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SOAH DOCKET NO. 473-17-5930 WS 2018 APR -2 PM 1:28  
PUC DOCKET NO. 46948

JOHN C. HARRIS, CLERK  
PUBLIC UTILITY COMMISSION

APPLICATION OF VINEYARD RIDGE,	§	BEFORE THE STATE OFFICE
LLC TO OBTAIN A WATER	§	
CERTIFICATE OF CONVENIENCE AND	§	OF
NECESSITY IN GILLESPIE COUNTY	§	ADMINISTRATIVE HEARINGS

**JOINT MOTION TO ADMIT EVIDENCE, APPROVE THE ORDER  
AND  
REMAND THE DOCKET TO THE PUC FOR FINAL ACTION**

**TO THE ADMINISTRATIVE LAW JUDGE:**

COME NOW the Applicant, Vineyard Ridge LLC, and the Staff of the Public Utility Commission of Texas (Staff), and file this Joint Motion to Admit Evidence, Approve the Order and Remand the Docket to the Public Utility Commission of Texas (Commission) for Final Approval and Action and, in support thereof, would show the ALJ as follows:

**I.  
Background**

On March 15, 2017, Vineyard Ridge, a Texas limited liability company, which the Texas Water Code (TWC) classifies as a retail public utility and an investor owned utility, filed an application for a new water CCN to provide water service for compensation in Gillespie County pursuant to Section 13.242, Texas Water Code. Vineyard Ridge supplemented the application on April 17, 2017, May 3, 2017, and February 13, 2018. On April 17, 2017, June 16, 2017, and June 23, 2017, Commission Staff recommended that the application, as supplemented, be accepted for filing and that the applicant be directed to provide notice to applicable parties, and proposed a procedural schedule. On June 27, 2017, Order No. 4 was issued, deeming the application administratively complete, requiring notice and establishing a procedural schedule. On July 21,

2017, Order No. 5 was issued, deeming Vineyard Ridge's Notice sufficient and establishing an amended procedural schedule.

Mr. John McRae (McRae) filed a request for a hearing on Vineyard Ridge's Application on August 11, 2017, which was granted by Order No. 6 issued August 29, 2017. On August 30, 2017, the Commission entered an Order of Referral, referring the matter to the State Office of Administrative Hearings ("SOAH") to conduct a hearing on the merits of the Vineyard Ridge Application. SOAH Order No. 1 was issued September 5, 2017, establishing SOAH's jurisdiction to conduct the hearing, scheduling a prehearing conference, and setting forth general procedural matters in the case.

On February 9, 2018, McRae and Vineyard Ridge filed an Unopposed Joint Notice of Settlement, Motion to Withdraw Intervention, and Motion to Continue the Hearing. The noticed Settlement Agreement resolved McRae's concerns without requiring any amendment to the Application, and rendered the application uncontested. On March 19, 2018, Applicant submitted a signed consent form evidencing its consent to the proposed final map, tariff, and certificate as prepared by Commission Staff.

## **II.**

### **Motion to Admit Evidence**

The Parties move to admit the following evidence into the record of this proceeding:

- a) Vineyard Ridge's Application (AIS Item No. 1, filed July 5, 2016), and the supporting Supplemental Information, including AIS Item No. 5, filed April 17, 2017, AIS Item No. 8, filed May 3, 2017, and AIS Item No. 39, filed February 13, 2018;
- b) Order No. 3, Deeming Application Administratively Complete, Addressing Notice, and Establishing Procedural Schedule (AIS Item No. 10, filed June 21, 2017)

- c) An Affidavit of Notice to neighboring systems and landowners (AIS Item No. 13, filed July 17, 2017)
- d) Order No. 5, Deeming Notice Sufficient and Establishing Procedural Schedule (AIS Item No. 15, filed July 21, 2017);
- e) Vineyard Ridge's Consent Forms (AIS Item No. 42, Filed March 23, 2018); and
- f) Commission Staff's recommendation regarding final disposition and attachments (AIS Item No. \_\_\_\_, filed April 2, 2018.)

### III.

#### **Joint Proposed Order**

The attached Joint Proposed Order, including its findings of fact and conclusions of law, would grant Vineyard Ridge's Application for CCN No. 13265.

### IV.

#### **Motion to Remand the Application for Recommendation to Grant the CCN**

The Application the Commission Staff jointly move for the ALJ, after admitting the evidence into the record, to remand the Docket to the Commission for final action to approve and grant the CCN pursuant to the proposed Order attached hereto as Exhibit "A."

### IV.

#### **Conclusion and Prayer**

WHEREFORE, PREMISES CONSIDERED, the undersigned pray the Administrative Law Judge grant the following relief:

- 1) Admit the requested evidence;
- 2) Remand the Docket to the Public Utility Commission of Texas with the recommendation that the Commission adopt and approve the ALJ's recommended Order and grant Vineyard Ridge's Application for CCN No. 13265.

