

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

§24.113. Revocation or Amendment of a Certificate of Convenience and Necessity.

- (a) **Applicability.** This section applies to the revocation or amendment of a certificate of convenience and necessity (CCN).
- (b) **Definitions.**
- (1) **Alternate retail public utility** --The retail public utility from which a landowner plans to request service after the landowner obtains expedited release under subsection (k) of this section. An alternate retail public utility is limited to the following:
 - (A) an existing retail public utility; or
 - (B) a district proposed to be created under Article 16, §59 or Article 3, §52 of the Texas Constitution.
 - (2) **Current CCN holder** --An entity that currently holds a CCN to provide service to an area for which revocation or amendment is sought.
 - (3) **Former CCN holder** --An entity that formerly held a CCN to provide service to an area that was removed from the entity's service area by revocation or amendment under this section.
 - (4) **Prospective retail public utility** --A retail public utility seeking to provide service to a requested area or to a removed area.
 - (5) **Removed area** --Area that has been removed under this section from the certificated service area of a former CCN holder.
 - (6) **Useless or valueless property** --Property that has been rendered useless or valueless to a former CCN holder by revocation or amendment, including by expedited release or streamlined expedited release, under this section.
- (c) A CCN or other order of the commission in any proceeding under this section does not create a vested property right.
- (d) An order of the commission issued under this section does not transfer any property, except as provided under subsection (p) of this section.
- (e) A former CCN holder shall not be required to provide service within the removed area.
- (f) If the CCN of any retail public utility is revoked or amended, the commission may by order require one or more other retail public utilities to provide service to the removed area, but only if each retail public utility that is to provide service consents.
- (g) **Cancellation.** Upon written request from the current CCN holder, the commission may cancel the CCN if the current CCN holder is authorized to operate without a CCN under §24.103(c) or (e) of this title relating to Certificate of Convenience and Necessity not Required.
- (h) **Revocation or amendment by consent.** The commission may revoke or amend any CCN with the written consent of the current CCN holder after notice and a hearing.
- (i) **Revocation or amendment.**
- (1) At any time after notice and a hearing, the commission may revoke or amend any CCN if the commission finds that any of the circumstances identified in this paragraph exist.
 - (A) The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area.
 - (B) The current CCN holder is in an affected county as defined in TWC §16.341, and the cost of providing service by the current CCN holder is so prohibitively expensive as to constitute denial of service. Absent other relevant factors, for commercial

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

developments started after September 1, 1997 or residential developments started after September 1, 1997, the fact that the cost of obtaining service from the current CCN holder makes the development economically unfeasible does not render such cost prohibitively expensive.

- (C) The current CCN holder has agreed in writing to allow another retail public utility to provide service within its certificated service area, except for an interim period, without amending its CCN.
 - (D) The current CCN holder has failed to file a cease-and-desist action under TWC §13.252 within 180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless good cause is demonstrated for failure to file the cease-and-desist action within 180 days.
- (2) **Mapping Information.** For petitions submitted under this subsection or under subsection (j) of this section, mapping information is required for the requested area in accordance with §24.119 of this title relating to Mapping Requirements for Certificate of Convenience and Necessity Application.
- (j) After notice to a municipality and an opportunity for a hearing, the commission may remove from the municipality's certificated service area an area that is located outside the municipality's extraterritorial jurisdictional boundary if the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area. This subsection does not apply to an area that was transferred to a municipality's certificated service area by the commission and for which the municipality has spent public funds.
- (k) **Expedited release.**
- (1) This subsection provides an alternative to revocation or amendment under subsections (h) or (i) of this section.
 - (2) An owner of a tract of land may petition the commission for expedited release of all or a portion of the tract of land from a current CCN holder's certificated service area if the tract of land is at least 50 acres in size and is not in a platted subdivision actually receiving service.
 - (3) The fact that a current CCN holder is a borrower under a federal loan program does not prevent either the granting of a petition under this subsection or an alternate retail public utility from providing service to the removed area.
 - (4) A landowner may not submit a petition under this subsection to the commission until at least 90 calendar days after the landowner has submitted the notice required by paragraph (5) of this subsection to the current CCN holder.
 - (5) The landowner shall submit to the current CCN holder a written request for service, other than a request for standard residential or commercial service. The written request shall identify the following:
 - (A) the tract of land or portion of the tract of land for which service is sought;
 - (B) the time frame within which service is needed for current and projected service demands in the tract of land;
 - (C) the reasonable level and manner of service needed for current and projected service demands in the area;
 - (D) the approximate cost for the alternate retail public utility to provide service at the same level, and in the same manner, that is requested from the current CCN holder;
 - (E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested, if any; and
 - (F) any additional information requested by the current CCN holder that is reasonably related to determining the capacity or cost of providing service at the level, in the manner, and in the time frame, requested.

