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

BEFORE THE STATE OFFICES
OF
ADMINISTRATIVE HEARINGS

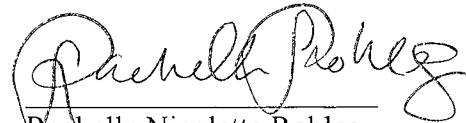
COMMISSION STAFF'S INITIAL BRIEF

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF
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COMMISSION STAFF’S INITIAL BRIEF

I. INTRODUCTION

A certificate of convenience and necessity (CCN) grants a utility the right to provide retail utility service within a specific area. The proposed water service area in this case includes Wolfe Air Park (Applicant or Wolfe), a community that includes residential homes and hangars surrounding a private air strip, and Holland Estates (Holland), a neighboring subdivision. Wolfe has been providing water services to this area since 1986¹ and now seeks approval of a CCN by the Commission.

Typically, applications for a new water CCN are administrative matters, not contested cases that result in a hearing on the merits, as in this case. Intervenor Joe Walker (Walker), a resident of Wolfe, intervened and requested a hearing, largely due to his concerns regarding the historical construction of the facility, among other perceived issues.

However, Walker conflates issues that lie outside the scope of the CCN application with the CCN concerns that are required to be addressed as part of a CCN proceeding. Because the utility possesses the financial, managerial, and technical capacity to provide continuous and adequate service, Staff respectfully recommends that the Applicant be granted the CCN.

¹ Applicant Ex. 1, Application of Wolfe Airpark Civic Club, Inc., for CCN at 6 (Application).

II. APPLICANT HAS THE FINANCIAL, MANAGERIAL, AND TECHNICAL CAPABILITY TO PROVIDE CONTINUOUS AND ADEQUATE SERVICE (P.O. ISSUE NO. 4, 5, 6, 7)

The Applicant submitted evidence to demonstrate that it possesses the financial, managerial, and technical capability to provide water service to the customers located within the 117 acres of the proposed service area.² This unique area surrounds a private strip and includes Holland, a neighboring subdivision, with 17 residential and 24 hangar connections.³ Since its inception in the early 1980s, the Applicant has provided water service to customers located in this area.⁴

In order to be granted a CCN, a water service utility must demonstrate that it has the financial, managerial, and technical capability to provide continuous and adequate service to the customers in the proposed service area.⁵ Additionally, the owner or operator of the retail public utility must demonstrate that it has the financial resources to operate and manage the utility and provide continuous and adequate service to the current and proposed utility area.⁶

While considering the financial prong of the requirement, Staff considered whether the Applicant met the leverage and operations tests established by rule.⁷ Since the Applicant has a debt to equity ratio of less than one, it has met the leverage test.⁸ Additionally, the Applicant meets the operations test because it has no projected financial losses.⁹ Moreover, the system was built and has been operating since 1986, and, due to the nature of the area it services and the relatively static nature of the population in the proposed service area, it anticipates no significant changes in costs due to growth.¹⁰ Thus, Applicant established that it satisfies the financial requirements.

Additionally, Applicant satisfies the managerial prong of the statutory requirements. The water utility was specifically created to service the residents of Wolfe, and, later, the service area expanded to include the neighboring subdivision.¹¹ Each customer has been paying a pro rata

² See Application.

³ Tr 31:18; Tr 32:8-10 (Heitz Cross).

⁴ Application at 4; Tr 32:16-18 (Heitz Cross).

⁵ Texas Water Code (TWC) § 13.241(a).

⁶ Title 16 Texas Administrative Code (TAC) § 24.11

⁷ Staff Ex. 2, Direct Testimony of Emily Sears at 5 (Sears Direct).

⁸ *Id.*

⁹ Sears Direct at 6.

¹⁰ *Id.*

¹¹ Ex. 14, Applicant's Direct Prefiled Testimony at 2 (Applicant Direct).

portion of the expense of operation and maintenance of the system.¹² Thus, the Applicant has successfully managed the utility for the past several decades, and has demonstrated that it has the ability to continue doing so.

Moreover, Staff determined that the Applicant demonstrated its technical capability to serve the proposed service area.¹³ Despite this, the intervenor was concerned regarding whether the Applicant satisfied the technical prong of the statutory requirement, stating that there are not enough wells to service Holland in addition to Wolfe and that the water pressure was insufficient.¹⁴ In the scope of her review, Staff expert Jolie Mathis evaluated whether Applicant's water system complied with certain TCEQ regulations, including whether it is a TCEQ-approved system, and determined that the Applicant satisfied both requirements.¹⁵

