



Control Number: 46923



Item Number: 97

Addendum StartPage: 0

STATE OF TEXAS
COUNTY OF BRAZORIA

PUC DOCKET NO. 46923

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

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PUBLIC UTILITY COMMISSION
OF TEXAS

AFFIDAVIT OF JOHN C. HAMPTON REGARDING ISSUANCE OF
CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 13276

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, personally appeared John C. Hampton,
known to me to be a credible person who on his oath deposed and stated the following on
his personal knowledge:

1. "My name is John C. Hampton and I am the attorney representing Wolfe Airpark
Civic Club, Inc in the Application for Certificate of Convenience and Necessity
(CCN) No. 13276 I am over the age of eighteen (18) years, and there is no legal
impediment to my giving this affidavit. I make the affidavit on my personal
knowledge and the statements contained herein are true and correct.
2. Attached are true and correct copies of the following documents issued by the Public
Utility Commission (PUC):
 - June 13, 2019 Order granting the Application for CCN to Wolfe Airpark Civic
Club, Inc.

- PUC Certified copy of Certificate of Convenience and Necessity No. 13276
 - Certified copy of the map showing the service area
3. The service area includes the Wolfe Airpark Subdivision, a subdivision of the Thomas Spraggins Survey, Abstract 366, Brazoria County, Texas according to the plat thereof recorded in Volume 16, Pages 153 and 514, Plat Records of Brazoria County, Texas, and Holland Estates; and is generally bounded on the north by Belcher Rd; on the east by 900' east of intersection of Frey Rd & Belcher Rd; on the south by Mustang Bayou; and on the west by 170' west of Hal McClain Rd, said area being approximately 117 acres.


WITNESS MY HAND on August 23, 2019.



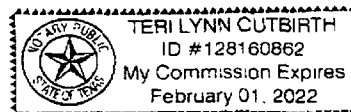
 JOHN C. HAMPTON
 ATTORNEY FOR WOLFE AIRPARK CIVIC CLUB, INC.

BEFORE ME, the undersigned authority, personally appeared John C. Hampton, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he has read the foregoing affidavit and that the statements in the affidavit are true and correct.

Given under my hand and seal of office this 23 day of August, 2019.



 Notary Public in and for
 The State of Texas



PUC DOCKET NO. 46923
SOAH DOCKET NO. 473-17-5770.WS

2019 JUN 13 PM 4:01

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

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PUBLIC UTILITY COMMISSION
 FILING CLERK
OF TEXAS

ORDER

This Order addresses the application of Wolfe Air Park Civic Club, Inc. to obtain a water certificate of convenience and necessity (CCN) in Brazoria County. The Commission grants the application to the extent provided in this Order.

The Commission makes the following changes to the findings of fact and conclusions of law from the proposal for decision issued by the State Office of Administrative Hearings (SOAH) on November 5, 2018. First, the Commission corrects the misnumbering of the findings of fact in the proposal for decision and refers below to the corrected numbering. The Commission modifies finding of fact 16 for completeness and findings of fact 16 and 41 for accuracy. The Commission also deletes findings of fact 30, 31, 35, and 36 because they are unnecessary and deletes finding of fact 69 because it is not a proper finding of fact. Further, the Commission adds findings of fact 39A through 39F to reflect the additional procedural history in this docket. Lastly, the Commission deletes conclusion of law 6 because it is not consistent with recent decisions issued by the Commission and adds new conclusions of law 1A, 6A, and 6B for consistency with recent Commission decisions.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. On March 6, 2017, Wolfe Air Park Civic Club, Inc. (the applicant) filed an application to obtain a water CCN. In the application, the applicant notified the Commission that it seeks *single certification for its preexisting water system*.
2. The applicant's proposed water service area includes Wolfe Air Park, a community comprised of residential homes around flight hangars; a private airstrip; and a portion of

Holland Estates (Holland), a neighboring subdivision. The proposed CCN area is approximately 99 acres and has 42 connections. A portion of the proposed service area is located within the corporate limits of Manvel, Texas. The applicant has been providing water service to the area since 1986.

