



Control Number: 46948



Item Number: 27

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OPEN MEETING COVER SHEET

MEETING DATE: September 28, 2017

DATE DELIVERED: September 21, 2017

AGENDA ITEM NO.: 40

CAPTION: Docket No. 46948; SOAH Docket No. 473-17-5930.WS - Application of Vineyard Ridge, LLC to Obtain a Water Certificate of Convenience and Necessity in Gillespie County

ACTION REQUESTED: Discussion and possible action with respect to Preliminary Order

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Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Hannah Turner *HT*
Commission Advising

RE: September 28, 2017 Open Meeting Item No. 40
Application of Vineyard Ridge, LLC to Obtain a Water Certificate of Convenience and Necessity in Gillespie County, Docket No. 46948, SOAH Docket No. 473-17-5930.WS, Draft Preliminary Order

DATE: September 21, 2017

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the September 28, 2017 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the September 28, 2017 open meeting.

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PUC DOCKET NO. 46948
SOAH DOCKET NO. 473-17-5930.WS

APPLICATION OF VINEYARD RIDGE, LLC TO OBTAIN A WATER CERTIFICATE OF CONVENIENCE AND NECESSITY IN GILLESPIE COUNTY	§ § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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DRAFT PRELIMINARY ORDER

On March 15, 2017, Vineyard Ridge, LLC filed an application with the Commission to obtain a new water certificate of convenience and necessity (CCN) in Gillespie County. The Commission deemed the application administratively complete on June 21, 2017.

Vineyard Ridge's proposed service area is located approximately 14 miles northeast of Fredericksburg, Texas.¹ The property consists of approximately 665 acres of undeveloped land that has been platted for a subdivision with 160 individual lots.² Once the water system is fully built out, in approximately two years, it will have 160 connections.³

On August 11, 2017, John McCrae filed a motion to intervene and requested a public hearing. On August 29, 2017, the Commission administrative law judge (ALJ) granted Mr. McCrae's motion to intervene. The Commission referred this docket to the State Office of Administrative Hearings (SOAH) on August 30, 2017.

Vineyard Ridge was directed and Commission Staff and other interested persons were permitted to file a proposed list of issues to be addressed in this docket by September 13, 2017. Commission Staff and Mr. McCrae timely filed lists of issues. Vineyard Ridge filed a list of issues on September 14. Also on September 14, Vineyard Ridge filed a motion to reconsider the Commission's order granting Mr. McCrae's request to intervene.

¹ Application at Attachment 3.

² *Id.*

³ Application, Rate Study at Attachment 1.

I. Issues to be Addressed

The Commission must provide to the administrative law judge a list of issues or areas to be addressed in any proceeding referred to SOAH.⁴ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has Vineyard Ridge given notice consistent with Texas Water Code (TWC) § 13.246 and 16 Texas Administrative Code (TAC) § 24.106?
2. Does Vineyard Ridge's proposed water service area overlap with the certificated service area of other entities? If so, what specific areas will overlap? Has Vineyard Ridge received appropriate consent to provide water service within the entities' service boundaries?
3. What modifications, if any, must be made to Vineyard Ridge's proposed water service area to reflect land removed from the proposed water service area because of a qualified landowner's election to exclude some or all of the landowner's property under TWC § 13.246(h) and 16 TAC § 24.102(h)?
4. Does Vineyard Ridge possess the financial, managerial, and technical capability to provide continuous and adequate water service? TWC § 13.241(a) and 16 TAC § 24.102(a).
5. Is Vineyard Ridge capable of providing drinking water that meets the requirements of the Texas Commission on Environmental Quality (TCEQ), the Texas Water Code, and the Texas Health and Safety Code? TWC § 13.241(b) and 16 TAC § 24.102(a)(1).
6. Does Vineyard Ridge have access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirements of 16 TAC § 24.102(a)(1)(A)? TWC § 13.241(b)(2) and 16 TAC § 24.102(a)(1)(B).
7. Would the proposed water service area require construction of a physically separate water system? If so, has Vineyard Ridge proven that regionalization or consolidation with a retail

⁴ Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2016).

public utility for water service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.102(b).

8. Is the requested water certificate necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.102(c).
9. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.102(d) weigh in favor of granting the requested water certificate?
 - a. Is the proposed water service area currently receiving adequate water service? TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1).
 - b. Does the proposed water service area need additional water service? TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2).
 - i. Have any landowners, prospective landowners, tenants, or residents requested water service?
 - ii. Are there economic needs for additional water service?
 - iii. Are there environmental needs for additional water service?
 - iv. Are there written applications or requests for water service?
 - v. Are there reports or market studies demonstrating existing or anticipated growth in the area?
 - c. What is the effect under TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3) of granting the requested water certificate on:
 - i. Vineyard Ridge?
 - ii. Landowners in the proposed water service area?

- iii. Any retail public utility that provides the same service as Vineyard Ridge and that is already serving any area proximate to the proposed water service area?
- d. Does Vineyard Ridge have the ability to provide adequate water service, including meeting the standards of the TCEQ and the Commission, taking into consideration the current and projected density and land use of the proposed service area? TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4).
- e. What is the feasibility of obtaining water service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5).
- f. Is Vineyard Ridge financially able to pay for the facilities necessary to provide continuous and adequate water service? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
- g. Is Vineyard Ridge financially stable including, if applicable, its debt-to-equity ratio? TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6).
- h. How would environmental integrity be affected, if at all, by granting the requested water certificate? TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7).
- i. Is it probable that water service would be improved or costs to consumers in that area would be lowered by granting the requested certificate? TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8).
- j. How would the land in the requested service area be affected, if at all, by granting the requested water certificate? TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9).
- 10. Should the Commission require Vineyard Ridge to provide a bond or other financial assurance to ensure that continuous and adequate water service is provided? TWC § 13.246(d) and 16 TAC § 24.102(e).
- 11. If applicable, what were Vineyard Ridge's efforts to:

- a. Extend water service to any economically distressed area, within the meaning of TWC § 15.001; and
- b. Enforce rules adopted under TWC § 16.343 regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e).

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of September 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER