



Control Number: 46923



Item Number: 60

Addendum StartPage: 0

SOAH DOCKET NO. 473-17-5770.WS

DOCKET NO. 46923

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

**APPLICANT'S MOTION TO STRIKE WALKER'S TESTIMONY OR
ALTERNATIVELY TO ALLOW SUPPLEMENTAL EVIDENCE**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES WOLFE AIRPARK CIVIC CLUB, INC., (Civic Club), and submits this Motion to Strike Joe Walker's Rebuttal Testimony, and would respectfully show the Court the following:

1. Applicant renews its original objections to Walker's Sworn Testimony (Walker Exhibit 1), as well as Applicant's supplemental objections made to the Court at the commencement of the hearing on April 26, 2018 (Tr. Pgs. 15 - 24).
2. The Court gave Applicant a running objection throughout the proceedings rather than requiring Applicant to make continuing objections throughout the hearing (Tr. Pg. 24, lines 8-17).
3. After Walker's cross examination, he orally testified for the first time that the Wolfe Airpark water quality was sub-standard (Tr. Pg. 108).
4. This allegation is untrue.

5. This allegation was not made in Walker's Request for Hearing (PUC Interchange Item No. 13).
6. This allegation was not made in his Written Direct Testimony (Walker Exhibit 1).
7. Water quality was not raised in Walker's 2006 Complaint to the TCEQ (Applicant's Exhibit 10).
8. Walker's 2006 complaint was withdrawn by the TCEQ in 2008 (Applicant's Exhibit 11).
9. PUC witnesses state that there have been no complaints regarding water quality during the entire regulatory supervision of the water system (Tr. Pg. 122, lines 2-6).
10. To rebut Walker's oral complaints about water quality, Applicant will show regulatory inspections that demonstrate the water quality meets or exceeds regulatory requirements (Applicant's Exhibit 14, Pg. 44).

**SUPPLEMENTAL EVIDENCE SHOULD BE ALLOWED TO
REFUTE WALKER'S FALSE STATEMENT**

11. SOAH and PUC regulations are established to allow the forum to fairly and accurately determine the legal and factual issues pending before the Court.
12. SOAH Procedural Rules are established to prevent surprise or ambush. Walker's new testimony at the hearing raising questions about water quality were made for the first time, contrary to the intent of the procedural rules to prevent surprise or ambush.
13. Further, the oral statements regarding water quality were not even present in the late filed written testimony that Walker submitted on April 23, 2018.

14. No complaint regarding water quality was made in Walker's original Request for Hearing dated August 16, 2017 (Item No. 13).
15. No complaint regarding water quality was made in Walker's Sworn Written Direct Testimony submitted immediately before the April 26, 2018 hearing (Item No. 53).
16. The Court gave Applicant a running objection throughout the proceedings rather than requiring Applicant to make continuing objections throughout the hearing.
17. Applicant renews its original objections (Item No. 51) to Walker's Sworn Written Direct Testimony (Item No. 53), as well as Applicant's supplemental objections made to the Court at the commencement of the hearing on April 26, 2018.

ACCORDINGLY, APPLICANT REQUESTS that the Court strike the testimony by Joe Walker regarding water quality.

ALTERNATIVELY, APPLICANT REQUESTS that if Walker's unsupported evidence is allowed, the Court grant leave to the Applicant to provide evidence that impeaches Joe Walker and confirms that the water quality of the Wolfe Airpark water system meets or exceeds regulatory requirements.

Respectfully submitted,

/s/John C. Hampton

By: _____

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CERTIFICATE OF SERVICE

I certify that a true copy of this document, together with any attachments, has been served on July 18, 2018 on the Legal Division of the Texas PUC by serving Rachelle Robles via email rachelle.robles@puc.texas.gov, and on Joe Walker via email to joewalk@hal-pc.org and joewalkerpe@gmail.com .

/s/John C. Hampton

JOHN C. HAMPTON

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IN BRAZORIA COUNTY	§	

ORDER STRIKING TESTIMONY OF JOE WALKER

ON THIS DAY CAME ON TO BE HEARD the Applicant's Motion to Strike Walker's Testimony or Alternatively to Allow Supplemental Evidence filed by Wolfe Airpark Civic Club, Inc.,

And the Court, having considered the arguments and authorities presented herein, hereby GRANTS the Motion to Strike.

SIGNED THIS ____TH DAY OF _____, 2018.

JUDGE PRESIDING

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**ORDER GRANTING APPLICANT'S
SUPPLEMENTAL REBUTTAL TESTIMONY**

ON THIS DAY CAME ON TO BE HEARD the Applicant's Motion to Strike Walker's Testimony or Alternatively to Allow Supplemental Evidence filed by Wolfe Airpark Civic Club, Inc.,

And the Court, having considered the arguments and authorities presented herein, hereby GRANTS Applicant's Supplemental Rebuttal Testimony.

SIGNED THIS ____TH DAY OF _____, 2018.

JUDGE PRESIDING