

CITIES' COALITION ON CCNs

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Dear Fellow CCN Holder,

This letter is to inform you, as a holder of a certificate of convenience and necessity ("CCN") from the Texas Commission on Environmental Quality ("TCEQ") and a fellow municipally-owned utility, of a major statutory and policy change that affects most municipally-owned utilities. During the last regular legislative session, **House Bill 2876 ("HB 2876") radically changed the manner in which CCNs are handled in the State**, particularly when dealing with municipalities.

HB 2876 contains a provision that prohibits a municipality from having a CCN outside its extraterritorial jurisdiction ("ETJ") without the written consent of the landowners. The law goes on to state that the changes made by HB 2876 apply only to: "(1) an application for a certificate of public convenience and necessity or for an amendment to a certificate of public convenience and necessity submitted to the Texas Commission on Environmental Quality on or after January 1, 2006; and (2) a proceeding to amend or revoke a certificate of public convenience and necessity initiated on or after January 1, 2006." Most municipalities that have been tracking the legislation understood that HB 2876 "grandfathered" existing CCNs and did not retroactively apply the provision relating to the prohibition of having CCNs outside of a city's ETJ.

During a regular Agenda on September 14, 2005, the TCEQ Commissioners held an open meeting wherein they considered the rulemaking initiative to implement HB 2876. After much discussion amongst themselves, the Commissioners each stated that they interpret one sentence in HB 2876 to mean that any portion of a municipal CCN extending beyond the city's ETJ, without the written consent of all landowners, was void as of September 1, 2005. This convoluted interpretation is not supported by a reading of the overall statutory language. It remains unclear how the TCEQ Commissioners will implement their interpretation in the final rules. However, our attorneys have advised us that the TCEQ staff is already implementing this requirement for pending municipal CCN amendment applications. **For municipalities with existing CCNs, the portions of CCNs that extend beyond the ETJ and do not have landowner consent will not be grandfathered by the Commission.**

It is important that all Texas cities that have existing CCNs extending beyond their ETJs become directly involved in the TCEQ rulemaking process and force at least two of the three TCEQ Commissioners to change their current position. We have begun to organize a coalition of impacted municipalities to express their opposition to TCEQ's interpretation of HB 2876. We intend to express this opposition to the Texas Municipal League, key state legislators and to the TCEQ Commissioners both directly and through the rulemaking process. A sample resolution opposing the Commission's interpretation of HB 2876 can be obtained by contacting the attorneys or consultants we have engaged to represent our coalition. We ask that you consider adopting a resolution opposing the Commission's interpretation of HB 2876. We also invite you to join our coalition of cities to solve this problem.

If you would like additional information on this crisis for municipally-owned utilities, or wish to join our coalition of cities, please feel free to call us at one of the numbers listed below, or our attorney, Art Rodriguez with Russell, Moorman & Rodriguez at (512) 930-1317, or our consultant, Pat Dillon with Southwest Consultants at (972) 680-3717. We appreciate any help you can provide in this fight to protect traditional municipal rights.

Sincerely,




Honorable Connie Fuller, City of Liberty Hill
512/ 778-5449



Honorable Mark Millar, City of Gunter
903/ 433-5185



Honorable Charles Niswanger, Town of Prosper
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Honorable James Robinson, City of Chico
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