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

- (6) The landowner shall submit a petition that is verified through a notarized affidavit and demonstrates the following information:
 - (A) the tract of land is at least 50 acres in size and is not in a platted subdivision actually receiving service;
 - (B) a written request
 - (i) was submitted by the landowner to the current CCN holder at least 90 calendar days before the petition was submitted to the commission, and
 - (ii) complied with paragraph (5) of this subsection;
 - (C) the current CCN holder
 - (i) has refused to provide service;
 - (ii) cannot provide service as identified in the notice provided under paragraph (5)(A)-(D) of this subsection on a continuous and adequate basis; or
 - (iii) conditions the provision of service on the payment of costs not properly allocable directly to the landowner's service request, as determined by the commission;
 - (D) the alternate retail public utility possesses the financial, managerial, and technical capability to provide service as identified in the notice provided under paragraph (5)(A)-(D) of this subsection on a continuous and adequate basis; and
 - (E) a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition to the commission.
- (7) The landowner shall submit, as part of the petition, the mapping information described in subsection (m) of this section.
- (8) The current CCN holder may submit a response to the petition within a timeframe specified by the presiding officer.
- (9) A presiding officer shall determine whether the petition is administratively complete. When the petition is determined to be administratively complete, the presiding officer shall establish a procedural schedule that is consistent with paragraph (10) of this subsection. The presiding officer may dismiss the petition if the petitioner fails to supplement or amend the petition after the presiding officer has determined that the petition is not administratively complete.
- (10) The commission shall grant the petition within 60 calendar days from the date the petition was found administratively complete unless the commission makes an express finding that the landowner failed to satisfy all of the requirements of this subsection. The commission shall support its express finding with separate findings of fact and conclusions of law for each requirement based solely on the information provided by the landowner and the current CCN holder. The commission may condition the granting or denial of a petition on terms and conditions specifically related to the landowner's service request and all relevant information submitted by the landowner and the current CCN holder. The determination of what property, if any, is useless or valueless property will be made according to the procedures defined in subsection (n) of this section.
- (11) Chapter 2001 of the Texas Government Code does not apply to any petition filed under this subsection. The commission's decision on the petition is subject to rehearing on the same timeline that applies to other final orders of the commission. The commission's order ruling on the petition may not be appealed.
- (12) **Finding regarding never having made service available.**
 - (A) The commission is required to find only that the alternate retail public utility can provide the requested service if the current CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations to provide service to the tract of land. In such instance, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder.

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

- (B) This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:
 - (i) the county has a population of more than 30,000 and less than 35,000 and borders the Red River;
 - (ii) the county has a population of more than 100,000 and less than 200,000 and borders a county described by clause (i) of this subparagraph;
 - (iii) the county has a population of 130,000 or more and is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or
 - (iv) the county has a population of more than 40,000 and less than 50,000 and contains a portion of the San Antonio River.
- (C) The commission will maintain on its website a list of counties that are presumed to meet the requirements of subparagraph (B) of this paragraph.
- (13) If the petitioner is a proposed district, then the commission may condition the release and CCN amendment or revocation on the final and unappealable creation of the district. The duty of the proposed district to provide continuous and adequate service is held in abeyance until this condition is satisfied.
- (14) The commission may require an award of compensation to the former CCN holder under subsections (n) and (o) of this section.
- (l) **Streamlined expedited release.**
 - (1) This subsection provides an alternative to the following:
 - (A) revocation or amendment under subsections (h) or (i) of this section; or
 - (B) revocation or amendment by expedited release under subsection (k) of this section.
 - (2) The owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if the following conditions are met:
 - (A) the tract of land is at least 25 acres in size;
 - (B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and
 - (C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.
 - (D) A qualifying county under subparagraph (C) of this paragraph does not have a population of more than 45,000 and less than 47,500 and is a county
 - (i) with a population of at least one million,
 - (ii) adjacent to a county with a population of at least one million, or
 - (iii) with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more.
 - (iv) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this subparagraph.
 - (3) A landowner seeking streamlined expedited release under this subsection shall submit the information listed in this paragraph with the commission.
 - (A) The landowner shall submit a petition that is verified through a notarized affidavit and contains the following information:
 - (i) a statement that the petition is being submitted under TWC §13.254(a-5) and this subsection;
 - (ii) proof that the tract of land is at least 25 acres in size;
 - (iii) proof that at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county;

