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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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ADMINISTRATIVE HEARINGS
STATE OFFICE OF
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SOAH DOCKET NO. 582-03-1994
TCEQ DOCKET NO. 2002-1250 JCR

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APPLICATION OF THE TOWN OF	§	FISHER EXECUTIVE STATE OFFICE
PROSPER TO AMEND SEWER	§	COMMISSION FILING CLERK
CERTIFICATE OF CONVENIENCE	§	OF
AND NECESSITY NO. 20888 IN	§	
DENTON COUNTY, APPLICATION	§	ADMINISTRATIVE HEARINGS
NO. 34004-C	§	

FISHTRAP PROPERTIES, LLP'S MOTION FOR EXTENSION OF TIME TO FILE PRE-FILED TESTIMONY

NOW COMES FISHTRAP PROPERTIES, LLP, ("Fishtrap") and files this its Motion for Extension of Time to file its supplemental and rebuttal pre-filed testimony currently due on September 16, 2004 and in support of its motion would show the Court the following:

I.

Under Court Order No. 29, Mustang S.U.D. ("Mustang") was required to file its direct case testimony on or about August 20, 2004 and its rebuttal testimony to the Town of Prosper's supplemental direct case testimony on September 16, 2004. However, due to staff and Board President vacancies, Mustang failed to file its direct case testimony and instead, just a week before its rebuttal testimony was due, filed a Notice of Withdrawal of Protest on or about September 7, 2004. Fishtrap had planned to rely upon the witnesses proffered by Mustang for portions of both its direct testimony and its rebuttal testimony, since Fishtrap and Mustang were aligned in this case and had the same interest. Fishtrap's testimony as to Mustang's service capabilities, the availability of facilities through Upper Trinity Regional Water District's wholesale treatment facilities and transmission lines and the duplication of facilities proffered by Prosper

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would have been redundant and cumulative to the testimony anticipated from Mustang and thus unnecessary. Fishtrap's 108 acre tract had been annexed into Mustang, and Fishtrap and Mustang had entered into utility service agreements under which Mustang would provide water and wastewater service to Fishtrap. If Mustang had prevailed in this case or if no CCN was issued to the requested area, Fishtrap would have been able to receive such service.

Mustang's withdrawal has forced Fishtrap to secure additional expert witnesses testimony from its engineers who had not planned to testify. Fishtrap's engineers are in the process of reviewing both Mustang's prior pre-filed testimony as well as Prosper's pre-filed and supplemental testimony and Fishtrap anticipates that it will be able to file its supplemental direct and rebuttal pre-filed testimony on September 23rd, 2004, one week past its present deadline of September 16, 2004.

II.

Fishtrap believes that a delay of one week will not adversely affect the time schedule in this case. Much of the testimony that will be presented by Fishtrap's engineers will be substantially the same as that already presented by Mustang's pre-filed testimony last March, and will not act as a surprise to the other parties. The testimony will simply be coming from different witnesses, Fishtrap's own engineers, as opposed to Mustang's general manager, Jason Pierce, who has since resigned from Mustang, and from Mark Mihms, Mustang's consulting engineer with HDR Engineering. Moreover, Fishtrap is agreeable to other parties' extending other deadlines for their filing pre-filed direct, supplemental or rebuttal testimony. This can be done without affecting the setting for the trial of this case during the week of December 13-16.

III.

Fishtrap would also show that the parties are in serious negotiations for settlement and believe that the parties are close to reaching an amicable resolution of the issues; a number of proposals consisting of offers and counter-offers have been exchanged between the parties. The Prosper city council is meeting Tuesday night, September 21, 2004, to consider various proposals put before it by Fishtrap and Mustang. Fishtrap believes an extension of its filing deadline is warranted to avoid extensive pre-filed testimony preparation costs if a settlement is successful, is essential to the presentation of Fishtrap's case in light of Mustang's withdrawal and would be helpful in allowing the parties some breathing room in which to see if settlement is possible.

IV.

Finally, Fishtrap would also show the court that if this case is not resolved amicably by the parties, Fishtrap intends to withdraw its opposition to the granting of a wastewater CCN to Prosper for all the new service area Prosper seeks to serve, except for the approximately 108 acres of land owned by Fishtrap and for which Fishtrap is seeking service from Mustang. This will have the effect of greatly simplifying the case, narrowing the issues, and reducing the amount of testimony and evidence required to be proffered by the parties.

V.

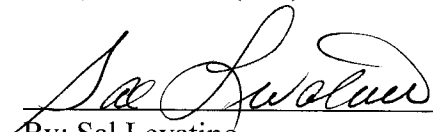
This extension is not sought for unnecessary delay, because Fishtrap does not believe an extension of one week for it to file its pre-filed testimony will delay the hearing on the merits.

VI.

The undersigned represents to the court that it has discussed extensions with counsel for both Prosper and the Executive Director. Counsel for Prosper is agreeable to the extension, but counsel for the Executive Director is not. The Executive Director's direct testimony is due October 22, 2004, one month after the new filing deadline Fishtrap is seeking.

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10/22/04

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 and/or USPS certified mail, RRR, on the 13th day of September, 2004.

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