



Control Number: 43965



Item Number: 119

Addendum StartPage: 0

43965

SOAH DOCKET NO. 582-03-2282
TCEQ DOCKET NO. 2003-0033-UCR

RECEIVED

2014 DEC 17 AM 7:53

BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF DENTON COUNTY §
FRESH WATER SUPPLY DISTRICT NO. §
10 TO AMEND WATER AND SEWER §
CERTIFICATES OF CONVENIENCE §
AND NECESSITY NOS. 13021 AND 20923 §
IN DENTON COUNTY, APPLICATION
NOS. 34068-C AND 34069-C

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 1

**SETTING OUT SCHEDULE AND PROCEDURES;
AND
SCHEDULING PREHEARING CONFERENCE AND HEARING ON THE MERITS**

I. PARTIES

On May 13, 2003, a preliminary hearing was held in this case. The following were designated as parties:

PARTY	REPRESENTATIVES
Denton County Fresh Water Supply District No. 10	Mark Zeppa
Executive Director (ED)	Lara K. Nehman and Sheridan Gilkerson
Public Interest Counsel (OPIC)	Not Represented
City of Prosper	Kerry E. Russell
Mahard Egg Farm, Inc.	John Turney
Prosper Independent School District	Drew Watkins

II. SCHEDULE

The following schedule for prehearing activities and the hearing on the merits of the application shall govern this proceeding:¹

DEADLINE/DATE	ACTIVITY
June 13, 2003	Discovery Begins
July 14, 2003	Written Discovery Ends. All requests must be received 20 days prior to this date so that responses are due on or before the date
July 21, 2003, at 9:00 a.m.	Preliminary conference to rule on discovery disputes and other pending matters
August 15, 2003	Applicant to pre-file direct case in writing, including all testimony and exhibits
September 5, 2003	Other parties, except Applicant and ED, to prefile direct case in writing, including all testimony and exhibits
September 26, 2003	ED to prefile direct case in writing, including all testimony and exhibits
October 9, 2003	Written objections to any prefiled evidence are filed
October 14, 2003	Replies to written objections to any prefiled evidence
October 16, 2003, at 9:00 a.m.	Preliminary conference to set time limits for case presentations, to rule on objections to prefiled evidence, and consider other pending matters
October 30-31, 2003, at 9:00 a.m.	Hearing on the merits

¹The date for filing written objections to pre-filed evidence is changed from the October 10, 2003, date agreed to by the parties to October 9, 2003. The October 15, 2003, agreed-to date for filing replies to written objections to prefiled evidence is changed to October 14, 2003.

III. HEARING AND PREHEARING DATES AND LOCATION

The hearing on the merits will convene at 9:00 a.m., October 30, 2003, at the State Office of Administrative Hearings (SOAH), 4th Floor, William P. Clements Building, 300 West 15th Street, Austin, Texas. Unless the parties are notified otherwise, the hearing will continue from day to day thereafter until it is concluded. Given the complexity and anticipated length, appearing at the hearing on the merits by telephone is not practical and will not be allowed.

IV. PROCEDURAL RULES

Except as otherwise provided herein, this case shall be conducted in accordance with the procedural rules of the TCEQ and SOAH. 30 TAC Chapter 80 and 1 TAC Chapter 155. In the event of conflict, the TCEQ's rules apply. 1 TAC § 155.1(b).

V. DISCOVERY

Discovery shall be conducted according to Texas Rules of Civil Procedure (TRCP), as supplemented by SOAH's discovery rules, 1 TAC § 155.31. The TRCP shall be interpreted consistently with chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001 *et seq.* 30 TAC § 80.151. Pursuant to SOAH Procedural Rule § 155.23(3), discovery documents shall be served on the other parties but shall not be filed with the ALJ unless such materials are the subject of a discovery dispute and only those portions relevant to the dispute shall be attached to any pertinent motion.

The parties are expected to attempt to resolve discovery disputes; however, significant disputes which cannot be resolved should be brought to the ALJ's attention in a motion to compel.

Any request for relief should include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

The total time for the Applicant, the Protestants as a group, and the ED for oral depositions may not exceed 50 hours each and the total number of written interrogatories that any party may serve on any other party may not exceed 25. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated. Additionally, parties may obtain disclosure of information and material as provided in TRCP 194. The parties are encouraged to cooperate and reach agreements regarding discovery matters. However, in the absence of a filed written agreement, responses to discovery requests are due on the deadline date.