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

- (iv) a statement of facts that demonstrate that the tract of land is not currently receiving service;
 - (v) copies of all deeds demonstrating ownership of the tract of land by the landowner; and
 - (vi) proof that a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition with the commission; and
 - (B) The landowner shall submit the mapping information described in subsection (m) of this section.
 - (4) The current CCN holder may submit a response to the petition within a timeframe specified by the presiding officer.
 - (5) The commission shall grant a petition filed under this subsection no later than the 60th calendar day after a presiding officer by order determines that the petition is administratively complete. The determination of what property, if any, is rendered useless or valueless property will be made according to the procedures defined in subsection (n) of this section.
 - (6) The fact that a CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection.
 - (7) The commission may require an award of compensation by the landowner to the former CCN holder.
- (m) **Mapping information.**
- (1) For proceedings under subsections (k) or (l) of this section, the following mapping information must be filed:
 - (A) a general-location map identifying the tract of land in reference to the nearest county boundary, city, or town;
 - (B) a detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. If ownership of the tract of land is conveyed by multiple deeds, this map should also identify the location and acreage of land conveyed by each deed; and
 - (C) one of the following for the tract of land:
 - (i) a metes-and-bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;
 - (ii) a recorded plat; or
 - (iii) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data shall include a single, continuous polygon record.
 - (2) Commission staff may request additional mapping information.
 - (3) All maps shall be filed in accordance with §22.71 and §22.72 of this title.
- (n) **Determination of property rendered useless or valueless.**
- (1) **Applicability.** This subsection governs the determination of whether property is rendered useless or valueless in proceedings under subsections (k) and (l) of this section.
 - (2) A current CCN holder has a right to intervene in a proceeding under this subsection and a right to a determination of useless or valueless property.
 - (3) There is a rebuttable presumption that there is no useless or valueless property if the current CCN holder fails to intervene by the intervention deadline established by the presiding officer.
 - (4) The current CCN holder and the petitioner may reach an agreement at any time during the pendency of a proceeding under subsections (k) or (l) of this section regarding what property is useless or valueless property, and if such an agreement is reached, they may also agree on what is the appropriate amount of compensation for such property. If the current CCN holder

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

and the petitioner reach an agreement under this paragraph, the agreement shall be presented to the commission at an open meeting for consideration and action.

- (5) The current CCN holder bears the burden to prove what property is useless or valueless property.
 - (6) The commission shall identify in its order granting release under subsections (k) or (l) of this section what property, if any, is useless or valueless property. This order is the commission's final determination of what property, if any, is useless or valueless property, subject to motions for rehearing in accordance with the process provided by commission rules.
 - (7) If the commission determines that there is not any useless or valueless property, then no proceeding under subsection (o) of this section is required.
- (o) **Compensation for property rendered useless or valueless.**
- (1) A retail public utility may not provide service directly or indirectly to the public in a removed area until any compensation ordered under this subsection is provided to the former CCN holder. Such compensation shall be for useless or valueless property, as such is determined by the commission under subsection (n) of this section.
 - (2) **Notice of intent to provide service.**
 - (A) After the commission has issued its order granting release under subsections (k) or (l) of this section, if a prospective retail public utility and a former CCN holder have not agreed on compensation, then the prospective retail public utility shall file a notice of intent to provide service.
 - (B) A notice of intent to provide service may be filed only after the commission has issued an order under subsections (k) or (l) of this section. A notice of intent filed before the commission issues its order under subsections (k) or (l) of this section is deemed to be filed on the date the commission's order is signed.
 - (C) The notice of intent to provide service shall include all of the information required by this subparagraph.
 - (i) The notice of intent shall state that it is a notice of intent to provide service under TWC §13.254(e) and this subsection.
 - (ii) If applicable, the notice of intent shall include an agreement between the former CCN holder and the prospective retail public utility regarding compensation for the useless or valueless property. If an agreement is filed, the agreement shall not be evidence in a future rate case.
 - (3) After the notice of intent to provide service is filed, a presiding officer shall establish a procedural schedule. The schedule shall ensure that the total compensation for any property identified in the order issued under subsections (k) or (l) of this section will be determined no later than the 90th day after the date the notice of intent is filed.
 - (4) Within ten calendar days after the filing of the notice of intent to provide service, the prospective retail public utility shall file one of the following items:
 - (A) a letter identifying the qualified individual or firm serving as the agreed independent appraiser; or
 - (B) a letter stating that the former CCN holder and prospective retail public utility will each engage its own appraiser, at its own expense.
 - (5) The former CCN holder has a right to intervene in a proceeding under this subsection.
 - (6) The former CCN holder and the prospective retail public utility may reach an agreement at any time during the pendency of a proceeding under this subsection regarding what is the appropriate amount of compensation for the useless or valueless property. If the former CCN holder and the prospective retail public utility reach an agreement under this paragraph, the agreement shall be presented to the commission at an open meeting for consideration and action.

