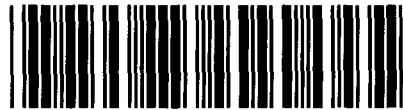




Control Number: 46948



Item Number: 52

Addendum StartPage: 0

APPLICATION OF VINEYARD
RIDGE, LLC TO OBTAIN A WATER
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN GILLESPIE
COUNTY

§
§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

This Order addresses the application of Vineyard Ridge, LLC for a water certificate of convenience and necessity (CCN) in Gillespie County and an initial tariff. The Commission approves Vineyard Ridge's application, as supplemented and to the extent provided in this Order.

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

I. Findings of Fact

Applicant

1. Vineyard Ridge is a Delaware limited liability company that is a wholly-owned subsidiary of National Land Partners III, LLC, which is a wholly-owned subsidiary of National Land Partners Holdings, LLC.
2. Vineyard Ridge proposes to construct facilities and equipment to provide retail potable water service for compensation.

Application

3. Vineyard Ridge proposes a service area of approximately 660 acres in Gillespie County with no current customers. Vineyard Ridge plans to develop the requested service area as a residential subdivision with 160 lots and a centralized, public water system.
4. The proposed service area is located approximately 14 miles northeast of downtown Fredericksburg, bounded on the north by North Grape Creek Road, on the east by North Grape Creek Road, on the south by Farm-to-Market Road 2721, and on the west by Dry Hollow Road, also known as County Road 109.
5. The proposed service area is not within the city limits or extraterritorial jurisdiction of any municipality.

6. Vineyard Ridge also requests that the Commission approve a tariff, including retail rates, to become effective when Vineyard Ridge begins to provide retail service to the public.
7. The application consists of the original filing on March 15, 2017, and the supplements to the application filed on April 17, 2017, May 3, 2017, and February 13, 2018.

Notice

8. Notice of the application appeared in the March 31, 2017 issue of the *Texas Register*.
9. On July 17, 2017, Vineyard Ridge filed proof that it had provided notice of its application. That proof included the affidavit of Bryan Boyd attesting that Vineyard Ridge provided individual notice by certified mail and the affidavit of Ken Estén Cooke, publisher, attesting that *Fredericksburg Standard Radio Post*, a periodical with general circulation in Gillespie County, published notice of the application on July 5 and 12, 2017.

Adequacy of Existing Service and Need for Service

10. No retail public utility currently provides service to the requested area.
11. Vineyard Ridge is the landowner that is developing the requested area into a residential subdivision.
12. The Texas Commission on Environmental Quality (TCEQ) granted Vineyard Ridge approval to construct a public water system in the requested area.
13. TCEQ assigned identification number 0860144 to Vineyard Ridge's TCEQ-approved public water system.

Effect of Granting the CCN

14. Granting the CCN will enable Vineyard Ridge to include a public water system in its residential subdivision.
15. Granting Vineyard Ridge a CCN will enable the 160 lot owners within the subdivision to receive service from a state-approved and monitored public water system.
16. Approving the CCN will have a minimal effect on other retail public utilities servicing the proximate area because no existing water utilities are within five miles of the requested area.

Applicant's Ability to Provide Adequate Service

17. TCEQ has determined that Vineyard Ridge is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code.
18. The Hill Country Underground Water Conservation District granted Vineyard Ridge a groundwater production permit for the use of approved water wells to produce enough groundwater to meet TCEQ requirements to serve the requested area.
19. Vineyard Ridge is currently developing the requested area and constructing facilities to provide service.

Feasibility of Obtaining Service from an Adjacent Retail Public Utility

20. There are no existing water utilities within five miles of the requested area.
21. Regionalization or consolidation with another retail public utility is not economically feasible.

Applicant's Financial Ability to Provide Adequate Service

22. Vineyard Ridge's managing members have provided financial assurance to pre-fund construction of the water facilities and agree to loan Vineyard Ridge the necessary funds.
23. Vineyard Ridge has a debt-to-equity ratio of 0.71.
24. Vineyard Ridge demonstrated that sufficient cash is available to cover projected operations and maintenance during the first five years of operation.
25. Vineyard Ridge has the financial capability to provide continuous and adequate service to the proposed service area.

Applicant's Managerial Ability to Provide Adequate Service

26. Vineyard Ridge has experience in the water utility industry in Texas, providing service to residents in the Spicewood and Houston areas.
27. The management of Vineyard Ridge has overseen numerous development projects with centralized, public water systems which include Chenango Ranch, Suncreek Estates, and Suncreek Ranch in the Houston area; Sunrise Bay in the Port Lavaca area; and Summit Springs in Blanco and Burnet Counties.

