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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, TEXAS §

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

MAHARD EGG FARM, INC.'S MOTION TO DISMISS AND RESPONSE TO APPLICANT'S MOTION TO AMEND APPLICATION AND DISMISS INTERVENORS

Now comes Mahard Egg Farm, Inc. and files this MOTION TO DISMISS AND RESPONSE TO APPLICANT'S MOTION TO AMEND APPLICATION AND DISMISS INTERVENORS and in support thereof would show as follows:

I.

In its motion, the Applicant seeks to amend its application to significantly alter the proposed service area. Such an amendment constitutes a major amendment under the agency's rules since it "...changes a substantive term, provision, requirement or a limiting parameter of a permit." 30 Tex. Admin. Code § 305.62 (c). The agency's rules further prohibit such amendments to an application, after issuance of notice of the application by the Chief Clerk, "...unless new notice is issued which includes a description of the proposed amendments to the application." 30 Tex. Admin. Code § 281.23 (a). This requirement applies to "...applications for new or amended certificates of convenience and necessity;..." 30 Tex. Admin. Code § 281.2 (8). Accordingly, these proceedings should be dismissed and the application remanded to the agency for the issuance of a new notice that incorporates the substantial change proposed in the service area, and subsequent procedural steps as provided for by agency rules.

II.

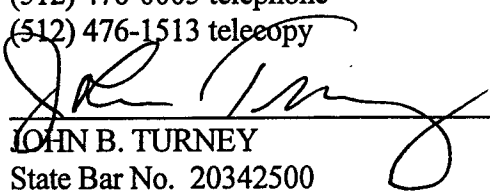
Subject to its Motion to Dismiss, Mahard is entitled to remain as a party to this proceeding. As reflected in the Applicant's motion to dismiss, Mahard owns substantial property within the proposed service area as noticed. In addition, the Mahard property is immediately adjacent to the proposed service area even as the applicant has proposed to amend the application. It is well established that the right to appear in an agency proceeding should be liberally recognized since an agency should be apprised of diverse viewpoints in order to determine where the public interest lies and how it should be furthered. *Railroad Comm'n of Texas v. Ennis Transport Co.* 695 S.W.2d 706, 710 (Tex. App. - Austin 1985, writ ref'd. n.r.e.); *Fort Bend County v. Texas Parks & Wildlife Comm'n*, 818 S.W. 2d 898, 899 (Tex. App. - Austin 1991, no writ hist.). Clearly properties within or immediately adjacent to the proposed service area in a CCN application are potentially affected by the scope and content of that application, and the resulting CCN, in a manner distinguishable from the general public. The owners of such properties therefore have a legitimate, justiciable interest in such applications and in the implementation of applicable regulatory criteria. This is particularly the case where, as here, such landowners have already been admitted as parties to the proceeding, and their dismissal is sought solely on the basis of unilateral changes proposed to the subject application.

III.

WHEREFORE, Mahard Egg Farm, Inc. respectfully requests that this Motion to Dismiss be granted, and that this proceeding be dismissed and the application remanded to the agency for new notice incorporating the amended service area, and for other further proceedings, all as required by agency rules. Alternatively, Mahard respectfully requests that the Applicant's Motion to Dismiss Mahard as a party be denied, and that Mahard retain its current party status in this proceeding. Mahard further requests such other relief to which it may be entitled.

Respectfully submitted,

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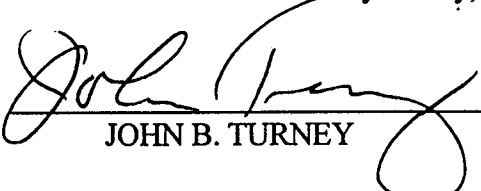


JOHN B. TURNEY
State Bar No. 20342500

ATTORNEYS FOR MAHARD EGG FARM, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded via facsimile and U.S. Mail to all parties of record on this the 3rd day of July, 2003.



JOHN B. TURNEY