



Control Number: 43781



Item Number: 88

Addendum StartPage: 0

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

43787

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

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

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**FISHTRAP PROPERTIES, LLP'S RESPONSE TO TOWN OF PROSPER'S
MOTION TO CLOSE THE EVIDENTIARY RECORD**

Comes now Fishtrap Properties, LLP ("Fishtrap"), and files this its Response to Town of Prosper's Motion to Close the Evidentiary Record and in support of said Response would show the Court the following.

At the end of the trial of this matter last month, at approximately 9:00 P.M. of the fourth day of trial, there was a discussion concerning what portions of the Byron Gaines transcript Fishtrap would seek to have admitted into evidence, plus what portions of the transcript supported the admission of that evidence. As a part of that discussion, the court reporter indicated that the transcript could be ready within ten working days-- January 3, 2004. See Attached pages of transcript, pages 1119 to 1130.

While the transcript was theoretically available on January 3, 2004, the court reporters would not release the transcript until its invoice had been paid. The invoice was transmitted via fax on January 3, 2005 to the law office of Skip Newsom, and it was in the amount of \$2,248.00. See attached copy of invoice. Mr. Newsom, in turn, immediately transmitted the invoice to Fishtrap Properties LLP in Dallas with a request for immediate payment. Fishtrap Properties paid the invoice and the transcript was

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transmitted electronically to Mr. Newsom on January 7, 2005, a Friday, at the close of the working day. See copies of email transmissions from Kennedy Reporting Service to judym@fnlawtx.com legal assistant for Mr. Skip Newsom.

The transcript is 1,130 pages long, plus copious exhibits introduced by all parties. Fishtrap believes that some of the exhibits, in particular the prefiled testimony of the Executive Director, will support Fishtrap's position that the deposition testimony of Byron Gaines should be admitted into testimony. Fishtrap is in the process of reviewing the transcript and exhibits for support of its position that the deposition testimony of Byron Gaines be introduced, and believes that it can furnish these transcript excerpts and exhibits no later than next Monday, January 24th. However, if necessary, Fishtrap will provide the transcript excerpts earlier if so ordered by the Court.


Fishtrap did not intentionally or knowingly ignore a January 14th deadline, and its failure to file by that date was due to inadvertence and was not done intentionally. Fishtrap would also point out that the Order was not in the form of a written order from the Court, but was from the bench and at the very end of the transcript. The original discussion between the parties and the Court appears to suggest that a reasonable amount of time for Fishtrap to review the transcript and furnish the necessary excerpts to the Court would be two weeks or ten working days. Since Fishtrap did not receive the transcript until the end of the business day on January 7, 2005, ten working days would make the due date January 21, 2005. Fishtrap requests that it be given until January 24, 2005 to file its transcript and exhibit excerpts in support of its position.

Wherefore premises considered, Fishtrap, as respondent, prays that Prosper's motion to close the evidentiary record be denied and that the date for filing transcript excerpts be extended until January 24, 2005.

Respectfully submitted,

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By: 
Sal Levatino
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ATTORNEYS FOR FISHTRAP
PROPERTIES, LLP AND GLENBROOK
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 19th day of January, 2005.

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Sal Levatino

1 MR. RODRIGUEZ: That's right. I mean,
 2 just --
 3 JUDGE NORMAN: Well, that's a different --
 4 I mean, you don't have to hire an attorney.
 5 MR. RODRIGUEZ: That's right.
 6 MR. NEWSOM: You don't have to. You
 7 can --
 8 JUDGE NORMAN: That's a legal principle.
 9 MR. NEWSOM: It's generally unwise to do
 10 that.
 11 JUDGE NORMAN: I'm sorry?
 12 MR. NEWSOM: I would think it would be
 13 generally unwise to --
 14 JUDGE NORMAN: I can understand why you
 15 guys would think that.
 16 MR. RUSSELL: Yes, we think that's very
 17 unwise. But I believe in this type of proceeding -- I
 18 know it is in some of the SOAH proceedings -- you can be
 19 represented by a representative who is not an attorney.
 20 JUDGE NORMAN: Yes.
 21 MR. RUSSELL: You can designate your
 22 personal representative who does not necessarily have to
 23 be an attorney.
 24 JUDGE NORMAN: Well, somebody can always
 25 represent themselves.