28. Vineyard Ridge has the managerial capability to provide continuous and adequate service to the proposed area.

Applicant's Technical Ability to Provide Adequate Service

29. Vineyard Ridge has committed to hire a qualified contractor to operate the system on a daily basis.
30. Vineyard Ridge has secured Brent Taylor, a licensed water operator with Spicewood Utility Services, LLC, to operate the system.
31. Mr. Taylor has been a licensed water operator for more than 12 years.
32. Vineyard Ridge's wells have adequate capacity to serve the proposed number of connections in the requested area.
33. Vineyard Ridge has the technical capability to provide continuous and adequate service to the requested area.

Environmental Integrity

34. Disturbance to environmental integrity during construction of Vineyard Ridge's centralized water system will be temporary.
35. As Vineyard Ridge's development plan includes a centralized water system to serve the subdivision, the subdivision plat prohibits the drilling of individual wells.
36. Disturbance to environmental integrity during construction of Vineyard Ridge's centralized water system is negligible in comparison to the drilling of individual wells in the requested area.

Initial Rates and Tariff

37. No invested capital is currently used and useful as Vineyard Ridge has no current customers.
38. Once Vineyard Ridge begins providing service, it must have tariffed rates in place to charge customers for water service.
39. Vineyard Ridge's application included a rate-design study conducted by a consultant, B & D Environmental, Inc.

40. B & D Environmental's study used financial and utility cost data from Vineyard Ridge, as well as operation estimates provided by Spicewood Utility Services.
41. B & D Environmental based its rate-design study on assumptions, including the assumption that developer contributions will fund all of Vineyard Ridge's water utility plant and distribution system; thus, no return on invested capital was included in calculating Vineyard Ridge's cost of service.
42. B & D Environmental calculated two revenue requirements and associated rates for Vineyard Ridge: (a) one in the amount of \$74,044 with monthly base rates of \$36.64 for the first of year of operation with a partial customer base; and (b) one in the amount of \$72,344 with monthly base rates of \$25.25 for the second year with a full customer base.
43. In its application, Vineyard Ridge requested the lower rates calculated using a full customer base.
44. The year-two rates will recover Vineyard Ridge's revenue requirement based on projected costs.
45. Vineyard Ridge requested rates solely for a standard residential meter of 5/8" or 3/4" plus gallonage and service charges.
46. Commission Staff attached a proposed tariff to its April 2, 2018 recommendation that the Commission approve Vineyard Ridge's application. Commission Staff's proposed tariff included the same rates requested by Vineyard Ridge.
47. The tariff provides a \$25.25 monthly base charge and a gallonage charge of \$2.07 per 1,000 gallons of water for a standard residential meter of 5/8" or 3/4."
48. The initial rates are subject to true up under 16 Texas Administrative Code (TAC) § 24.21(b)(1)(C).

Procedural History

49. On March 15, 2017, Vineyard Ridge filed an application to obtain a water CCN and an initial tariff.
50. In Order No. 1 issued on March 20, 2017, the Commission administrative law judge (ALJ) required Commission Staff to file comments on the administrative completeness of the

application and the notice that Vineyard Ridge proposed. The Commission ALJ also ordered Commission Staff and Vineyard Ridge to propose a procedural schedule.

51. On April 17, 2017, Vineyard Ridge filed the first supplement to its application. That supplement included its organizational chart, public water system plan, status of area land sales, business plan, and financial information.
52. On April 17, 2017, Commission Staff recommended that Vineyard Ridge's application be found administratively incomplete due to deficiencies with the maps and with the technical and financial portions of the application.
53. In Order No. 2 issued on April 19, 2017, the Commission ALJ ordered Vineyard Ridge to cure the deficiencies noted by Commission Staff. The Commission ALJ also ordered Commission Staff to file an additional recommendation on administrative completeness and a proposed procedural schedule.
54. On May 3, 2017, Vineyard Ridge filed the second supplement to its application. That supplement included additional financial information.
55. On June 16, 2017, Commission Staff filed a supplemental recommendation that Vineyard Ridge's application was administratively complete following supplementation. In addition, Commission Staff provided a proposed notice, instructions on how to provide that notice, and affidavit forms for Vineyard Ridge to complete and file after it provided the notice. Commission Staff also proposed a procedural schedule.
56. In Order No. 3 issued on June 21, 2017, the Commission ALJ deemed the application administratively complete and established a procedural schedule. In addition, the Commission ALJ ordered Vineyard Ridge to provide notice consistent with Commission Staff's supplemental recommendation, including using the forms attached to Commission Staff's supplemental recommendation.
57. On June 23, 2017, Commission Staff filed a supplemental amended recommendation maintaining that the application was administratively complete, but correcting the proposed notice forms.

