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SOAH DOCKET NO. 473-18-2486.WS  
PUC DOCKET NO. 47795

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PUBLIC UTILITY COMMISSION  
FILING CLERK

APPLICATION OF THE CITY OF § PUBLIC UTILITY COMMISSION  
HUTTO TO AMEND A SEWER §  
CERTIFICATE OF CONVENIENCE § OF TEXAS  
AND NECESSITY IN WILLIAMSON §  
COUNTY §

**CITY OF HUTTO'S RESPONSE TO  
REQUESTS TO INTERVENE AND OPT-OUT**

The City of Hutto, Texas (“**Hutto**”) files this Response to Requests to Intervene and Opt-Out in the above referenced proceeding and would show the Administrative Law Judge (“**ALJ**”) as follows:

**I. Background**

On March 5, 2018, the ALJ issued Order No. 1, holding, among other things, that a Prehearing Conference (the “**Conference**”) would occur on April 3, 2018. On March 8, 2018, Hutto filed its List of Issues requesting that the Public Utility Commission of Texas (“**PUC**”) submit to the State Office of Administrative Hearing (“**SOAH**”) a requirement to determine (i) which landowner opt-out requests comply with 16 TEX. ADMIN. CODE § 24.102(h) and warrant removal from Hutto’s requested service area and (ii) which requests to intervene in Hutto’s certificate of convenience and necessity (“**CCN**”) application amendment comply with 16 TEX. ADMIN. CODE § 22.103. Furthermore, on March 26, 2018, PUC Staff (“**Staff**”) and Hutto filed a Joint Motion to Reset Procedural Schedule, requesting the ALJ move the Conference to a date after the deadline to intervene had passed so that all parties desiring to intervene could be determined at the Conference. The City and Staff suggested May 22, 2018.

On April 2, 2018, the ALJ issued Order No. 2 and affirmed May 22, 2018, as the date for the Conference so that there was additional time for parties to intervene. Order No. 2 also provided

that the following matters would be discussed at the Conference: pending motions, a procedural schedule, and any other matters that may assist in the disposition of this case in a fair and efficient manner.

As of May 15, 2018, the following types of requests have been filed in this docket: opt-out requests, requests to intervene, opt-out requests *and* requests to intervene, and requests to be notified if Hutto's application to amend its sewer certification of convenience and necessity (the "**Application**") was referred to a hearing (collectively referred to herein as the "**Filings**"). Pursuant to Order No. 2, the ALJ will determine at the Conference, among other things, which of the opt-out requests are legally sufficient to remove someone's real property from Hutto's requested service area and which parties have standing to intervene in this docket.

## **II. Hutto's Response to Filings**

TEXAS WATER CODE §§ 13.002(1) and 13.246(a) states that a person may intervene in a CCN application if the person owns land "within an area for which a certificate of public convenience and necessity is filed[.]" Furthermore, 16 TEX. ADMIN. CODE § 22.103(b) provides that a person has standing to intervene in a proceeding before the PUC if that person: "(1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding."

A person may "opt-out" of a CCN application pursuant to 16 TEX. ADMIN. CODE § 24.102(h), which provides that property owners may elect to exclude some or all of their property from the requested CCN service area if they meet certain criteria and provide "written notice to the commission before the 30th day after the date the landowner receives notice of an application for a CCN or CCN amendment." A filing that complies with § 24.102(h) "is effective without a

further hearing or other process by the commission” and the “requested area shall be modified to remove the electing landowner’s property.”

If the ALJ determines that the opt-out requests filed in this docket were properly filed pursuant to 16 TEX. ADMIN. CODE § 24.102(h), and any other applicable regulatory and statutory guidelines, Hutto will not contest the removal of such real property from its requested service area. However, once the ALJ has granted an opt-out request and the person’s real property is removed from Hutto’s requested service area, then the party no longer has standing pursuant to TEX. WATER CODE §§ 13.002(1), 13.246(a) and 16 TEX. ADMIN. CODE § 22.103(b). Furthermore, if a request to intervene has been filed in this docket by a requestor that does not own property located within Hutto’s requested service area, then Hutto respectfully requests the ALJ deny such petition to intervene, as it is inconsistent with TEX. WATER CODE §§ 32.002(1), 13.246(a) and 16 TEX. ADMIN. CODE § 22.103(b).

### **III. Conclusion and Prayer**

WHEREFORE, PREMISES considered, for all the foregoing reasons, the City of Hutto respectfully requests that the ALJ review the opt-out requests filed in this docket to confirm that the applicable regulatory and statutory requirements are met, including those requirements stated in 16 TEX. ADMIN. CODE § 24.102(h). The City of Hutto further respectfully requests that the ALJ deny the requests to intervene filed in this docket if the requestor does not own property within the service area subject to the City of Hutto’s sewer certificate of convenience and necessity application.

Respectfully submitted,



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ATTORNEYS FOR CITY OF HUTTO, TEXAS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding as required by SOAH Order No. 1 on this 15th day of May, 2018.



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Morgan J. Johnson