1 MR. RUSSELL: I think it's foolish, but
 2 you can do that.
 3 MR. KIRSHBAUM: Well, we deal with that
 4 quite frequently in rate cases before SOAH.
 5 JUDGE NORMAN: All right. Okay. Let's
 6 move forward.
 7 MR. RUSSELL: That was a nice aside. It
 8 woke us all up.
 9 Q (By Mr. Newsom) Mr. Dickey, I'm not sure I
 10 understood your testimony. Again, in response to
 11 Mr. Russell, did you indicate that you had not examined
 12 the interceptor that goes up Doe Branch, prior to today?
 13 A It was contained in the prefiled testimony. I
 14 did see it, yes.
 15 Q Okay. What did you mean when you told
 16 Mr. Russell that you hadn't really examined it until
 17 today?
 18 A I did not review the impact of what would be
 19 cause on it since they are a wholesale provider.
 20 Q Okay. And in the contested case that you were
 21 in and provided testimony in, did that entail an
 22 instance where one of the service providers did not have
 23 to obtain a CCN?
 24 MS. RUSSELL: This does go beyond the
 25 scope of any cross-examination --

1 MR. NEWSOM: Well, I'll withdraw it.
 2 MS. RUSSELL: -- that I may have asked.
 3 MR. NEWSOM: I'll withdraw the question.
 4 I think that the record is good enough.
 5 JUDGE NORMAN: All right.
 6 MR. NEWSOM: We pass the witness.
 7 JUDGE NORMAN: Any questions?
 8 MR. RUSSELL: We have no questions, Your
 9 Honor.
 10 MR. KIRSHBAUM: No further questions, Your
 11 Honor. Executive Director rests.
 12 JUDGE NORMAN: Okay. You may go. Thank
 13 you.
 14 MR. RODRIGUEZ: Can we take about a
 15 five-minute break, Your Honor?
 16 JUDGE NORMAN: Sure.
 17 (Off the record: 8:37 p.m. to 8:43 p.m.)
 18 MR. RODRIGUEZ: Well, Your Honor, as I
 19 said in my opening statement, I thought that this was a
 20 very simple CCN case, and I think we've had all the
 21 witnesses that prove that. And it's Prosper's belief,
 22 Your Honor, that there's been nothing in the evidence
 23 that's been presented over the last four days that needs
 24 to be rebutted.
 25 So at this time, we're not presenting a

1 rebuttal case. However, we would like to reserve the
 2 right, based upon your ruling with respect to Byron
 3 Gaines, that we would like to reserve the right to be
 4 able to rebut that if, indeed, the Court leaves the
 5 evidentiary record open while he considers whether that
 6 will be admitted or not. So with that one --
 7 JUDGE NORMAN: I think that's fair.
 8 MR. RODRIGUEZ: With that one reservation,
 9 Your Honor, we have no rebuttal testimony at this time.
 10 JUDGE NORMAN: And if we do that, if I do
 11 let it in and then, you know, I'll just call you -- and
 12 you do want to rebut it -- do you have an objection to
 13 that?
 14 MR. RUSSELL: But it would be limited to
 15 Gaines --
 16 JUDGE NORMAN: Right.
 17 MS. RUSSELL: -- just to be real clear?
 18 JUDGE NORMAN: Right; right, if I do let
 19 in Gaines.
 20 MR. NEWSOM: Well, I think that's fair.
 21 JUDGE NORMAN: Yes. And what I'll do is,
 22 I'll just call y'all over there, and you can call
 23 Dr. Harkins by telephone as far as -- or she can --
 24 MR. NEWSOM: I'm sorry. I couldn't hear.
 25 JUDGE NORMAN: Call her by telephone or,

1 if you want to -- I hate -- I'm going to make the
 2 lawyers come over, but I'm not going to let you-all do
 3 it on the telephone.
 4 (Multiple people talking)
 5 MR. RODRIGUEZ: Dr. Harkins is from
 6 Austin.
 7 JUDGE NORMAN: Right. Okay. That's fine.
 8 We'll do that. So what we're going to do is -- can you
 9 tell you about when the transcript will be available?
 10 THE REPORTER: It's 10 working days.
 11 (Off-the-record discussion)
 12 MR. RODRIGUEZ: I mean, even at 10
 13 business days, that takes us to January 3rd.
 14 JUDGE NORMAN: Okay.
 15 MR. RODRIGUEZ: I mean, it's well after
 16 the holidays.
 17 (Off-the-record discussion)
 18 JUDGE NORMAN: So you will have it in by
 19 the end of the year. Is that what you're saying?
 20 THE REPORTER: Yes.
 21 JUDGE NORMAN: Okay. From that point,
 22 then I would like for you to -- Mr. Newsom?
 23 MR. NEWSOM: Before you start that
 24 schedule, I am not supposed to be in town the first week
 25 of January.