58. In Order No. 4 issued on June 27, 2017, the Commission ALJ noted that Commission Staff had filed corrections to the proposed notice forms and revised the procedural schedule.
59. On June 28 and 29, 2017, Vineyard Ridge mailed notice of the application to neighboring utility systems, landowners, cities, and affected parties.
60. On July 5 and 12, 2017, Vineyard Ridge published notice of the application in the *Fredericksburg Standard-Radio Post*, a newspaper of general circulation in Gillespie County.
61. On July 19, 2017, Commission Staff recommended that the ALJ find Vineyard Ridge's notice sufficient. Commission Staff also proposed a procedural schedule.
62. In Order No. 5 issued on July 21, 2017, the Commission ALJ deemed Vineyard Ridge's notice sufficient and adopted the procedural schedule proposed by Commission Staff.
63. On August 11, 2017, John McRae, a landowner with property near the requested service area, filed a motion to intervene and a request for a hearing on the merits.
64. In Order No. 6 issued on August 29, 2017, the Commission ALJ granted Mr. McRae's motion to intervene.
65. On August 30, 2017, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH) for assignment of an ALJ to conduct a hearing and issue a proposal for decision, if necessary. In the order of referral, Vineyard Ridge was ordered, and any other interested party was given, an opportunity to file a list of issues in this proceeding by September 13, 2017.
66. In SOAH Order No. 1 issued on September 5, 2017, the SOAH ALJ, among other things, set a prehearing conference and established filing, service, motion, and discovery requirements.
67. On September 13, 2017, Commission Staff and Mr. McRae each filed a list of issues.
68. On September 14, 2017, Vineyard Ridge filed a motion to reconsider the order granting Mr. McRae's motion to intervene and the order of referral.
69. On September 14, 2017, Vineyard Ridge filed a conditional list of issues for consideration if the Commission denied its motion for reconsideration.

70. On September 21, 2017, Mr. McRae filed a response in opposition to Vineyard Ridge's motion for reconsideration.
71. On September 29, 2017, the Commission issued a preliminary order.
72. In SOAH Order No. 2 issued on October 11, 2017, the SOAH ALJ referred this matter for mediation, set the dates for a hearing, and ordered parties to submit an agreed procedural schedule.
73. On October 18, 2017, Vineyard Ridge filed, on behalf of all the parties, an agreed procedural schedule and an agreement that parties serve each other by email.
74. In SOAH Order No. 3 issued on October 25, 2017, the SOAH ALJ adopted the agreed procedural schedule.
75. On February 9, 2018, Mr. McRae and Vineyard Ridge filed an unopposed joint notice of settlement, motion to withdraw Mr. McRae's intervention and his request for a hearing, and motion to revise the procedural schedule, including continuing the hearing on the merits.
76. In SOAH Order No. 4 issued on February 12, 2018, the SOAH ALJ dismissed Mr. McRae as a party, granted the motion to continue the hearing on the merits, and required a status report if the parties did not finalize a settlement by March 23, 2018.
77. On February 13, 2018, Vineyard Ridge filed the third supplement to its application. That supplement included a cost breakdown of tap fees, a breakdown of water system operational costs, TCEQ's review and approval of a drought contingency plan, and a breakdown of non-sufficient fund fees.
78. On February 13, 2018, the SOAH mediator filed a report that the parties had resolved their dispute.
79. On March 23, 2018, Vineyard Ridge filed a status report and requested more time to file either settlement documents or a status report.
80. On March 23, 2018, Vineyard Ridge submitted a signed form consenting to the map, certificate, and tariff prepared by Commission Staff.

81. In SOAH Order No. 5 issued on March 27, 2018, the SOAH ALJ granted Vineyard Ridge's request for an extension of time to file settlement documents or a status report.
82. On April 2, 2018, Commission Staff filed a recommendation that the Commission approve Vineyard Ridge's application.
83. On April 2, 2018, Vineyard Ridge and Commission Staff filed a joint motion to admit evidence, remand the docket to the Commission for final action, and approve the proposed order attached to the motion.
84. In SOAH Order No. 6 issued on April 5, 2018, the SOAH ALJ remanded the proceeding to the Commission, dismissed the SOAH docket, and admitted the following into evidence: (a) Vineyard Ridge's application, filed on March 15, 2017; (b) Vineyard Ridge's supplemental information, filed on April 17, 2017, May 3, 2017, and February 13, 2018; (c) an affidavit of notice to neighboring systems and landowners, filed on July 17, 2017; (d) Vineyard Ridge's consent forms, filed on March 23, 2018; and (e) Commission Staff's final recommendation, including attachments, filed on April 2, 2018.

