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House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

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**SOAH DOCKET NO. 582-03-1994
TCEQ DOCKET NO. 2002-1350-UCR**

APPLICATION OF THE TOWN OF PROSPER TO AMEND SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO. 20888 IN DENTON COUNTY, APPLICATION NO. 34004-C	§ § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**PROSPER'S OBJECTIONS TO AND MOTION TO STRIKE ADDITIONAL EVIDENCE
PRESENTED BY FISHTRAP PROPERTIES, L.L.P.**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Town of Prosper ("Prosper") and files these objections to the Additional Evidence Presented by Fishtrap Properties, L.L.P. ("Fishtrap") in its letter to Your Honor dated April 5, 2005, in the above-styled matter, and respectfully shows the Administrative Law Judge ("ALJ") the following:

Prosper objects to and moves to strike the additional evidence presented by Fishtrap in its letter to Your Honor dated April 5, 2005 ("Letter"). Specifically, Fishtrap attaches two documents to their Letter in the hopes to confuse, deceive, or argue that Prosper's water certificate of convenience and necessity is somehow invalid.¹ Prosper strongly objects to this additional evidence now being sought for introduction into the record and for Fishtrap's additional argument that should have been included in its Closing Argument or Reply Brief. The introduction of such evidence and argument after the close of evidence in this proceeding is improper.

Fishtrap had ample opportunity to present relevant evidence regarding Prosper's Application. It chose not to present the evidence that it now seeks to introduce at the Hearing on the Merits. Fishtrap Properties provided three live witnesses and multiple witnesses by deposition at the Hearing on the Merits and never sought to introduce evidence regarding the

¹ Specifically, Attachments 2 and 3 to the Letter were never offered, nor accepted, into the evidentiary record in this proceeding. Attachment 1 is in evidence as it was attached to the prefiled testimony of Douglas Mousel, APP. Ex. 105, Attachment DM-8.

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validity of Prosper's water certificate of convenience and necessity. Indeed, no such evidence should have been allowed as Fishtrap success on its appeal is wholly speculative. The close of all evidence occurred on February 14, 2005.² Fishtrap has not satisfied any of the requirements to introduce additional evidence in this proceeding.³ Indeed, Fishtrap had ample opportunity to develop its case. The introduction of additional evidence after the close of evidence is improper, highly prejudicial, and would cause an injustice to Prosper. Additionally, the evidence that the party seeks to introduce is irrelevant, speculative, and not decisive to Prosper's Application.

Prosper objects to and moves to strike Attachments 2 and 3 and the correlative legal argument contained in Fishtrap's Letter.

Regarding Prosper's provision of draft Findings of Fact and Conclusions of Law, it is common practice in proceedings before the TCEQ that the Applicant provides such document. Nowhere in the rule is there such a prohibition. Fishtrap merely seeks a third bite at the apple to continue to assert its spurious, irrelevant banter, guised as Findings of Fact and Conclusions of Law.

PRAYER FOR RELIEF

Based on the foregoing, Prosper respectfully prays that the Administrative Law Judge sustain the objections and strike the evidence and argument discussed above and denies Fishtrap Properties, L.L.P. leave to file draft Findings of Fact and Conclusions of Law. Further, Prosper prays for any additional relief to which it has shown itself justly entitled.

Respectfully submitted,

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² Order No. 45 allowed the Executive Director of the Commission to withdraw its Request for Additional Evidence. No other party requested to enter additional evidence.

³ Tex. R. Civ. Proc. 270 and *In re S.L.M. and J.A.M.*, 97 S.W.3d 224, 230 (Tex. App.-Amarillo 2002, n.p.h.).

ARTURO D. RODRIGUEZ, JR.
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ATTORNEYS FOR PROSPER

PROSPER'S OBJECTION TO ADDITIONAL EVIDENCE 3

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April 2005, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following:

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Comments:

Prosper's Objections to and Motion to Strike Additional Evidence Presented by Fishtrap Properties, L.L.P.

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