1 JUDGE NORMAN: Okay. That's fine. I
 2 mean, I think --
 3 MR. NEWSOM: If it's possible to work
 4 around that.
 5 JUDGE NORMAN: I think it is -- I mean, it
 6 is -- the main thing was to get this hearing over with.
 7 MR. RODRIGUEZ: Right.
 8 JUDGE NORMAN: And, you know, at this
 9 point, probably a week or two doesn't matter.
 10 First, the portions of the Gaines
 11 deposition that you want in, assuming that all of it is
 12 not -- shouldn't come in under 106 or 107, the portions
 13 that you want, just like what they did with the, the
 14 portions that you want and the transcript testimony that
 15 justifies that, is what -- if you could do that by what
 16 time, you or Mr. Levatino either one?
 17 MR. NEWSOM: Could we have until the end
 18 of the second week of January? I should be able to
 19 address myself to that upon my return, and that would
 20 be the second week --
 21 MS. RUSSELL: January 14th?
 22 MR. NEWSOM: That would be the second week
 23 of January.
 24 JUDGE NORMAN: Is it the 14th or the 13th?
 25 MR. RODRIGUEZ: The 14th is a Friday.

1 JUDGE NORMAN: Yes, you can have until the
 2 14th.
 3 MR. NEWSOM: Okay.
 4 JUDGE NORMAN: And then how do we want
 5 to -- then do y'all want -- y'all will need to respond
 6 by --
 7 MR. RUSSELL: We can respond by the end of
 8 the next week.
 9 JUDGE NORMAN: By the 21st.
 10 MS. RUSSELL: 21st.
 11 JUDGE NORMAN: And then I'll get an order
 12 out pretty quick to you. Then do you want to -- is that
 13 the way we want to do it? You'll present it, and there
 14 is a response. Are you going to want to then say
 15 something or do we need to set a prehearing conference?
 16 MR. NEWSOM: If you're going to rule on
 17 the matters that are submitted to you simply in
 18 writing --
 19 JUDGE NORMAN: I will.
 20 MR. NEWSOM: -- we would like to have the
 21 opportunity to respond. We probably don't need to have
 22 that opportunity for a written response if you're going
 23 to convene a hearing conference to discuss that.
 24 JUDGE NORMAN: I'll convene a hearing, and
 25 I'll make it within the next week after the 21st, and

1 I'll send y'all an order of when that hearing is going
 2 to be.
 3 MR. RODRIGUEZ: As long as you could not
 4 make it the 24th, Your Honor, that would be the Monday.
 5 JUDGE NORMAN: Okay.
 6 MR. RODRIGUEZ: That's the only conflict
 7 that Kerry and I have that week.
 8 JUDGE NORMAN: All right. Okay. Sometime
 9 in the week --
 10 MR. RUSSELL: He's a prosecutor that day
 11 for Liberty Hill.
 12 JUDGE NORMAN: All right. The 25th or
 13 later --
 14 MR. RODRIGUEZ: Please.
 15 JUDGE NORMAN: -- to argue that.
 16 MR. NEWSOM: And, Your Honor, if you would
 17 permit me, I do have a trial up in Denton, but I don't
 18 have my calendar with me.
 19 JUDGE NORMAN: All right.
 20 MR. NEWSOM: I can check that and
 21 certainly --
 22 JUDGE NORMAN: Just e-mail me -- I mean,
 23 not e-mail, but send in a fax on that to all of us.
 24 MR. NEWSOM: You don't give out your
 25 e-mail address?

1 JUDGE NORMAN: No.
 2 MR. NEWSOM: I can leave word with your
 3 assistant or I can send you a --
 4 JUDGE NORMAN: Just fax.
 5 MR. NEWSOM: -- short mail.
 6 JUDGE NORMAN: A fax would be good, when
 7 you can do it on that week --
 8 MR. NEWSOM: Okay.
 9 JUDGE NORMAN: -- hopefully that week.
 10 After I rule on that, then what process -- we'll need to
 11 go through a process of --
 12 MR. RUSSELL: -- closing arguments.
 13 JUDGE NORMAN: Right. How do you-all
 14 ordinarily do that?
 15 MR. RODRIGUEZ: Generally about three to
 16 four weeks for closing arguments.
 17 JUDGE NORMAN: And then responses?
 18 MR. RODRIGUEZ: And then about another
 19 couple of weeks after responses -- then responses are
 20 due a couple of weeks later.
 21 JUDGE NORMAN: Okay.
 22 MR. NEWSOM: Would you mind if we had the
 23 opportunity to get together and maybe agree on a
 24 schedule for that?
 25 MR. RODRIGUEZ: I think that would