If a motion to compel is filed, the party asserting a privilege from discovery shall produce the documents in question to the ALJ for an in camera inspection within three (3) working days after receiving the motion under the procedures set out at 1 TAC § 155.23(2). In camera documents will be returned only to the party that provided them regardless of the ruling. If the ruling is against the producing party, production shall follow on either the 20th working day or if this date has passed, then within two (2) working days. To the extent discovery requests involve confidential materials having a limited privilege (e.g., Texas Rules of Evidence 507 trade secrets), the parties should file a motion seeking a protective order to facilitate discovery. Additionally, if it would facilitate orderly and efficient discovery, any party, after conferring with all other parties, may seek the issuance of a general protective order.

Responses to written discovery requests shall identify the preparer(s) and witness sponsor(s) of that response.

VI. PLEADINGS

Unless specified or agreed otherwise, to be considered filed on a particular day, filings must

be received by the ALJ and the parties by 5:30 p.m. on that date. When something is due by a certain date or time, it is not sufficient to merely mail the filing on that day. Receipt is required.

Unless one party seeks additional oral argument and the motion is granted, the ALJ will rule on motions based on the written pleadings. If oral argument is granted, it shall be conducted by telephone conference, unless the ALJ specifies otherwise. The party requesting oral argument shall make arrangements for the telephone conference in a manner so as not to delay a ruling on the motion.²

Motions or other correspondence may be FAXED if the original is sent by mail. Filings should be sent to all parties contemporaneously (*i.e.*, that same day) with any filing to the ALJ. If over 20 pages long, it may be sent by express mail for delivery on the next business day. This is particularly important when deadlines for responses are involved since it will be assumed that all parties received a filing the same day the ALJ did and their time is running for responses.

If a deadline is approaching and a party cannot get a fax through for reasons beyond its control [*e.g.* both SOAH fax numbers (Natural Resources 512/936-0730 and SOAH Main Docket 512/475-4994) have been busy since 4:00 p.m.], call and tell the ALJ's assistant, Ms. Tracy Lewis, 512/ 475-4693, or the SOAH Docket Division (512/475-3445) of the problem.

Parties shall use the ALJ's service list and this list should be attached to all filings.

VII. PREFILED EVIDENCE

All parties shall prefile their direct-case evidence in writing. One copy shall be served on the representative of every other party, and one copy shall be filed with the judge. Rebuttal evidence

²This paragraph does not apply to matters considered at the July 21, 2003, and October 16, 2003, or other preliminary conferences.

and documents used for impeachment or rebuttal purposes need not be prefiled. The prefiled evidence should include all testimony and other evidence necessary to support a party's direct case.

Evidence that is not prefiled may not be introduced as part of a party's direct case absent a showing of good cause. Good cause will be considered on a case-by-case basis upon a showing of need, the reasonableness of not having anticipated its use, and that the other parties will not be prejudiced by its late entry into the record. Therefore, evidence even considered for use in a direct case should be prefiled, although a party later may choose not to introduce every item it prefiles.

The Applicant is hereby warned against trying to obtain a tactical advantage by saving evidence for rebuttal that is more reasonably part of a direct case. Such evidence will not be admitted as "rebuttal" absent a showing of good cause, particularly that the need for such "rebuttal" evidence could not have been reasonably anticipated and prefiled with the direct case.

Prefiled testimony should be written as if the questions were asked by the party's lawyer and answered by the witness. The witness must be called to testify and adopt the prefiled testimony under oath, the testimony must be offered as an exhibit, and the witness must be passed for cross-examination by the other parties. When no party wishes to cross-examine a witness, the parties should agree to the admission of the witness' testimony so that the witness is not required to needlessly attend the hearing.

Since the purpose of prefilings evidence is to shorten the length and minimize the cost of the hearing, the Judge will discourage non-substantive evidentiary objections to prefiled evidence that seem to have little purpose other than lengthening the hearing and leaving evidentiary gaps, *e.g.* form-of-the-question and leading-the-witness objections. Counsel to all parties are expected to confer and reach agreements on ways to minimize all evidentiary objections.

An order of witnesses shall be prefiled with the testimony. If there is a necessity to deviate from the established order, this should be raised with the ALJ and the other parties as soon as it

becomes known.

Every page of every prefiled document shall be appropriately numbered to allow easy identification and reference.