Procedural History

3. In Order No. 1 issued on March 13, 2017, the Commission administrative law judge (ALJ) required comments on the administrative completeness of the application and notice and addressed procedural matters.
4. On April 6, 2017, Commission Staff filed a recommendation that the Commission deem the application deficient. Commission Staff recommended that the applicant be required to file additional financial information as required in question 6 of the application.
5. In Order No. 2 issued on April 11, 2017, the Commission ALJ deemed the application deficient, provided an opportunity to cure, and set deadlines.
6. On May 8, 2017, the applicant filed supplemental information in support of the application.
7. On June 7, 2017, Commission Staff filed a supplemental recommendation that the Commission deem the application administratively complete and require the applicant to provide adequate notice.
8. In Order No. 3 issued on June 8, 2017, the Commission ALJ deemed the application administratively complete, addressed notice, and established a procedural schedule.
9. In Order No. 4 issued on August 10, 2017, the Commission ALJ set a deadline for the applicant to file affidavits of notice, including a copy of the individual notice issued with the accompanying map and the published notice.
10. On August 11, 2017, the applicant filed the requested affidavits.
11. On August 11, 2017, Joe Walker (the protestant), who receives service from the applicant's system, filed a request for a hearing.
12. On August 21, 2017, Commission Staff filed a recommendation that the Commission find that the applicant's notices substantially met the requirements of Texas Water Code (TWC) § 13.246 and 16 Texas Administrative Code (TAC) § 24.106.

13. On August 23, 2017, the Commission issued an order of referral, referring this case to SOAH, and requested the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for decision, if necessary.
14. In SOAH Order No. 1 issued on August 31, 2017, the SOAH ALJ described the application and jurisdiction, provided notice of a prehearing conference, and addressed procedures.
15. On September 8, 2017, Commission Staff filed a proposed list of issues. On September 12, 2017, the applicant filed a proposed list of issues.
16. On September 14, 2017, the SOAH ALJ held a telephonic prehearing conference. All parties except the protestant attended the prehearing conference.
17. In SOAH Order No. 2 issued on September 19, 2017, the SOAH ALJ memorialized the prehearing conference and set the hearing on the merits.
18. On October 6, 2017, the applicant filed direct testimony.
19. In SOAH Order No. 3 issued on October 12, 2017, the SOAH ALJ referred the case for mediation evaluation, denied a motion to dismiss, granted a request for a modified procedural schedule, and required new dates for a hearing.
20. On October 26, 2017, the applicant and Commission Staff filed a joint proposed procedural schedule.
21. In SOAH Order No. 4 issued on November 13, 2017, the SOAH ALJ adopted the joint proposed procedural schedule and set a hearing on the merits.
- 22. On April 13, 2018, Commission Staff filed direct testimony.
23. On April 16, 2018, after attempting mediation, a period for discovery, and the timely filing of testimony by the applicant and Commission Staff, the protestant filed a request for an extension of time to file testimony and documents in response to the applicant's direct testimony.
24. On April 17, 2018, the applicant and Commission Staff filed objections to the protestant's motion for an extension of time.

25. In SOAH Order No. 5 issued on April 18, 2018, the SOAH ALJs denied the protestant's request for an extension of deadlines and changed the final prehearing conference to a telephonic prehearing conference.
26. In SOAH Order No. 6 issued on April 20, 2018, the SOAH ALJs canceled the final prehearing conference.
27. On April 23, 2018, the protestant filed another motion to allow late filing of his testimony and to modify and extend the procedural schedule. That day, Commission Staff filed an objection to the motion.
28. In SOAH Order No. 7 issued on April 24, 2018, the SOAH ALJs denied the protestant's motion to file his testimony late and to modify and extend the procedural schedule.
29. On April 26, 2018, the SOAH ALJs convened the hearing on the merits. The applicant appeared through its attorney John Hampton. Commission Staff was represented by attorney Rachelle Robles. The protestant appeared and represented himself. All parties offered evidence, and the hearing concluded the same day.
30. DELETED.
31. DELETED.
32. On July 20, 2018, the applicant and Commission Staff filed initial briefs. The applicant also filed a motion to strike the protestant's redirect testimony from the hearing or, alternatively, allow the applicant to submit supplemental evidence. In accordance with that motion, the applicant filed rebuttal testimony regarding the quality of water supplied by the applicant's system.
33. On July 25, 2018, the protestant filed an initial brief and a motion to require an engineer's study and to refer the applicant for criminal investigation.
34. On July 30, 2018, Commission Staff filed a response to the protestant's motion to require an engineer's study and to refer the applicant for criminal investigation.
35. DELETED.
36. DELETED.

