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SOAH DOCKET NO. 473-17-5770.WS
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FILING CLERK

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

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 11

**FINDING NOTICE OF THE APPLICATION TO BE SUFFICIENT,
DENYING PROTESTANT'S MOTION TO REQUIRE AN ENGINEER'S STUDY
AND TO REFER APPLICANT TO CRIMINAL INVESTIGATION,
ADMITTING APPLICANT'S POST-HEARING REBUTTAL TESTIMONY AND
PROTESTANT'S SEPTEMBER 6, 2018 FILING,
AND ESTABLISHING NEW RECORD CLOSE DATE**

A. Finding Notice of the Application to be Sufficient

On March 13, 2017, an Administrative Law Judge (ALJ) at the Public Utility Commission of Texas (Commission) issued Order No. 1 requiring comments on the administrative completeness of Wolfe Air Park Civic Club, Inc. (Applicant)'s application and notice.

On April 6, 2017, Commission Staff (Staff) filed a recommendation that the Commission deem the application deficient. On June 7, 2017, after Applicant filed additional information, Staff filed a supplemental recommendation that the Commission deem the application administratively complete and require Applicant to provide adequate notice.

On August 10, 2017, the Commission ALJ issued Order No. 4 setting a deadline for Applicant to file affidavits of notice, including a copy of the individual notice issued with the accompanying map and the published notice. On August 11, 2017, Applicant filed the requested affidavits.

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On August 11, 2017, Joe Walker (Protestant), who receives service from Applicant's system, filed a request for hearing.

On August 21, 2017, Staff filed a recommendation that Applicant's notices substantially met the requirements of Texas Water Code § 13.246 and 16 Texas Administrative Code § 24.106. Staff noted that, although the notices did not include the required statement from 16 Texas Administrative Code § 24.106(a)(3), the notices substantially included the information from the statement throughout the notice.

On August 23, 2017, the Commission issued an Order of Referral, referring this case to the State Office of Administrative Hearings (SOAH), and requesting the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for decision, if necessary.

The ALJs adopt Staff's August 21, 2017 recommendation and find that Applicant's notice substantially met the requirements of Texas Water Code § 13.246 and 16 Texas Administrative Code § 24.106.

B. Denying Applicant's Motion to Strike Testimony, Granting Applicant's Motion to Allow Supplemental Evidence, and Admitting Applicant's Rebuttal Testimony Regarding Water Quality

In SOAH Order No. 7 the ALJs denied Protestant's request to extend the hearing date or late-file supplemental direct testimony. However, Protestant appeared at the hearing, and the ALJs permitted him to offer testimony regarding water quality during his redirect.

On July 20, 2018, Applicant filed a motion to strike Protestant's redirect testimony or to Applicant to submit supplemental evidence regarding water quality. Because Protestant did not offer testimony regarding water quality until the hearing, and because it was not reasonably foreseeable that he would do so, Applicant is entitled to offer rebuttal evidence on the issue.

Applicant's motion to strike Protestant's testimony regarding water quality is denied, but Applicant's motion to allow supplemental evidence is granted, and Applicant's Rebuttal

Testimony Regarding Water Quality filed July 20, 2018, is admitted into the record and has been marked as Applicant Ex. 19.

C. Denying Protestant's Motion to Require an Engineer's Study and to Refer Applicant to Criminal Investigation

On July 25, 2018, Protestant filed a Motion to Require an Engineer's Study and to Refer Applicant to Criminal Investigation. On July 30, 2018, Staff filed a Response to Protestant's Motion to Require an Engineer's Study and to Refer Applicant to Criminal Investigation. The ALJs agree with Staff that the subject matter of Protestant's motion is outside the scope of this contested case proceeding. Therefore, the motion is denied.


D. Admitting Protestant's Response to Applicant's Response to Protestant's Reply Brief

On September 6, 2018, Protestant filed a response to Applicant's response to Protestant's reply brief. This filing, including its attachments, is admitted into the record as Walker Ex. 2.


E. Establishing Record Close Date

The record in this case is closed as of September 6, 2018.

SIGNED October 30, 2018.



TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



CASEY A. BELL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS