUC in-house ALJ to grant. If the PUC staff is so sure that it can defeat Founders' application, it may have the opportunity to do so in a contested case hearing at the State Office of Administrative Hearings (SOAH) to be conducted under the authority of the Administrative Procedures Act, Texas Government Code, Chapter 2001. Founder's requests that this application be referred to SOAH.

Respectfully submitted,

By: 

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ATTORNEY FOR FOUNDER'S RESERVE  
COMMUNITY ASSOCIATION, INC.

CERTIFICATE OF SERVICE

I, Mark H. Zeppa, counsel for the Applicant, certify the foregoing pleading was served in accordance with 16 TAC § 22.74 on February 29, 2016:

A handwritten signature in black ink that reads "Mark H. Zeppa". The signature is written in a cursive style with a long horizontal stroke at the end.

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Mark H. Zeppa