



Control Number: 43781



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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	§	BEFORE THE STATE
PROSPER TO AMEND SEWER	§	
CERTIFICATE OF CONVENIENCE	§	OF
AND NECESSITY NO. 20888 IN	§	
DENTON COUNTY, APPLICATION	§	ADMINISTRATIVE HEARINGS
NO. 34004-C	§	

**FISHTRAP PROPERTIES, LLC'S AND
GLENBROOK WATER SUPPLY CORPORATION'S
OBJECTION TO THE SCHEDULING OF JURISDICTIONAL
HEARING FOR DECEMBER 16, 2003**

Comes now Fishtrap Properties, LLP and Glenbrook Water Supply Corp. ("Fishtrap" or movant) and files this its Objection to the Scheduling of Jurisdictional hearing for December 16, 2003, and in support of said objection would show the Court the following:

Notice Required for Application for CCN

This case is in its present posture because the notice given by the Town of Prosper ("Prosper") was untrue in its claim that the proposed new service area for its sewer CCN **“ . . . IS TOTALLY WITHIN THE CITY LIMITS OF PROSPER, TEXAS. . . ”** (boldface, caps, and underline being part of the original notice). Fishtrap Properties, LLP and Glenbrook Water Supply Corporation (collectively referred to as "Fishtrap") believe that this defective notice statement discouraged nearby competing utility providers from protesting Prosper's CCN application for the obvious reason that cities normally provide such services to their citizens.

Fishtrap's position was that the notice was defective, the Executive Director supported Fishtrap's plea in abatement regarding the notice, and this Court granted

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Fishtrap's motion and abated the proceedings. Proper notice was subsequently given by Prosper, and Mustang Special Utility District ("Mustang") responded to the notice by filing a timely protest to Prosper's sewer CCN application.

In order for proper and fair notice to be meaningful and effective, Fishtrap supports Mustang's opposition to a December 16, 2003 jurisdictional hearing because Mustang, as an affected party, needs and requires adequate time to effectively participate in the proceedings. Because Mustang was not given proper notice, it was not present and did not participate in the eleven depositions taken during discovery and has not participated in the extensive written discovery engaged in by all the current parties (*i.e.*, Fishtrap, Prosper, and the Executive Director), nor has it reviewed the prefiled testimony filed and objected to by all the parties. These discovery materials constitute several thousand pages of documents, exhibits and maps, and Fishtrap believes it is unfair to Mustang to expect it to meaningfully participate in any scheduling conference likely to take place on December 16, 2003. To require Mustang to be ready to participate in this jurisdictional hearing on December 16, 2003 would be to Prosper's benefit and advantage, and thus reward Prosper's actions in sending out defective notice, since Mustang as a protestant to Prosper's sewer CCN application would be at a distinct and substantial disadvantage in arguing and defending its position.

In its Objection to the conditional scheduling of a December 16, 2003 jurisdictional hearing, Mustang attached as Exhibit "A" a copy of its October 31, 2003 letter requesting a hearing on Prosper's sewer CCN application. In said letter, Fishtrap believes Mustang set out a number of reasons why Prosper's sewer CCN application should not be granted. Fishtrap believes that Mustang, especially as a member of the

Upper Trinity Regional Water District, is a far more appropriate retail provider of sewer service to Fishtrap than Prosper due to a number of factors such as, the existence of Mustang facilities available for this purpose, the nearness of Mustang's facilities and infrastructure to Fishtrap, a lower cost for Mustang's services.

In conclusion, effective notice to Mustang is and was a conditional requirement in order for a contested case to arise and for jurisdiction to attach--at least with respect to Mustang--and the failure of Prosper to give such notice to Mustang deprived the State Office of Administrative Hearings of jurisdiction with respect to Mustang. In order for the notice to be meaningful, and for jurisdiction to properly attach, Mustang should be allowed adequate time to participate at any jurisdictional hearing at which discovery and other scheduling matters will be decided. Any delay which occurs is a fault not of Mustang's but of Prosper's due to its defective notice and its highly misleading statement that the proposed service area was "...TOTALLY WITHIN THE CITY LIMITS OF PROSPER, TEXAS. . .", and had proper notice been given, this problem would not have arisen.


Fishtrap suggests that any hearing not occur before January 12, 2003, at the earliest due to the obvious holiday commitments involving travel and family. The undersigned's co-counsel, Mr. Tom Leonard, will be unavailable from December 29 to January 3, 2003, for the wedding of his daughter.

WHEREFORE, Fishtrap respectfully requests that the jurisdictional hearing in this matter be rescheduled for a date in the week of January 12, 2003, but preferably later in that week. Fishtrap also prays that all other matters originally scheduled in Order

No. 15 continue to be abated and rescheduled to a time after the jurisdictional hearing whenever that matter is finally set.

Respectfully submitted,

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ATTORNEY FOR FISHTRAP
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WATER SUPPLY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served on the following persons by fax, hand delivery or 1st class USPS mail on the 18th day of November, 2003.

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Subject: App of Town of Prosper; SOAH # 582-03-1994; TCEQ # 2002-1250-UCR

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MESSAGE:

Fishtrap Objection to proposed Dec 16, 2003 Jurisdictional Hearing