1 JUDGE NORMAN: Yes.
 2 MR. KIRSHBAUM: Could we also reserve that
 3 right in case there is something in the deposition that
 4 we want to consider?
 5 JUDGE NORMAN: Yes. And when I rule, if I
 6 do permit it, then that's going to permit the rebuttal
 7 case that we'll bring up pretty shortly after that. So
 8 I think that's about all she wrote.
 9 MR. RODRIGUEZ: Well, thank you for
 10 indulging us for four -- almost four and a half days.
 11 JUDGE NORMAN: Oh, no, not at all. I
 12 enjoyed it.
 13 MR. KIRSHBAUM: Thank you for
 14 accommodating our witnesses.
 15 MR. RUSSELL: Thank you, Your Honor.
 16 JUDGE NORMAN: Thank you. I did truly
 17 enjoy the hearing, believe it or not.
 18 (Proceedings concluded: 8:51 p.m.)
 19
 20
 21
 22
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 24
 25

1 probably be good.
 2 MR. NEWSOM:
 3 MR. RUSSELL: That would be helpful.
 4 JUDGE NORMAN: Yes, y'all can do that.
 5 MR. RUSSELL: Unless you just want to do
 6 that.
 7 JUDGE NORMAN: No. I would be glad for
 8 y'all to do it.
 9 MR. RODRIGUEZ: Yes. And that schedule is
 10 going to be impacted by what your decision is going to
 11 be that third the week in January.
 12 JUDGE NORMAN: Right, right. What was I
 13 going to say? And my understanding of the TCEQ rules,
 14 it used to be for me to give out a PFD, which used to be
 15 30 working days, but now I think it's the regular 60
 16 days, isn't it?
 17 MR. RUSSELL: I think that's correct.
 18 MR. RODRIGUEZ: And that's like a target.
 19 JUDGE NORMAN: Right. I have only
 20 exceeded that one time.
 21 MR. KIRSHBAUM: Your Honor, can I have a
 22 clarification? I understand that Prosper has reserved
 23 the right to put on a rebuttal case, and that's
 24 contingent on the Byron Gaines deposition being admitted
 25 or not.

1 CERTIFICATE
 2
 3 STATE OF TEXAS)
 4 COUNTY OF TRAVIS)
 5
 6 We, David Bateman and Aloma J. Kennedy,
 7 Certified Shorthand Reporters in and for the State of
 8 Texas, do hereby certify that the above-mentioned matter
 9 occurred as hereinbefore set out.
 10 WE FURTHER CERTIFY THAT the proceedings of
 11 such were reported by us or under our supervision, later
 12 reduced to typewritten form under our supervision and
 13 control and that the foregoing pages are a full, true,
 14 and correct transcription of the original notes.
 15
 16 IN WITNESS WHEREOF, we have hereunto set
 17 our hand and seal this 31st day of December 2004.
 18
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David Bateman
 Certified Shorthand Reporter
 CSR No. 7578 - Expires 12/31/05

Kennedy Reporting Service, Inc.
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Thank you for your business.

<u>SERVICE ORDERED BY</u>	<u>DOCKET NUMBER</u>	<u>CASE NAME</u>	<u>JOB NUMBER</u>
Skip Newsom	582-03-1994	Town of Prosper	4430-1-4

<u>DATE TAKEN</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>RATE</u>	<u>AMOUNT</u>
	State Office of Administrative Hearings			
	Hearing on the Merits, Volumes 1 - 4			
12/13/2004	One Copy - Regular	288	1.95	561.60
12/14/2004	One Copy - Regular	270	1.95	526.50
12/15/2004	One Copy - Regular	225	1.95	438.75
12/16/2004	One Copy - Regular	357	1.95	696.15
	Administrative Expense Fee	1	25.00	25.00

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Judy Meininger

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Subject: Town of Prosper

Judy:

Sorry for the delay. We just received payment via U.S. mail. I'm sending one volume at a time. If you have not done so already, you will need to download the free e-transcript viewer from www.reallegal.com in order to view the transcript. Please give us a call if you have any questions. Thank you.

Tara Davis
Production Assistant
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512.474.2233

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Subject: Prosper V.3

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Attach: prosper4.ptx
Subject: Prosper V.4

This is the last volume. Please call if you have any questions. Thank you.