Respectfully Submitted,

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/s/ Edmond R. McCarthy, Jr.  
Edmond R. McCarthy, Jr.  
State Bar No. 13367200

/s/ TJ Harris  
TJ Harris  
State Bar No. 24097804

ATTORNEYS FOR VINEYARD RIDGE,  
LLC

ATTORNEYS FOR THE PUC LEGAL  
DIVISION

### **CERTIFICATE OF SERVICE**

I, Edmond R. McCarthy, Jr., attorney for the Applicant, Vineyard Ridge LLC, certify that a copy of this document was filed with the Public Utility Commission on April 2, 2018, and served the same day on the Parties as identified on the service list below in accordance with 16 TAC § 22.74.

/s/ Edmond R. McCarthy, Jr.  
Edmond R. McCarthy, Jr.

### **SERVICE LIST**

Vineyard Ridge, LLC  
Attn: Davy Roberts  
P.O. Box 1987  
Marble Falls, TX 78654  
Fax: 800-511-2430

Bryan Boyd, P.E.  
Wet Rock Groundwater Services, LLC  
317 Ranch Road 620 South, Suite 203  
Austin, TX 78734

**Exhibit “A”**  
**Proposed Order**

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

<b>APPLICATION OF VINEYARD RIDGE, LLC TO OBTAIN A WATER CERTIFICATE OF CONVENIENCE AND NECESSITY IN GILLESPIE COUNTY</b>	§ § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**ORDER**

This Order addresses the application of Vineyard Ridge, LLC (Vineyard Ridge) for a water certificate of convenience and necessity (CCN) in Gillespie County. Staff (Staff) of the Public Utility Commission of Texas Commission (Commission) recommended approval of the application. The application is approved.

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

**I. Findings of Fact**

**Procedural History**

1. Vineyard Ridge is a Texas limited liability company that the Texas Water Code (TWC) classifies as a retail public utility and an investor owned utility.
2. On March 15, 2017, Vineyard Ridge filed an application for a new water CCN to provide water service for compensation in Gillespie County. Vineyard Ridge supplemented the application on April 17, 2017, May 3, 2017, and February 13, 2018.
3. Currently no service is being provided to the requested area.
4. On April 17, 2017, June 16, 2017, and June 23, 2017, Staff recommended that the application, as supplemented, be accepted for filing and that the applicant be directed to provide notice to applicable parties, and proposed a procedural schedule.
5. On June 27, 2017, Order No. 4 was issued, deeming the application administratively complete, requiring notice and establishing a procedural schedule.
6. On July 21, 2017, Order No. 5 was issued, deeming Vineyard Ridge's Notice sufficient and establishing an amended procedural schedule.

7. On August 11, 2017, Mr. John McRae (McRae) filed a request for a hearing on Vineyard Ridge's Application.
8. On August 29, 2017, Order No. 6 was issued granting McRae's hearing request.
9. On August 30, 2017, the Commission entered an Order of Referral, referring the matter to the State Office of Administrative Hearings ("SOAH") to conduct a hearing on the merits of the Vineyard Ridge Application.
10. On September 5, 2017, SOAH Order No. 1 was issued establishing SOAH's jurisdiction to conduct the hearing, scheduling a prehearing conference, and setting forth general procedural matters in the case.
11. On February 9, 2018, McRae and Vineyard Ridge filed an Unopposed Joint Notice of Settlement, Motion to Withdraw Intervention, and Motion to Continue the Hearing. The noticed Settlement Agreement resolved McRae's concerns without requiring any amendment to the Application.
12. On March 19, 2018, Applicant submitted a signed consent form evidencing consent to the proposed final map, tariff, and certificate as prepared by Commission Staff.
13. The approved final map, tariff, and certificate referenced in Finding of Fact No. 13 are attached to this Order.
14. On April 2, 2018, Staff recommended approval of the application.
15. On April 2, 2018, Applicant Vineyard Ridge filed a joint proposed order, motion to remand, and request to admit evidence.
16. On \_\_\_\_\_, 2018, Order No. 6 was issued, admitting evidence into the record in this proceeding.

**Notice**

17. Applicant provided public notice to neighboring utility systems, landowners, cities and affected parties on June 28-29, 2017.
18. Applicant provided public notice in the *Fredericksburg Standard-Radio Post*, a newspaper of general circulation in Gillespie County, on July 5, 2017 and July 12, 2017.



19. On July 17, 2017, Applicant filed affidavits attesting to mailed and published notice, including copies of individual notices.
20. Notice of the Application was published in the *Texas Register* on March 31, 2017.

**Description of Applicant and Application**

21. The total proposed service area requested in this application consists of approximately 660 acres, encompassing the 160 existing lots of the Vineyard Ridge Subdivision in Gillespie County.
22. The proposed service area is not within the limits or extra-territorial jurisdiction of any municipality.
23. Existing utilities are not available in the area to extend retail water service to the proposed service area.

