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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 OFFICE OF THE COMMISSION
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OF
ADMINISTRATIVE HEARINGS

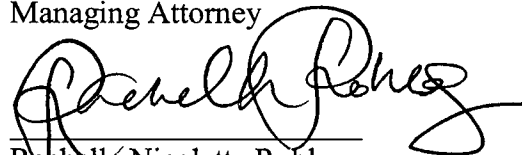
COMMISSION STAFF'S REPLY BRIEF

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney



Rachelle Nicolette Robles
State Bar No. 24060508
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7255
(512) 936-7268 (facsimile)
rachelle.robles@puc.texas.gov

Date: August 17, 2018

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COMMISSION STAFF’S REPLY BRIEF

I. INTRODUCTION

The late-filed initial brief¹ filed by intervenor Joe Walker (Walker) fails to rebut the arguments regarding Staff’s recommendation to approve Wolfe Airpark’s (Wolfe) application for a water certificate of convenience and necessity (CCN).

In his reply brief, Walker states the following:

“The governing provisions of the design, operation, and upgrade of Texas public water systems is codified in the Texas Administrative Code (TAC). I presume the proceedings are governed by the same documents.”²

However, that presumption is incorrect, and this error lies at the heart of many of Walker’s objections to Wolfe’s CCN application. Walker continues to conflate his personal concerns regarding the historical construction of the water system with issues that are relevant to a CCN application. In this reply brief, Staff only addresses the factors pertinent to a CCN application. Staff addresses these arguments and others regarding Wolfe’s need for a CCN below.

¹ See State Office of Administrative Hearings (SOAH) Order No. 9 (May 16, 2018), which set July 20, 2018 as the deadline for the initial brief. Walker’s initial brief was filed on July 25, 2018.

² Joe Walker’s Initial Brief at 2 (July 25, 2018) (Walker’s Initial).

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

Staff's initial brief provides how Wolfe meets the statutory requirements by demonstrating that it has the financial, managerial, and technical capability to provide continuous and adequate service.³

Walker fails to offer any new insight as to how Wolfe does not meet the statutory requirements. He argues that the water system is insufficient because it does not match the original plans drafted for the system, of which he is the only one qualified to review the design and operation to determine whether it complies with the TAC requirements.⁴ However, the relevant consideration is whether the water system is approved by the Texas Commission on Environmental Quality (TCEQ) and currently complies with certain TCEQ requirements; Staff determined that it satisfies both requirements.⁵

Additionally, Walker complains that the water pressure is insufficient, and that the lack of complaints lodged with TCEQ only speaks to the fact that he is the only individual served by the water system that is qualified to make that determination, because he is the only registered professional engineer in the subdivision, and, thus, the only one who would complain to TCEQ regarding those types of issues.⁶ However, a registered professional engineer is not the only person that may take note of this issue and then complain to TCEQ regarding water pressure, or any other concern any citizen may have with the water system.

Walker's objections regarding Wolfe's technical capabilities fail to rebut Staff's assessment of Wolfe's ability to meet the statutory requirements.

³ Staff's Initial Brief at 4-5 (July 20, 2018) (Staff's Initial).

⁴ Walker's Initial at 2-3.

⁵ Staff's Initial at 5.

⁶ Walker's Initial at 5.

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)

Staff's initial brief demonstrated how the balance of factors weigh in favor of granting Wolfe's water CCN application, because it is necessary for the service, accommodation, convenience, or safety of the residents of the proposed service area.⁷

Walker continues to conflate the service area proposed in a water CCN application with boundaries outlined by deeds conferring property rights.⁸ The two do not necessarily correlate.⁹ Additionally, he doubts the Commission's authority to "grant approval of the operation of Wolfe Airpark's water system to areas outside the legal description boundaries."¹⁰ However, both the statute and the rule specifically outline which criteria may be considered in determining the proposed service area in the CCN, none of which address Walker's concern here.¹¹

Additionally, Walker mischaracterizes Staff's recommendation, stating that Staff's recommendation required the installation of water meters.¹² Instead, Staff specifically recommended for that issue to be "addressed in a separate rate case" outside of the instant proceeding and that Wolfe "submit a request for an exception to the meter requirement" when it files a rate application in 18 months.¹³

Granting Wolfe's water CCN would allow Wolfe to continue to serve the residents in the proposed service area and preserve the status quo, and the arguments Walker presented in his initial brief fail to demonstrate why the balance of factors weigh in favor of denying the requested water CCN.

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. Staff

⁷ Staff Initial at 6.

⁸ Walker Initial at 6.

⁹ See 16 Texas Administrative Code (TAC) § 24.105(a)(2) and 16 TAC § 24.119.

¹⁰ Walker Initial at 6.

¹¹ Texas Water Code (TWC) § 13.244 and 16 TAC § 24.119.

¹² Walker Initial at 8 and 13.

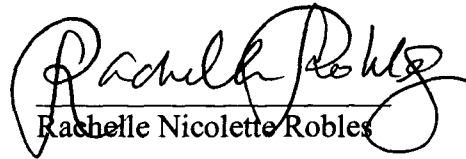
¹³ Direct Testimony of Jolie Mathis at 5 (April 13, 2018) (Mathis Direct).

continues to believe that the intervenor's concerns are resolved by an analysis of the relevant factors and respectfully recommends that the ALJs approve the application.

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 17, 2018 in accordance with. 16 TAC § 22.74


Rachelle Nicolette Robles