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

- (7) If the former CCN holder and the prospective retail public utility agree on a qualified individual or firm to serve as an independent appraiser, then all of the requirements listed in this paragraph apply.
- (A) The independent appraiser shall be limited to appraising the useless or valueless property.
 - (B) The former CCN holder and the prospective retail public utility shall file the appraisal within 65 calendar days after the filing of the notice of intent to provide service.
 - (C) The prospective retail public utility shall bear the costs of the independent appraiser.
 - (D) The commission is bound by the independent appraiser's valuation of the useless or valueless property. The commission shall review the valuation to ensure compliance with the requirements of this section.
- (8) If the former CCN holder and the prospective retail public utility do not agree on an independent appraiser, each shall engage its own qualified appraiser at its own expense.
- (A) Each appraiser shall be limited to appraising the useless or valueless property.
 - (B) Each appraiser shall file its appraisal with the commission within 60 calendar days after the filing of the notice of intent to provide service.
 - (C) After the two appraisals are filed, the commission shall appoint a qualified individual or firm to serve as a third appraiser who shall make a valuation within 30 calendar days of the date the independent appraisals are filed.
 - (D) The third appraiser's valuation shall be limited to the useless or valueless property and may not be less than the lower appraisal valuation or more than the higher appraisal valuation.
 - (E) The former CCN holder and the prospective retail public utility shall each pay one-half of the cost of the third appraisal. Payment shall be made directly to the third appraiser. Proofs of payment shall be separately filed with the commission by the former CCN holder and the prospective retail public utility.
 - (F) The commission is bound by the third appraiser's valuation of the useless or valueless property. The commission shall review the valuation to ensure compliance with the requirements of this section.
- (9) **Valuation of real property.** The value of real property that the commission identified in the order issued under subsections (k) or (l) of this section as useless or valueless shall be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.
- (10) **Valuation of personal property.** The value of personal property that the commission identified in the order issued under subsections (k) or (l) of this section as useless or valueless shall be determined according to this paragraph. To ensure that compensation to a former CCN holder is just and adequate, the following factors shall be used in valuing such personal property:
- (A) the amount of the former CCN holder's debt allocable to service to the removed area;
 - (B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;
 - (C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;
 - (D) the amount of the former CCN holder's contractual obligations allocable to the removed area;
 - (E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;
 - (F) the impact on future revenues lost from existing customers;
 - (G) necessary and reasonable legal expenses and professional fees; and
 - (H) any other relevant factors as determined by the commission.

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS.

Subchapter G. CERTIFICATES OF CONVENIENCE AND NECESSITY.

(11) If the presiding officer determines that all requirements of this subsection have been met, the presiding officer shall issue an order setting the compensation due to the former CCN holder at the valuation established by the appraisal. This order shall be the final act of the commission, subject to motions for rehearing. Alternatively, the presiding officer may issue a proposed order for consideration by the commission.

(p) **Additional conditions.**

(1) If the current CCN holder did not agree in writing to a revocation or amendment sought under this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:

- (A) ordering the prospective retail public utility to provide service to the entire service area of the current CCN holder; and
- (B) transferring the entire CCN of the current CCN holder to the prospective retail public utility.

(2) The commission shall order the prospective retail public utility to provide service to the entire service area of the current CCN holder if the commission finds that the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers.

(A) The commission shall order the prospective retail public utility to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the prospective retail public utility's other customers and shall establish the terms under which service must be provided.

(B) The commission may order any of the following terms:

- (i) transfer of debt and other contract obligations;
- (ii) transfer of real and personal property;
- (iii) establishment of interim rates for affected customers during specified times; and
- (iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(3) The prospective retail public utility shall not charge the affected customers any transfer fee or other fee to obtain service, except for the following:

- (A) the prospective retail public utility's usual and customary rates for monthly service, or
- (B) interim rates set by the commission, if applicable.

(4) If the commission orders the prospective retail public utility to provide service to the entire service area of the current CCN holder, the commission shall not order compensation to the current CCN holder, the commission shall not make a determination of whether property is rendered useless or valueless under subsection (n) of this section, and the prospective retail public utility shall not file a petition under subsection (o) of this section.