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SOAH DOCKET NO. 582-03-1994
TCEQ DOCKET NO. 2002-1250-UCR

PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF THE TOWN OF
PROSPER TO AMEND SEWER CERT-
IFICATE OF CONVENIENCE AND
NECESSITY NO. 20888 IN DENTON
COUNTY, APPLICATION NO. 34004-C

§
§
§
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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

ORDER NO. 1

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

I. PARTIES

On April 10, 2003, a preliminary hearing was held in this case. The following were designated as parties:

| PARTY | REPRESENTATIVES |
|--|---------------------------------------|
| City of Prosper | Kerry E. Russell |
| Executive Director (ED) | Lara K. Nehman and Sheridan Gilkerson |
| Public Interest Counsel (OPIC) | Not Represented |
| Fish Trap Properties LLP | Tom Leonard and Sal Levatino |
| Glenbrook Water Supply | Tom Leonard and Sal Levatino |
| Denton County Fresh Water Supply District No. 10 | Mark Zeppa |
| Binary Investments, Inc. | Mark Zeppa |
| Huffines Communities, Inc. | Mark Zeppa |
| Sealed Bid DFW, L.P. | Mark Zeppa |
| Inwood Plaza Joint Venture | Mark Zeppa |

STATE OFFICE OF ADMINISTRATIVE HEARINGS

William P. Clements Building

300 West Fifteenth Street

Room 502

Austin, Texas 78701

Phone (512) 475-4993

Facsimile (512) 936-0730

DATE:

April 14, 2003

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

12

SOAH DOCKET NO.:

582-03-1994

TCEQ DOCKET NO.:

2002-1250-UCR

REGARDING:

ORDER NO.1 & ORDER NO. 2

FROM:

JUDGE JAMES W. NORMAN

| FAX TO: | FAX NO.: |
|--|----------|
| Blas Coy (TCEQ - OPIC) | 239-6377 |
| Docket Clerk (TCEQ) | 239-3311 |
| Lara Nehman & Sheridan Gilkerson(TCEQ) | 239-0606 |
| Tom Leonard | 476-1676 |
| Sal Levatino | 482-0051 |
| Mark Zeppa | 346-6847 |
| Kerry E. Russell | 864-7744 |

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APR 14 2003

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION
UTILITIES AND DISTRICTS

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II. SCHEDULE

The parties agreed on the following schedule for prehearing activities and the hearing on the merits of the application, which schedule shall govern this proceeding:

| DEADLINE/DATE | ACTIVITY |
|----------------------------------|--|
| April 14, 2003 | Discovery Begins |
| June 13, 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 |
| June 20, 2003, at 10:00 a.m. | Preliminary conference to rule on discovery disputes and other pending matters |
| July 15, 2003 | Applicant to pre-file direct case in writing, including all testimony and exhibits |
| August 1, 2003 | Other parties, except Applicant and ED, to prefile direct case in writing, including all testimony and exhibits |
| August 15, 2003 | ED to prefile direct case in writing, including all testimony and exhibits |
| August 26, 2003 | Written objections to any prefiled evidence are filed |
| September 3, 2003 | Replies to written objections to any prefiled evidence |
| September 5, 2003, at 10:00 a.m. | Preliminary conference to set time limits for case presentations, to rule on objections to prefiled evidence, and consider other pending matters |
| September 18, 2003, at 9:00 a.m. | Hearing on the merits of application begins |
| September 19, 2003 | Estimated end of hearing on the merits |

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III. HEARING AND PREHEARING DATES AND LOCATION

The hearing on the merits will convene at 9:00 a.m., September 18, 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 APA. 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.

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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., TRE 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.

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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.¹

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 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.

¹This paragraph does not apply to matters considered at the June 20, 2003, September 5, 2003, or other preliminary conferences.

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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 prefiling 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.

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Every page of every prefled 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.² 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 original and one copy of that transcript to the ALJ and one copy to the ED. The Applicant shall work

² See TEX. GOV'T CODE ANN. § 551.001 *et seq.* and § 552.001 *et seq.*

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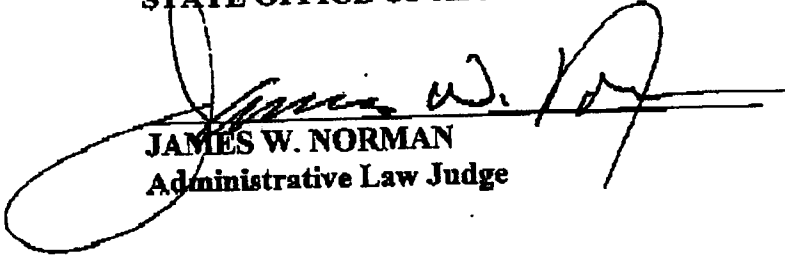
with the TCEQ Chief Clerk's Office to ensure that a court reporter attends the hearing. The Applicant shall pay the cost of that recording and transcription subject to an allocation of those costs among all the parties at the end of the case. 30 TAC § 80.23.

X. ORDER OF HEARING

Unless otherwise ordered, the parties will present their cases in the following order: Applicant, Fish Trap Properties LLP, Glenbrook Water Supply, Denton County Fresh Water Supply District No. 10, Binary Investments, Inc., Huffines Communities, Inc., Sealed Bid DWF, L.P., Inwood Plaza Joint Venture, 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.

Issued this 14th day of April, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS


JAMES W. NORMAN
Administrative Law Judge

SOAH DOCKET NO. 582-03-1994
TCEQ DOCKET NO. 2002-1250-UCR

APPLICATION OF THE TOWN OF
PROSPER TO AMEND SEWER CERT-
IFICATE OF CONVENIENCE AND
NECESSITY NO. 20888 IN DENTON
COUNTY, APPLICATION NO. 34004-C

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

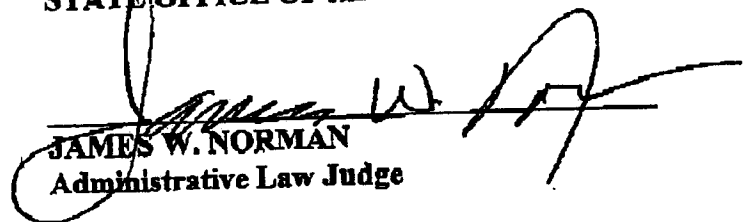
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CONCERNING ALIGNMENT OF PARTIES

The subject of party alignment was not addressed at the April 10, 2003, preliminary conference. On or before seven days from the entry of this order, the parties shall submit to the Administrative Law Judge proposed alignments for the presentation of the parties' cases.

Issued this 14th day of April, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



JAMES W. NORMAN
Administrative Law Judge

STATE OFFICE OF ADMINISTRATIVE HEARINGS
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SERVICE LIST

AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
 (TCEQ)

STYLE/CASE: APPLICATION OF THE CITY OF PROSPER TO AMEND
 SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY

SOAH DOCKET NUMBER: 582-03-1994
TCEQ DOCKET NUMBER: 2002-1250-UCR

ADMINISTRATIVE COURT

STATE OFFICE OF ADMINISTRATIVE
 HEARINGS

JAMES W. NORMAN
 PRESIDING ADMINISTRATIVE LAW JUDGE

PARTIES

REPRESENTATIVE/ADDRESS

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 GLENBROOK WATER SUPPLY**

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 Sal Levatino- fax: 512/482-0051

SOAH DOCKET NO. 000-00-0000
TCEQ DOCKET NO. 000-00-000

SERVICE LIST

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HUFFINES COMMUNITIES, INC.

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Docket Clerk, Office of the Chief Clerk, TCEQ, Fax No. (512) 239-3311