37. In SOAH Order No. 10 issued on August 28, 2018, the SOAH ALJs granted the applicant's motion for leave and established a record close date of August 27, 2018.
38. On September 6, 2018, after the record close date, the protestant filed a response to the applicant's response to the protestant's reply brief.
39. In SOAH Order No. 11 issued on October 30, 2018, the SOAH ALJs addressed a number of pending matters. In SOAH Order No. 11, the SOAH ALJs:
- Adopted Commission Staff's recommendation on notice and found that the applicant's notice of the application was sufficient;
 - Granted the applicant's July 20, 2018 motion to allow supplemental evidence and admitted the applicant's rebuttal testimony regarding water quality into the record;
 - Admitted into the record the protestant's September 6, 2018 response to the applicant's response to the protestant's reply brief;
 - Denied the protestant's motion to require an engineer's study and to refer the applicant for criminal investigation; and
 - Established a record close date of September 6, 2018.
- 39A. On November 5, 2018, the SOAH ALJs issued a proposal for decision.
- 39B. At its December 20, 2018 open meeting, the Commission considered the proposal for decision and remanded the case to Docket Management because the Commission found that the applicant had failed to file a completed application for a water CCN by not including a proposed tariff.
- 39C. On January 29, 2019, the applicant filed a proposed tariff.
- 39D. On April 4, 2019, Commission Staff filed a proposed tariff, which corrected some errors in the applicant's proposed tariff.
- 39E. On April 12, 2019, Docket Management found this case ready for reconsideration by the Commission.
- 39F. On May 22, 2019, Commission Staff filed a revised proposed tariff to correct some errors in the proposed tariff filed on April 4, 2019.

Preliminary Order Issues

40. The applicant's proposed water service area includes Wolfe Air Park, a community comprised of residential homes around flight hangars; a private airstrip; and a portion of Holland, a neighboring subdivision.
41. The applicant has been providing continuous and adequate water service to the proposed service area since 1986. The water utility was created to serve Wolfe Air Park residents, and the service area was later expanded to include residents in Holland.
42. The applicant's water system currently has 17 residential and 24 hangar connections.
43. Because of the unique location of the service area and combination of residential and hangar connections, it is not feasible to obtain water from another retail water utility.
44. The applicant's debt-to-equity ratio is zero because the applicant has no debt.
45. The applicant has no projected losses.
46. The applicant does not anticipate a change in costs due to growth and anticipates that there will be no change to the water system's physical facilities due to growth.
47. The applicant has successfully managed the water utility for the past several decades and has the ability to continue to do so.
48. The applicant's proposed service area does not overlap with the certificated service area of any other entity.
49. Because no qualified landowner has elected to exclude some or all of the landowner's property, no modifications to the applicant's proposed service area are necessary to reflect land removed from the area.
50. John Heitz, the applicant's president and the chairman of its board of directors, has over 45 years' experience maintaining and operating complex mechanical systems.
51. Mr. Heitz is and has been the operator of the applicant's water system since 2010.
52. The applicant's water system includes a well drilled to 650 feet, a well capacity of 1.5 gallons per minute per connection, and a pressure tank capacity of 50 gallons per connection.

53. Licensed contractors inspect the applicant's water system monthly, and the Texas Commission on Environmental Quality (TCEQ) randomly inspects the system.
54. No inspection of the applicant's water system has found any material concerns regarding, or deficiencies in, the adequacy of the water service.
55. The applicant maintained continuous and adequate water service during Hurricanes Rita, Ike, and Harvey and during the 2011 drought.
56. The applicant charges each connected customer a pro rata portion of the expenses of operation and maintenance of the water system.
57. If significant or unanticipated expenses arise related to the operation and maintenance of the water system, the applicant has the authority to levy all landowners in Wolfe Air Park and Holland a pro rata share of those expenses.
58. Throughout its operational history, the applicant's water utility has been able to adequately maintain and operate the water system using the funds collected through pro rata charges to the connected landowners.
59. The applicant has access to consultants capable of solving any managerial or technical issue pertaining to the continuous and adequate provision of water service.
60. The applicant is capable of providing continuous and adequate water service to the *proposed service area*.
61. The applicant's water system is TCEQ-approved and capable of providing drinking water that meets applicable statutory and regulatory requirements.
62. The applicant has access to an adequate supply of water.
63. The applicant's water utility does not need any additional facilities to provide continuous and adequate water service.
64. The applicant's water system has no TCEQ violations or enforcement history.
65. No other landowners, prospective landowners, tenants, or residents have requested additional water service from the applicant.

