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

§ PUBLIC UTILITY COMMISSION  
§  
§ OF TEXAS  
§  
§  
§

APPLICANT'S REPLY BRIEF

Respectfully submitted,

*/s/John C. Hampton*

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Date: August 10, 2018

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## **APPLICANT'S REPLY BRIEF**

Now comes Wolfe Airpark Civic Club, Inc. (Applicant) and submits this Reply Brief, responding to Joe Walker's Initial Brief and his "Motion to Require Engineer's Study and to Refer Applicant to Criminal Investigation".

### **I. INTRODUCTION**

Over the last thirty (30) plus years, two regulatory agencies have reviewed Applicant's water supply system and have determined that it is properly providing adequate supplies of safe water to its customers. Prior to the April 26, 2018 hearing, the Staff of the Public Utility Commission of Texas (Commission staff) recommended that the Applicant receive a water Certificate of Convenience and Necessity (CCN) (PUC Exhibit 1, Pg. 7, line 20). Further, after considering the evidence and submissions of the parties at the April 26, 2018 hearing, Commission staff reaffirmed its recommendation that Applicant receive a water CCN (Commission Initial Brief).

Previously, in 2008, the TCEQ reviewed Walker's 2006 complaint and rejected it (Applicant's Exhibit 11). The 2008 TCEQ report invalidates the central basis of the complaints Walker brings to this Court. **Incredibly, even though the TCEQ had rejected his complaints, Walker attempts to bring the same invalid arguments to this Court.**

Regarding the issue of water meters, Commission staff recommended in it April 13, 2018 direct testimony that Applicant receive a CCN and then file a rate case to adjust rates if necessary and address the issue of water meters with a cost analysis and rate structure that allocates costs fairly. After the hearing, as noted by Commission staff in their Initial Brief filed on July 20, 2018 (at footnotes 27 and 28), the Commission may exempt a small water utility from installing water meters.

## **II. REPLY TO WALKER'S MOTION FOR ENGINEERING STUDY AND CRIMINAL REFERRAL**

Regarding Walker's request to require an engineering study and criminal referral, Applicant absolutely denies the validity of Walker's complaints. As shown below, the 2008 TCEQ report (Applicant's Exhibit 11) confirms that Applicant has been operating properly for over 30 years. Further, Applicant joins with the Commission staff's response and would respectfully urge that Walker's request is outside of the scope of this proceeding, and is not related to the Public Utility Commission's (PUC's) issues set forth in its Preliminary Order signed September 29, 2017 (Preliminary Order).

## **III. REPLY TO WALKER'S COMPLAINTS**

Applicant has demonstrated that it can provide adequate supplies of safe water as shown by its decades of operation without a single valid complaint. This is confirmed by the TCEQ's regular inspections of the system and the Applicant's weekly monitoring of water quality as set forth in the monthly TCEQ Reports. This evidence confirms the fact that Applicant has and can continue to provide adequate quantities of safe water to its customers.

Further, Applicant's formal request for CCN submitted to the Commission, as well as the evidence produced at the April 26, 2018 hearing, satisfies the requirements set forth by the Commission in the Preliminary Order.

Prior to April 2018, Walker had submitted no evidence to support his objection to Applicant's request for a water CCN. Walker's core complaints had been previously rejected by the TCEQ's 2008 report. Walker's remaining arguments ask this Court to consider issues that are outside the parameters of the Commission's Preliminary Order, and are not relevant to the analysis of whether a CCN should be approved.

Walker's arguments are untrue, and are refuted by the 30 plus years of Applicant's service without a valid complaint; by the TCEQ inspections; by the evidence submitted by Applicant; and by the testimony of Commission staff.

**A. Commission Staff Recommends Issuance of a Water CCN**

After considering the evidence submitted at the April 26, 2018 hearing, Commission staff reaffirmed its prior recommendation in their Initial Brief, stating that "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 (Exhibit 18, pg. 5). This unique area surrounds a private strip and includes Holland, a neighboring subdivision, with 17 residential and 24 hangar connections. Since its inception in the early 1980's, the Applicant has provided water service to customers located in the area".

Further, after considering all the evidence in this case, Commission staff has concluded in its Initial Brief that the balance of factors weigh in favor of granting the requested water CCN because it is necessary for the service, accommodation, convenience or Safety of the Public.

**B. TCEQ Previously Rejected Walker's Core Complaints**

Walker argues that a TCEQ Complaint Report dated January 10, 2006 supports his objection. This is the same TCEQ Complaint introduced as Applicant's Exhibit 10. Although later withdrawn, this inspection refutes two of the arguments Walker attempted to make at the April 26, 2018 hearing concerning water quality and system capacity. The 2006 TCEQ inspection determined that capacity of the system met the regulatory requirements and made no adverse finding regarding water quality.