Walker lodged an additional complaint that he believed that the water system was not a "State approved water system."¹⁶ Walker failed to cite to any specific statute he believed the water system violated. Regardless, as stated above, the relevant consideration for the Commission's review of a water utility CCN application is whether TCEQ approved the Applicant's water system, whether it is operating in compliance with those rules, and whether there are any outstanding violations.¹⁷ Since TCEQ approved the water facilities and system, it is in place, and there were no outstanding TCEQ violations, Staff determined that the Applicant satisfied the technical prong of the statutory requirement.¹⁸

Finally, the Applicant has been providing continuing and adequate service to its customers for the past several decades, including providing water service through drought and hurricanes.¹⁹ There has only been one formal complaint lodged with TCEQ, filed by Walker.²⁰ After an investigation, TCEQ determined that the complaint was without merit and withdrew it.²¹ Thus, the Applicant has satisfied the requirements imposed by TWC § 13.241.

¹² Ex. 6, Deed Restrictions of Wolfe Airpark Subdivision; Ex. 7 Amendments to Deed Restrictions of Wolfe Airpark Subdivision.

¹³ Staff Ex. 1, Direct Testimony of Jolie Mathis at 7 (Mathis Direct).

¹⁴ Intervenor Ex. 1, Motion to Allow Late Direct Testimony, and, if Possible, Extend Procedural Schedule at 1-2 (Walker Direct).

¹⁵ Tr 122:2-6 (Mathis Cross).

¹⁶ Walker at 2.

¹⁷ Tr at 122:2-6 (Mathis Cross).

¹⁸ Mathis Direct at 6.

¹⁹ Application at 5.

²⁰ Tr 111:6-12 (Walker Recross).

²¹ Ex. 11, TCEQ Withdrawal of Complaint No. 68737.

III. THE BALANCE OF FACTORS WEIGH IN FAVOR OF GRANTING THE REQUESTED WATER CCN BECAUSE IT IS NECESSARY FOR THE SERVICE, ACCOMODATION, CONVENIENCE, OR SAFETY OF THE PUBLIC (P.O. ISSUES 8, 9)

The Applicant has already been successfully providing water service to the customers in the proposed service area since its inception,²² and granting the CCN application would maintain the status quo. Because of the unique location and combination of residential and hangar connections, it is not feasible to obtain water from another retail water utility.²³

Walker argued that only lots located in Wolfe have the legal right to possess connections to Applicant's water system, and that Holland's connections should not be permitted.²⁴ However, Walker conflates a legal right in connection with a deed with what Staff can consider in its review of a CCN application. A service area of a proposed CCN application does not necessarily correlate with areas that correspond to deeds conferring property rights. Moreover, the deed creating Wolfe was amended to include the lots in question.²⁵ Regardless, this issue lies outside the scope of the review of a CCN application, and it is thus irrelevant. The considerations are whether map requirements in the application satisfy the relevant statutes and rules,²⁶ which the Applicant has, and whether there is an existing CCN holder for the proposed area, which there is not.

Walker also raised an issue of the fact that the water system does not use individual water meters to track residents' usage and charge them accordingly. Title 16 TAC § 24.89 dictates the meter requirements for water service, but the Commission may exempt a water utility from installing meters.²⁷ Since this utility is relatively small and has been able to successfully manage its finances for the past several decades, Staff recommends that the installation of meters be addressed in a subsequent rate case outside of this proceeding, and that Applicant submit a cost analysis for installing meters, in order to aid Staff in considering whether it is prudent to install the meters.²⁸

²² Application at 6; Applicant Direct at 4.

²³ Mathis Direct at 5.

²⁴ Walker Direct at 1-2.

²⁵ Tr 70:11-14 (Heitz Redirect).

²⁶ 16 TAC § 24.105(a)(2) and 16 TAC § 24.119.

²⁷ 16 TAC 24.89(a)(2).

²⁸ Mathis Direct at 5, lines 8-15. *Also see Application of Cypresswood Estates Water System For a Pass-Through Rate Change*, Docket No. 47625, Commissioner Memo (January 24, 2018), where the Commission declined to read

IV. CONCLUSION

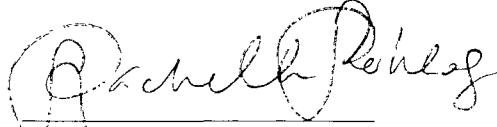
Applicant has demonstrated that it satisfies the statutory requirements of possessing the financial, managerial, and technical capability of providing continuous and adequate service to customers. Additionally, the balance of factors weigh in favor of granting the request. Although it is rare to hold a hearing on the merits of a water CCN application, Staff believes that the intervenor's concerns are resolved by an analysis of the relevant factors and respectfully recommends that the ALJs approve the application.

16 TAC § 24.89 as requiring a small water utility to install meters without first analyzing the costs and benefits of installing water meters for that water utility.

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 20, 2018 in accordance with. 16 TAC § 22.74


Rachelle Nicolette Robles