**Applicant's Financial, Managerial and Technical Capability**

24. Vineyard Ridge possesses the financial capability to provide continuous and adequate service to the proposed service area as the applicant's managing members have provided financial assurance to pre-fund the construction of the infrastructure and agree to loan the applicant the necessary funds.
25. Applicant has the managerial capability to provide continuous and adequate service to the proposed area and has hired a state-licensed operator and affiliated operations company.
26. Applicant has the technical capability to provide continuous and adequate service to the proposed area and the Texas Commission on Environmental Quality has approved applicant's water system plans for the proposed area as well as its drought contingency plan.
27. At 100% build out, the 160-lot subdivision needs water production of 96 gallons per minute.
28. Applicant has a permit to produce the groundwater necessary to produce 96 gallons per minute from the Hill Country Underground Water Conservation District.
29. Applicant's wells have adequate capacity to serve the proposed number of connections.

**Applicant's Requested Rates**

30. Vineyard Ridge's requested rates for a standard residential meter of 5/8" or 3/4" include a base rate of \$25.25 (including zero gallons) plus a gallonage charge of \$2.07 per 1,000 gallons, as outlined below.

METER SIZE	MONTHLY BASE RATE
5/8" or 3/4"	\$25.25(Includes 0 gallons)
1"	N/A
1 ½ "	N/A
2"	N/A
3"	N/A

GALLONAGE CHARGE
\$2.07 per 1,000 gallons

31. The estimated capital investment is not yet used and useful as the utility has no current customers. However, once the utility completes facilities and acquires customers, the utility must have rates to charge customers in order to recover its costs.
32. The projected operating expenses are commensurate with a reasonable estimate of operating expenses for a similar sized utility in a similar geographic area, as are the projected revenues and expenditures.

**Effect of Granting the Application**

33. The proposed service area is currently not receiving any retail public water service.
34. If the Commission grants the application, applicant will be obligated to provide continuous and adequate water service to all qualified applicants for service.
35. If the Commission grants the application, each of the 160 landowners within the subdivision will not drill individual wells, negating any environmental impact from the temporary disturbance during construction of the applicant's water system. As platted, the drilling of individual wells is prohibited within the subdivisions.

36. Applicant will construct all infrastructure to minimize any environmental impact from construction.
37. If the Commission grants the application, the existing lot owners within Vineyard Ridge Subdivision will have a state-approved and monitored drinking water supply.

## **II. Conclusions of Law**

1. The Commission has jurisdiction over these matters pursuant to TWC §§ 13.001, 13.041, 13.182, 13.183, 13.241, 13.244, and 13.246.
2. Vineyard Ridge published notice and provided notice to neighboring utilities and affected parties, as well as all landowners in the requested area, as required pursuant to TWC § 13.246(a) and 16 Texas Administrative Code (TAC) § 24.106.
3. Applicant complied with the requirements of 16 TAC § 24.21(b)(1)(A) by filing a tariff, containing schedules of all of its rates, tolls, charges, rules and regulations pertaining to all of its utility service, when it filed its application.
4. Applicant has met the substantive criteria for granting a water CCN and approving the tariff, including demonstrating adequate financial, managerial and technical capability for providing continuous and adequate service to the requested area and its current service area in Gillespie County pursuant to TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.21, 24.34 and 24.102.
5. Approval of this application will set the applicant's overall revenues at a level that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital, once used and useful, in rendering service to the public over and above its reasonable and necessary operating expenses and preserve the financial integrity of the utility as required by TWC § 13.183(a).
6. Vineyard Ridge is entitled to approval of its application having demonstrated that the requested rates are just and reasonable for customers and the utility as required by TWC §§ 13.182 and 13.183(c).
7. Issuing the CCN for water service and approving the tariff is necessary for the service, accommodation, convenience, or safety of the public pursuant to TWC § 13.246.

8. Under TWC § 13.257(r) and 16 TAC § 24.106(f), Vineyard Ridge is required to record a certified copy of the approved CCN and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.
9. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

### **III. Ordering Paragraphs**

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

1. The application, as amended, is approved.
2. Consistent with this Order, CCN No. 13265 in Gillespie County is granted to Vineyard Ridge.
3. Pursuant to 16 TAC § 24.21(b)(1)(C), Vineyard Ridge shall file a rate change application within 18 months from the date service begins to adjust the rates to a historic test year and true up the new tariff rates.
4. Applicant shall serve every customer and applicant for service within the areas certified under CCN No. 13265, and such service shall be continuous and adequate.
5. Vineyard Ridge shall comply with the recording requirements in TWC § 13.257(r) for the area in Gillespie County affected by the application and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
6. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

**Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_, 2018.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN WALKER, CHAIRMAN**

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**ARTHUR D'ANDREA, COMMISSIONER**