



Control Number: 43965



Item Number: 40

Addendum StartPage: 0

43965

RECEIVED

RECEIVED

DEC 17 2003
PUBLIC UTILITY COMMISSION
UTILITIES AND DISTRICTS

SOAH DOCKET NO. 582-03-2282

TCEQ DOCKET NO. 2003-0033-UC

2004 DEC 17 AM 7:41

PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF DENTON COUNTY	§	BEFORE THE TEXAS
FRESH WATER SUPPLY DISTRICT	§	
NO. 10 TO AMEND WATER AND	§	COMMISSION ON
SEWER CCNS IN DENTON COUNTY	§	
(APPLICATION NOS. 34068-C/34069-C)	§	ENVIRONMENTAL QUALITY

**DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10's BRIEF THE
STANDING OF PROSPER INDEPENDENT SCHOOL DISTRICT**

COMES NOW, Denton County Fresh Water Supply District No. 10 (the District), and files its Brief on the issue of the standing of the Prosper Independent School District (PISD).

During the course of the July 21, 2003, prehearing conference, PISD stipulated that it did not own property or options to purchase property within the proposed amended service area of the District. PISD admits that it does not receive utility service from the District at this time.

PISD claims that with the expected population that the developers (through Phillip Huffines) projected in the proposed service area, it will need at least 2 elementary schools to serve future school children. The location of these schools is a contested issue. Whether these schools will be inside or outside the proposed service area is a contested issue. The date of these schools will be built is a contested issue.

PISD claims that it is an "affected person" and, thus, entitled to party status under 30 TAC §80.109(b)(3), §55.203 and §55.256.

PISD does not fit the Texas Water Code definition of "affected person".

Texas Water Code §13.002

(1) "Affected person" means any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

PISD admits that it does not pay a utility bill to the District at this time. The certification proceeding before Judge Norman does not affect PISD's rates or service because PISD is not a customer and currently has no foreseeable means of becoming a customer. PISD, through its counsel Maria Sanchez, admitted in argument that the school district's only apparent means of acquiring a school site within the proposed service area was through condemnation of a school site. While the District acknowledges that PISD, like the District, has the power of condemnation, PISD admitted that it has never used that power for a school site. Neither of PISD's witnesses had any idea where the school(s) would be located. Neither of PISD's witnesses had any idea when **or if** any power of condemnation would be exercised.

30 TAC §55.203. Determination of Affected Person.

(a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. ***An interest common to members of the general public does not qualify as a personal justiciable interest.***

(b) Governmental entities, including local governments and public agencies, ***with authority under state law over issues raised by the application*** may be considered affected persons.

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) ***whether a reasonable relationship exists between the interest claimed and the activity regulated;***

(4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) ***for governmental entities, their statutory authority over or interest in the issues relevant to the application.***

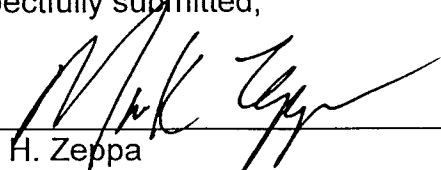
The District does not dispute that under the TCEQ rule provisions cited above, PISD would have a unique justiciable interest in this docket ***if*** the school district had a school within the District's service area today. That is because PISD would be a customer. As a school district, PISD has no legal authority over a water or sewer utility under the Texas Water Code, the Texas Education Code or any other statute. [The District excludes discussion of a utility using a school district's land for easement purposes and the rights of a landowner.] However,

under the present tense definition of "affected person" of Texas Water Code §13.002(1) and the PISD lack of any tie to real estate within the proposed service area ***with any degree of certainty*** as to location or date, PISD is not affected by the amended application. The statute requires the tie to the justiciable interest to exist today, not in some unknown indefinite future. This is distinguishable from an "option to purchase", which is a recognized interest in Texas real property law.

The District respectfully submits that Mr. Drew Watkins' sworn testimony at the first prehearing conference in this docket demonstrates PISD's true interest in this docket. The school district opposes the high-density development within the 475 acres and influx of potential new students it could bring the PISD. This is a land use control manner about which Judge Norman repeatedly admonished Mr. Watkins. It does not afford standing in a certification docket. Articulating concerns over non-existent schools without a showing that those schools will ever exist within the service area in question does not create standing.

CONCLUSION. PISD has not demonstrated that it has a justiciable interest.

Respectfully submitted,

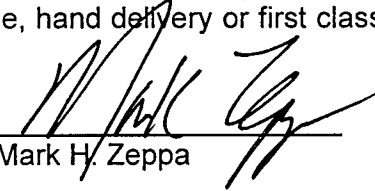


Mark H. Zeppa
State Bar No. 22260100
Law Offices of Mark H. Zeppa, PC
4833 Spicewood Springs Road #202
Austin, TX 78759-8436
(512) 346-4011, Fax (512) 346-6847

ATTORNEY FOR DENTON COUNTY
FRESH WATER SUPPLY DISTRICT
NO. 10

CERTIFICATE OF SERVICE

I, Mark H. Zeppa, attorney for DCFWSD #10, certify that true and correct copies of the foregoing pleading were served on the following by facsimile, hand delivery or first class USPS mail on the 25th day of July 2003:



Mark H. Zeppa

1. Judge James Norman
State Office of Administrative Hearings
P O Box 13025
Austin, Texas 78711-3025
Fax (512) 475-4994
2. Lara Nehman, Staff Attorney
Sheridan Gilkerson, Staff Attorney
Environmental Law Division
TCEQ
P O Box 13087, MC 173
Austin, TX 78711-3087
Fax (512) 239-0606
3. Blas Coy, Jr., Public Interest Counsel
Office of the OPIC
TCEQ
P O Box 13087, MC 103
Austin, TX 78711-3087
Fax (512) 239-6377

4. John Turney
Bell, Turney, Coogan & Richards, LLP
823 Congress Avenue, Ste. 706
Austin, TX 78701
Fax (512) 476-1513
5. Maria Sanchez
Davidson & Trolino, PC
919 Congress, Ste. 810
Austin, TX 78701
Fax (512) 473-2159
6. TCEQ Docket Clerk
Office of the Chief Clerk
P O Box 13087, MC 105
Austin, TX 78711-3087
Fax (512) 239- 3311