66. Granting the application will facilitate the applicant's continued ability to maintain and operate its water system and provide continuous and adequate water service to connected customers.
67. Granting the application will have no impact on environmental integrity or the land in the proposed service area.
68. A bond or other financial assurance from the applicant is not necessary to ensure the provision of continuous and adequate water service to the connected customers.

The Protestant's Arguments

69. DELETED.
70. No customer other than the protestant has complained of the adequacy of the applicant's water service.
71. The TCEQ conducted a comprehensive compliance investigation of the applicant's water system in April 2015. The report from this investigation does not include any mention of water quality or water pressure issues.
72. Testing of the water in the applicant's water system from 2015 to 2017 did not reveal any issues with water quality.

II. Conclusions of Law

1. The Commission has jurisdiction and authority over this matter under TWC §§ 13.041 and 13.241 through 13.246.
- 1A. The applicant is a retail public utility as defined in Texas Water Code (TWC) § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
2. SOAH has jurisdiction to conduct a hearing on the merits and to prepare a proposal for decision in accordance with TWC § 13.041(c-1), PURA¹ § 14.053, and Texas Government Code §§ 2003.021 and 2003.049.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.013–66.017 (PURA).

3. The applicant provided proper notice of the application under Texas Water Code § 13.246 and 16 TAC § 24.106.
4. Proper notice of the hearing was provided under Texas Government Code §§ 2001.051 and 2001.052.
5. The application complies with TWC §§ 13.244 and 13.246, and 16 TAC §§ 24.102 and 24.105.
6. DELETED.
- 6A. The applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service to the requested area as required by TWC § 13.241(a) and 16 TAC § 24.227.
- 6B. After considering the factors in TWC § 13.246(c) and 16 TAC § 24.227(d), approval of the application is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(c).

III. Ordering Paragraphs

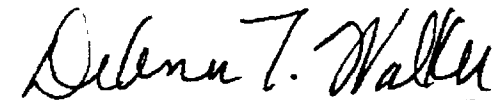
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission grants the applicant a CCN to provide water service in the area described in its application.
2. The applicant must serve every customer and request for service within the certificated area approved in this Order, and such service must be continuous and adequate.
3. Within ten days of the date of this Order, Commission Staff must file a certificate and a map. Within ten days of Commission Staff's filing, Docket Management must issue an order approving the certificate and map if they are in accordance with this Order.
4. The applicant must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Brazoria County affected by the application.
5. The applicant must file in this docket proof of the recording required in ordering paragraph 4 not later than 45 days after the date of this Order.

6. The applicant must file a rate case with the Commission within 18 months of the date of this Order. In the rate case, the applicant must reconcile rates to incurred costs, and to adjust rates, if necessary.
7. All other motions any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 13th day of June 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER



Public Utility Commission of Texas

By These Presents Be It Known To All That

Wolfe Airpark Civic Club, Inc.

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Wolfe Airpark Civic Club, Inc. is entitled to this

Certificate of Convenience and Necessity No. 13276

to provide continuous and adequate water utility service to that service area or those service areas in Brazoria County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 46923 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Wolfe Airpark Civic Club, Inc., to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas this 29th day of July 2019.

Wolfe Airpark Civic Club, Inc.
 Water CCN No. 13276
 PUC Docket No. 46923
 Obtained New CCN in Brazoria County



Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN



13276 - Wolfe Airpark Civic Club, Inc.

0 350 700
 Feet



Map by: Komal Patel
 Date created: July 25, 2019
 Project Path: n:\vinamapping\46923WolfeAirPark.mxd

FILED and RECORDED

Instrument Number: 2019041552

Filing and Recording Date: 08/26/2019 11:28:38 AM Pages: 15 Recording Fee: \$83.00

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Brazoria County, Texas.



A handwritten signature in black ink, appearing to read "Joyce Hudman".

Joyce Hudman, County Clerk
Brazoria County, Texas

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cclerk-jessie