



Control Number: 46923



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BRAZORIA COUNTY CLERK

OPEN MEETING COVER SHEET

MEETING DATE: September 28, 2017

DATE DELIVERED: September 21, 2017

AGENDA ITEM NO.: 39

CAPTION: Docket No. 46923; SOAH Docket No. 473-17-5770.WS - Application of Wolfe Air Park Civic Club, Inc. to Obtain a Water Certificate of Convenience and Necessity in Brazoria County

ACTION REQUESTED: Discussion and possible action with respect to Preliminary Order

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Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: John Kramer *JK*
Commission Advising

RE: *Application of Wolfe Airpark Civic Club, Inc. to Obtain a Water Certificate of Convenience and Necessity in Brazoria County, Docket No. 46923, SOAH Docket No. 473-17-5770.WS, Draft Preliminary Order, 9/28/17 Open Meeting, Item No. 39.*

DATE: September 21, 2017

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the September 28, 2017 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the September 28, 2017 open meeting.

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PUC DOCKET NO. 46923
SOAH DOCKET NO. 473-17-5770.WS

APPLICATION OF WOLFE AIRPARK	§	PUBLIC UTILITY COMMISSION
CIVIC CLUB, INC. TO OBTAIN A	§	
WATER CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
BRAZORIA COUNTY	§	

DRAFT PRELIMINARY ORDER

On March 6, 2017, Wolfe Airpark Civic Club, Inc. filed an application to obtain a new certificate of convenience and necessity in Brazoria County for a pre-existing water system that Wolfe Airpark has maintained for several decades. The total service area being requested includes approximately 99 acres and 42 customers. On August 16, 2017, Joe Walker filed a request for a public hearing on Wolfe Airpark's application.

On August 23, the Commission issued an order referring this proceeding to the State Office of Administrative Hearings (SOAH) to conduct a hearing. Wolfe Airpark was directed, and Commission Staff and other interested parties were permitted, to file by September 8, a list of issues to be addressed in this docket and also identify any issues not to be addressed and any threshold of policy issues that should be addressed. Commission Staff timely filed a list of issues. Wolfe Airpark filed a list of issues on September 12.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has Wolfe Air Park given notice consistent with TWC § 13.246 and 16 Texas Administrative Code (TAC) § 24.106?

¹ Tex. Gov't Code Ann. § 2003.049(e) (Vernon 2000).

2. Does Wolfe Air Park's requested water service area overlap with the certificated service area of other entities? If so, what specific areas will overlap? Has Wolfe Air Park received appropriate consent to provide water service within the entities' service boundaries?
3. What modifications, if any, must be made to Wolfe Air Park's requested area to reflect land removed from the requested area because of a qualified landowner's election to exclude some or all of the landowner's property pursuant to TWC §§ 13.2451(b) and 13.246(h) and 16 TAC § 24.102(h)?
4. Does Wolfe Air Park possess the financial, managerial, and technical capability to provide continuous and adequate water service? TWC § 13.241(a) and 16 TAC § 24.102(a).
5. Does Wolfe Air Park possess a TCEQ-approved public water system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the Texas Water Code? TWC § 13.241(b)(1) and 16 TAC § 24.102(a)(1)(A).
6. Does Wolfe Air Park have access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirements of 16 TAC § 24.102(a)(1)(A)? TWC § 13.241(b)(2) and 16 TAC § 24.102(a)(1)(B).
7. Would the requested water service area require construction of a physically separate water system? If so, has Wolfe Air Park proven that regionalization or consolidation with a retail public utility for water service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.102(b).
8. Is the requested water certificate necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.102(c).
9. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested water certificate? In answering this issue, please address the following sub-issues:
 - a. Is the requested water service area currently receiving adequate water service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
 - b. Does the requested water service area need additional water service? TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2).
 - i. Have any landowners, prospective landowners, tenants, or residents requested water service?

- ii. Are there economic needs for additional water service?
 - iii. Are there environmental needs for additional water service?
 - iv. Are there written applications or requests for water service?
 - v. Are there reports or market studies demonstrating existing or anticipated growth in the area?
- c. What is the effect under TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3) of granting the requested water certificate on
 - i. Wolfe Air Park,
 - ii. landowners in the requested service areas, and
 - iii. any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested area?
- d. Does Wolfe Air Park have the ability to provide adequate water service, including meeting the standards of the TCEQ and the Commission, taking into consideration the current and projected density and land use of the requested area? TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4).
- e. What is the feasibility of obtaining water service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5).
- f. Is Wolfe Air Park financially able to pay for the facilities necessary to provide continuous and adequate water service? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
- g. Is Wolfe Air Park financially stable including, if applicable, its debt-to-equity ratio? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
- h. How would environmental integrity be affected, if at all, by granting the requested water certificate? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).
- i. Is it probable that water service would be improved or costs to consumers in that area would be lowered by granting the requested certificate? TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8).
- j. How would the land in the requested service area be affected, if at all, by granting the requested area? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).

10. Should the Commission require Wolfe Air Park, pursuant to TWC § 13.246(d) and 16 TAC § 24.102(e), to provide a bond or other financial assurance to ensure that continuous and adequate water service is provided?
11. If applicable, what were Wolfe Air Park's efforts to:
 - a. extend water service to any economically distressed area, within the meaning of TWC § 15.001, located within Wolfe Air Park's certificated service area; and
 - b. enforce rules adopted under TWC § 16.343, regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e).

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of September 2017

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

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