On the day they will be offered, two copies of every exhibit, which will be referred to as the "Record Set" and the "Appeal Set," shall be provided to the court reporter before the hearing starts, so that the court reporter can mark them and not delay the hearing.

VIII. OPEN GOVERNMENT

The Judge intends to strictly limit admission of evidence under seal and closing of the hearing on the merits to the public. Texas law frowns on secret governmental proceedings or decisions of any kind.³ The parties shall negotiate prior to the hearing to agree on redacted versions of the confidential documents that can be admitted or to stipulate to facts to which they pertain. The Judge is confident that the parties can reach such agreements. Gamesmanship on this point will not be tolerated. If the parties are legitimately unable to reach an agreement, the Judge will resolve the dispute at the hearing in a session closed to the public.

IX. TRANSCRIPT

For any proceeding in a docket set to last longer than one day, a court reporter is generally required. 1 TAC § 155.43(b). Upon his or her own motion, the judge may request a verbatim record and an original and two copies of a transcript of a proceeding. 30 TAC § 80.23 (b)(4).

In that the parties estimate that the hearing on the merits will take more than one day, a court reporter will be needed at the hearing on the merits to transcribe the hearing and to deliver the

³ See TEX. GOV'T CODE ANN. § 551.001 *et seq.* and § 552.001 *et seq.*

original and one copy of that transcript to the ALJ and one copy to the ED. The Applicant shall work with the TCEQ Chief Clerk's Office to ensure that a court reporter attends the hearing. The Applicant shall pay the cost of that recording and transcription subject to an allocation of those costs among all the parties at the end of the case. 30 TAC § 80.23.

X. ORDER OF HEARING

Unless otherwise ordered, the parties will present their cases in the following order: Applicant, City of Prosper, Mahard Egg Farms, Inc., Prosper Independent School District, OPIC, and ED. The Applicant will have the opportunity to introduce rebuttal evidence, which it need not prefile. The order of cross-examination will be the same as direct.

XI. CONSOLIDATION

The Applicant's motion to consolidate this case with the Application of the City of Prosper to amend its sewer certificate of convenience and necessity in Docket No. 582-03-1994 was considered. The City of Prosper opposed the consolidation. The Applicant withdrew its motion to consolidate. There were no other comments.

The motion to consolidate is **denied**.

Issued May 15th, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



JAMES W. NORMAN
Administrative Law Judge

FAX TRANSMITTAL

State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
(512) 475-4993

TO:	FAX NUMBER:
Blas Coy	239-6377
Docket Clerk (TCEQ)	239-3311
Mark Zeppa-Denton Cty Water	346-6847
Lara K. Nehman, Sheridan Gilkerson-TCEQ	239-0606
Kerry Russell-City of Prosper	512/864-7744
John Turney-Mahard Egg Farm, Inc.	476-1513
Drew Watkins-Prosper ISD	VIA REGULAR MAIL-NO FAX #
Kennedy Reporting	474-6704

FROM: Tracy-Lynne Lewis, Assistant to Judge's name

FAX #: (512) 936-0730

DATE: May 15, 2003

OF PAGES: (Including this Page) 10

The information contained in this facsimile message is privileged and confidential information intended only for the use of the above-named recipient(s) or the individual or agent responsible to deliver it to the intended recipient. You are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

 *** MULTI TX/RX REPORT ***

TX/RX NO 0762
 PGS. 10
 TX/RX INCOMPLETE (4) 92390000
 TRANSACTION OK (1) 92396377
 (2) 92393311
 (3) 93466847
 (5) 92390606
 (6) 915128647744
 (7) 94761513
 (8) 94746704

deleted wrong #

ERROR INFORMATION -----

FAX TRANSMITTAL

State Office of Administrative Hearings
 P. O. Box 13025
 Austin, Texas 78711-3025
 (512) 475-4993

TO	FAX NUMBER
Blas Coy	239-6377
Docket Clerk (TCEQ)	239-3311
Mark Zeppa-Denton Cty Water	346-6847
Lara K. Nehman, Sheridan Gilkerson-TCEQ	239-0606
Kerry Russell-City of Prosper	512/864-7744
John Turney-Mahard Egg Farm, Inc.	476-1513
Drew Watkins-Prosper ISD	VIA REGULAR MAIL-NO FAX #
Kennedy Reporting	474-6704
FROM:	Tracy-Lynne Lewis, Assistant to Judge's name
FAX #:	(512) 936-0730
DATE:	May 15, 2003
PAGES:	(Including this Page) 10