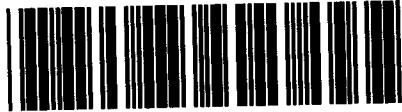


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SOAH DOCKET NO. 582-03-2282
TCEQ DOCKET NO. 2003-0033-UC

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SEP 26 2003

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 §

PUBLIC UTILITY COMMISSION
BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 9

CONCERNING EXECUTIVE DIRECTOR'S MOTION TO DISMISS

On September 19, 2003, the Texas Commission on Environmental Quality (Commission) Executive Director filed a motion to dismiss for failure to prosecute based on the following assertions: Order No. 1, issued on May 15, 2003, set a pre-hearing schedule requiring all parties to file their direct case in writing; the order required Denton County Fresh Water District No. 10 (District) to file its direct case in writing by August 15, 2003, Mahard Egg Farm (Mahard) and Prosper Independent School District (Prosper) to file their direct cases in writing by September 5, 2003, and the Executive Director to file her direct case in writing by September 26, 2003; as of September 19, 2003, neither the District nor the other parties have filed their direct cases or requested extensions to do so; the Executive Director served discovery requests on all the parties, but only Mahard responded; the District's response was due on July 14, 2003; on September 8, 2003, the Administrative Law Judge (ALJ) issued Order No. 8 saying the hearing schedule remained in effect; and the District has not filed any request to amend its deadlines or indicated an intent to prosecute the case.

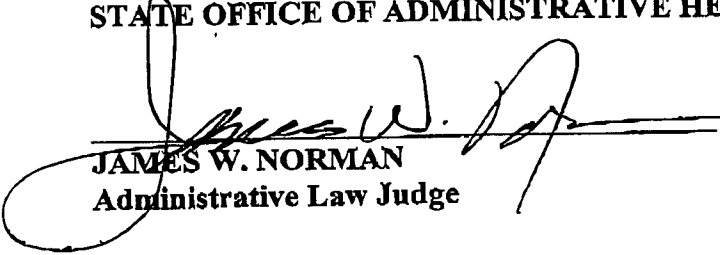
The State Office of Administrative Hearings (SOAH) records indicate that: the hearing schedule is in effect: the District was required to file its direct case on August 15, 2003, but has failed to do so; Mahard and Prosper were required to file their direct cases by September 5, 2003, but have failed to do so; and no party has filed any request to amend any deadline.

The Executive Director filed her motion pursuant to 1 TEX. ADMIN. CODE § 155.57(b). She argued that the matter should not merely be dismissed from SOAH's docket, but be presented to the Commission for dismissal because only the Commission has authority to dismiss an application. However, the rule cited by the Executive Director permits a dismissal that only removes the matter from SOAH's docket. It is not meant to propose a decision on the merits of the case.

Pursuant to 1 TEX. ADMIN. CODE § 155.57(a), the Administrative Law Judge notifies the parties of his intent to issue a proposal for decision resolving the case without evidentiary hearing based on District's failure to file its direct case in writing or request an extension. Pursuant to the cited rule, any party may file its opposition to the motion within twenty days of its receipt of the motion. Any opposition filed should comply with the rule's requirements.

Issued 24th day of September, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



JAMES W. NORMAN
Administrative Law Judge

From: Lara Nehman
To: Basnet, Prabin
Date: 9/19/03 5:56PM
Subject: Denton County FWSD No. 10

Prabin,

Sheridan & I filed a Motion to Dismiss this case today for failure of the Applicant to prosecute its case (not filing prefiled testimony and not providing explanation or requesting new deadline, etc.). You should be receiving a copy & I'll keep you posted on the response from the other parties. If the Judge does not grant our Motion, we stated that we would request that the Judge order the other parties to prefile their direct cases by new deadlines and that we be given the same amount of time after their deadlines as we originally had to file our direct case. If there is no ruling by the time our prefiled case is due next Friday, September 26th, I suggest that we file something really brief stating that we do not have sufficient information to take a position in this case... Please provide me with your thoughts on this. I know that we had planned to support the Application.

Thanks.
Lara

Lara Nehman
Staff Attorney
Environmental Law Division
Texas Commission on
Environmental Quality
Phone: (512) 239-1121
Fax: (512) 239-0606

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CC: Gilkerson, Sheridan; Mejia, Lisa