



Control Number: 43551



Item Number: 39

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014.



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

JUN 28 PM 4: 33

CHIEF CLERKS OFFICE

Kenneth Ramirez  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
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Via Hand Delivery

June 28, 2002

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PUBLIC UTILITY COMMISSION  
FILING CLERK

LaDonna Castañeula, Chief Clerk  
Office the Chief Clerk  
Texas Natural Resource Conservation  
Commission  
P.O. Box 13087, MC-105  
Austin, Texas 78711-3087

Re: Response to City of Mustang Ridge's Protest and Intervention Request on the City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C)

Dear Ms. Castañeula:

Enclosed please find an original and one copy of a letter to Doug Holcomb in response to City of Mustang Ridge's Protest and Intervention Request on the City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C). Please date-stamp the copy and return it to my messenger.

If you have any questions, please contact me at 512/494-3611.

Very truly yours,

Bracewell & Patterson, L.L.P.

Kenneth Ramirez

KR/jcb  
Enclosures

cc: Mr. Doug Holcomb  
Mr. Chris Lippe, P.E., Director, Water and Wastewater Utility  
Mr. Andrew Covar, Assistant Director, Water and Wastewater Utility  
Mr. Ronnie Jones  
Mr. Bart Jennings  
Mr. Mark H. Zeppa



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Doug Holcomb  
Utilities & Districts Section  
Water Permits & Resource Management Division  
Texas Natural Resource Conservation Commission  
MC-153  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Response to City of Mustang Ridge's Protest and Intervention Request on the City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C)

Dear Mr. Holcomb:

On June 20, 2002, Mr. Mark H. Zeppa filed a letter of protest and intervention request on behalf of the City of Mustang Ridge ("Mustang Ridge") regarding the City of Austin's ("Austin") water and sewer Certificate of Convenience and Necessity ("CCN") applications (33562-C and 33563-C) ("Applications").

Mustang Ridge's intervention request and request for party status should be denied because it is untimely. Austin filed its Applications on August 13, 2001. The Applications were declared administratively complete on August 20, 2001. Austin issued individual and published notices under 30 TAC § 291.106; individual notices were mailed on September 24, 2001 and the last date of publication was October 3, 2001. Thus, the Texas Natural Resource Conservation Commission ("TNRCC") received Mustang Ridge's June 20, 2002 letter over six months after the end of the regulatory public comment period.

Even if Mustang Ridge's request had been timely, it still would not be entitled to a hearing. A request for a contested hearing may be granted if made by an "affected person." *See* 30 TAC § 55.27(b)(2); *see also* 30 TAC §§ 291.107(d) and 55.101(g)(5). 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. *See* 30 TAC § 55.29(a). An interest that is common to members of the general public does not qualify as a personal justiciable interest. *See id.* This standard requires Mustang Ridge to show that it will potentially suffer harm or has a justiciable interest that will be affected. *See*



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United Copper Indus., Inc. v. Grissom, 17 S.W.3d 797, 803 (Tex. App.—Austin 2000, pet. denied).

Relevant factors to be considered in evaluating whether a person is an affected person include:

- Whether the interest claimed is one protected by the law under which the application will be considered;
- Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- The likely impact of the regulated activity on the health, safety, and use of property of the person; and
- The likely impact of the regulated activity on use of the impacted natural resource by the person.

30 TAC § 55.29(c).

In addition, a request for hearing must also be reasonable and supported by competent evidence. *See* 30 TAC § 55.27(b)(2).

Mustang Ridge does not qualify as an affected person, and its request for hearing is not reasonable and supported by competent evidence; therefore, Mustang Ridge's request for hearing should be denied.

To Austin's knowledge, Mustang Ridge does not own, operate, maintain or control any facilities for the provision of centralized water or sewer utility service for compensation. Additionally, Mustang Ridge has not filed a competing application to provide water or sewer utility service to any area within Austin's proposed service areas. Austin's provision of service will therefore have no impact upon Mustang Ridge greater than that which is common to members of the general public. Specifically, Mustang Ridge has no economic interest protected by the law under which the Applications will be considered, and there will be no impact on the use of its property or natural resources. As such, Mustang Ridge meets none of the relevant factors to be considered in evaluating affected person status for Austin's Applications.

Also, Austin takes this opportunity to address several incorrect assertions made by Mustang Ridge in its intervention request.



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Mustang Ridge states in its letter that "(a)s a landowner within its own city limits the City of Mustang Ridge does not need or desire Austin's service or the encumbrance of its CCN." Austin's Applications expressly exclude: (1) any areas that lie within the corporate limits of a municipality (other than Austin) as of the date Austin's Applications were filed; (2) any areas that lie within the extraterritorial jurisdiction ("ETJ") of a municipality (other than Austin) as of the date Austin's Applications were filed; and (3) any areas that lie within the boundary of a TNRCC-issued water or sewer CCN that was valid and in effect as of the date Austin's Applications were filed and any connections currently being lawfully served by such providers. In short, Austin is in no way requesting to provide water or sewer utility service to customers that reside within the City of Mustang Ridge's corporate limits or its ETJ.

Similarly, Mustang Ridge erroneously asserts that Austin is "attempting to use a utility CCN as a land use, building code and development tool within the corporate limits and extraterritorial jurisdiction of another municipality." Austin's reasons for filing its Applications do not entail a desire to acquire a "tool" for land use, etc. As Austin previously stated, its reasons for filing its applications include:

- The granting of the CCN areas will secure the area for better long-range planning and cost-effective infrastructure placement. This planning will result in more efficient and effective use of public funds.
- The granting of the CCN areas will assure infrastructure construction to Austin standards and specifications that results in a higher level of public health and safety.
- The granting of the CCN areas will ensure utility service for a more reasonable cost to customers since most utilities' rates are higher than the Austin's rates.
- The granting of the CCN areas will minimize the negative financial impact to Austin customers as annexation of the CCN area occurs since the infrastructure will be built to Austin standards and will not need to be replaced to meet municipal requirements.
- The granting of the CCN areas will benefit future customers due to the depth and magnitude of Austin's managerial, technical, and customer service experience and abilities.
- The granting of the CCN areas follows state law and Austin's established environmental policy since it promotes regionalization of water and sewer utility



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service and will enhance Austin's promotion of development within Austin's designated Desired Development Zone rather than in environmentally sensitive areas.

Moreover, once again, Austin is not seeking a CCN within Mustang Ridge's corporate limits or ETJ.

Finally, Mustang Ridge refers to an alignment with Creedmoor "and with neighboring cities." While it is uncertain to which cities Mustang Ridge is referring, it is clear which neighboring governmental entities will not be joining in this alleged alignment. To date, the City of Round Rock, the City of Pflugerville, the City of Manor, the City of West Lake Hills, and Travis County have all filed letters or resolutions with TNRCC expressing their support for Austin's Applications.

Consequently, for the above reasons, Austin requests that Mustang Ridge's untimely request to intervene as a party be denied.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read "Kenneth Ramirez".

Kenneth Ramirez

KR/jcb

cc: Chris Lippe P.E., Director, Water and Wastewater Utility  
Andrew Covar, Assistant Director, Water and Wastewater Utility  
Bart Jennings, Water and Wastewater Utility  
Ronnie Jones, Assistant City Attorney  
Mark H. Zeppa, Attorney