In the 2006 complaint, the TCEQ initially determined that Applicant's system required individual meters, and required a CCN with an approved rate structure to charge its customers the

costs necessary to maintain and operate the water system.

This is the core support for Walker's argument against issuance of a CCN. As noted by the Commission staff, this has been the only complaint made against the operation of the system in the entire 30 plus years. The customers served at the time of this complaint are the same customers served from the beginning of the operation as described on the map included as Exhibit 18, pg 5.

However, in 2008, the TCEQ considered and rejected each of Walker's 2006 complaints (Applicant's Exhibit 11).

In 2008, the TCEQ determined that:

- it was not necessary for Applicant to have a CCN.
- it was not necessary for Applicant to have individual water metering devices as a requirement to charge customers for the pro rata share of the expense necessary to maintain and operate the system.
- it was not necessary for Applicant to have an approved tariff request to charge customers for the pro rate costs associated with maintaining and operating the system.

The TCEQ's 2008 report (Applicant's Exhibit 11) conclusively eliminates Walker's core arguments to this Court. The conclusive legal effect of the 2008 TCEQ withdrawal is established by the following regulation, at 16 TAC 24.1(b):

**"A rule, form, policy, procedure, or decision of the Texas Commission on environmental quality (TCEQ) related to a power, duty, function, program or activity transferred by House Bill 1600 and Senate Bill 567, 83<sup>rd</sup> Legislature, Regulator Session (this Act), continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas (commission) and remains in effect until amended or replaced by the commission. Any jurisdiction over a utility's rates, operations, and service ceded to the TCEQ continues in effect and shall be deemed to be ceded to the commission".**

Therefore, as the Court considers Applicant's request for a CCN, Applicant respectfully requests that the Court give great weight to the Commission staff's recommendation for issuance,

the TCEQ's prior action rejecting Walker's arguments, and the 30 plus year history of Applicant's operation of the water system without any valid complaints.

#### **IV. OBJECTION TO WALKER'S SUPPLEMENTAL EVIDENCE**

In Walker's Initial Brief, he attempts to submit evidence not previously produced. Applicant objects to the evidence as it is untimely, irrelevant, unverified and constitutes inadmissible hearsay. In addition, Applicant submits the following objections:

- Supplement 2 relates to documents from 2001 through 2006 which are not relevant to the pending application.
- Supplement 3 relates to testimony rendered moot by the 2008 TCEQ decision (Applicant's Exhibit 11).
- Supplement 4 is an unsigned Judgment against an unrelated third party.
- Supplement 5 is a 2003 letter that is rendered irrelevant by the 2008 TCEQ Report and additional TCEQ inspections (Applicant's Exhibit 14, pg 44).

To the extent that the Court is concerned about water quality or system capability, Applicant again refers the Court to Applicant's Exhibit 14, pg. 44 showing that the TCEQ's consistent inspections show no deficiencies. Regarding the water quality, Applicant reurges its Motion to Strike (Item 60), or alternatively requests that the Court consider its verified supplemental evidence demonstrating safe water quality from several regulatory agencies (Item 61).

#### **V. SUMMARY**

Applicant has been providing clean water in adequate quantities for the entire 30 plus years of its operation. The TCEQ's 2008 report affirmed Applicant's capability to charge its customers the costs associated with the maintenance and operation of the system.

The Commission staff, in reviewing all the evidence and arguments of the parties,



recommends the issuance of a water CCN to Applicant.

Applicant's request for CCN and the evidence submitted to the Court meets all of the requirements set forth in the Commission's Preliminary Order.

More specifically, Applicant's water system meets the Commission's requirement stated in issue no. 4 regarding financial, managerial, and technical capability to provide continuous and adequate water service.

Further, Applicant's water system is a TCEQ approved water system that meets the Commission requirement stated in issue no. 5 regarding the capability to provide drinking water that meets the requirements of the Texas Health and Safety Code Chapter 341, TCEQ Rules, and the Texas Water Code Section 13.241 (b)(1) and 16 TAC Section 24.102 (a)(1)(A).

## **VI. CONCLUSION**

Wherefore, Applicant respectfully requests that this Court find and recommend that the Commission approve Applicant's request for a Certificate of Convenience and Necessity for the provision of water services within the application area.

Respectfully submitted,

*/s/John C. Hampton*

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### **CERTIFICATE OF SERVICE**

I certify that a true copy of this document, together with any attachments, has been served on August 10, 2018 on the Legal Division of the Texas PUC by serving Rachelle Robles via email [rachelle.robles@puc.texas.gov](mailto:rachelle.robles@puc.texas.gov), and on Joe Walker via email to [joewalk@hal-pc.org](mailto:joewalk@hal-pc.org) and [joewalkerpe@gmail.com](mailto:joewalkerpe@gmail.com) .

*/s/John C. Hampton*

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JOHN C. HAMPTON