II. Conclusions of Law

1. Vineyard Ridge will be a public utility and a utility as defined in Texas Water Code (TWC) § 13.002(23) and 16 TAC §§ 24.3(51) and 24.3(75) when it begins providing service for compensation.
2. Vineyard Ridge will be a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(59) when it begins operating, maintaining, or controlling its system for compensation.
3. The Commission has jurisdiction over this matter under TWC §§ 13.041, 13.182, 13.183, 13.241, 13.242, 13.244, and 13.246.
4. Public notices of the application were provided as required by TWC § 13.246 and 16 TAC § 24.106.

5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,² the Texas Water Code, and Commission rules.
6. Vineyard Ridge demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area in Gillespie County as required under TWC § 13.241(a) and 16 TAC § 24.102(a).
7. Vineyard Ridge demonstrated that TCEQ has approved its public water system and determined that it is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code, TCEQ rules, and the requirements of TWC § 13.241(b)(1) and 16 TAC § 24.102(a)(1)(A).
8. Vineyard Ridge demonstrated that TCEQ has determined that Vineyard Ridge has access to an adequate supply of water as required under TWC § 13.241(b)(2) and 16 TAC § 24.102(a)(1)(B).
9. Vineyard Ridge demonstrated that regionalization or consolidation with another retail public utility is not economically feasible as required under TWC § 13.241(d) and 16 TAC § 24.102(b).
10. Issuance of a CCN to Vineyard Ridge is necessary for the service, accommodation, convenience, or safety of the public under TWC § 13.246.
11. The rates in the proposed tariff attached to Commission Staff's recommendation filed on April 2, 2018 are just and reasonable, are not unreasonably preferential, prejudicial or discriminatory, and comply with the requirements of TWC §§ 13.182 and 13.183(c) and 16 TAC § 24.21(b).
12. Approval of the application will establish Vineyard Ridge's overall revenues at a level that will permit Vineyard Ridge to recover its reasonable and necessary operating expenses, subject to the Commission's final determination in the rate proceeding under 16 TAC § 24.21(b)(1)(C), and to preserve the financial integrity of Vineyard Ridge as required by TWC § 13.183(a).

² Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2016 & Supp. 2017).

13. Under 16 TAC § 24.21(b)(1)(C), Vineyard Ridge is required to file a rate application within 18 months from the date service begins to adjust the rates to a historic test year and true up the new tariffed rates.
14. Under TWC § 13.257(r) and (s), 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.
15. The requirements for informal disposition in 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 orders:

1. The Commission approves Vineyard Ridge's application, as supplemented, to the extent provided in this Order.
2. The Commission grants Vineyard Ridge CCN number 13265 attached to this Order for the area in Gillespie County described in this Order and depicted on the map attached to this Order.
3. The Commission approves the rates and terms in the tariff attached to this Order, subject to true up.
4. Within 10 days of the date this Order is signed, Commission Staff shall file a clean record copy of Vineyard Ridge's tariff to be stamped *Approved* and retained by the Commission.
5. The tariff approved in this Order is effective the date the Order is signed.
6. Vineyard Ridge shall file a rate change application, including the true up required under 16 TAC § 24.21(b)(1)(C), within 18 months from the date service begins.
7. Vineyard Ridge shall provide continuous and adequate service to every customer and applicant for service within the area certified under CCN number 13265 as required under TWC § 13.250 and 16 TAC § 24.114.

8. Vineyard Ridge shall file in this docket evidence of the recording required under TWC § 13.257(r) and (s) no later than 31 days after receipt of this Order.
9. Vineyard Ridge shall construct all infrastructure to minimize any environmental impact from construction.
10. All other motions and any other requests for general or specific relief, if not expressly granted in this Order, are denied.

Signed at Austin, Texas the 9th day of August 2018.

PUBLIC UTILITY COMMISSION OF TEXAS


DEANN T. WALKER, CHAIRMAN


ARTHUR C. D'ANDREA, COMMISSIONER


SHELLY BOTKIN, COMMISSIONER