

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

### Subchapter H. CERTIFICATES OF CONVENIENCE AND NECESSITY.

#### §24.239. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental

- (a) Any water supply or sewer service corporation, or water and sewer utility, owned by an entity required by law to possess a certificate of convenience and necessity (CCN) shall, and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:
- (1) the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or
  - (2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.
- (b) The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days unless good cause is shown. Public notice may be waived by the commission for good cause shown.
- (c) Unless notice is waived by the commission for good cause shown, proper notice shall be given to affected customers and to other affected parties as determined by the commission and on the form prescribed by the commission which shall include the following:
- (1) the name and business address of the current utility holding the CCN (transferor) and the retail public utility or person which will acquire the facilities or CCN (transferee);
  - (2) a description of the requested area; and
  - (3) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date."
- (d) The commission may waive notice under this subsection if the requested area does not include unserved area, or for good cause shown. If notice is not waived by the commission, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.
- (e) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located.
- (f) The commission may allow published notice in lieu of individual notice as required in this subsection.
- (g) A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system (transferee) must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227(a) of this title (relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity).
- (h) If the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water and/or sewer utility service is provided to both the requested area and any area already being served under the transferee's existing CCN. The commission shall set the amount of financial assurance. The form of the financial assurance shall

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be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this title does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

- (i) The commission shall, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental to determine whether the transaction will serve the public interest. If the commission decides to hold a hearing, or if the transferee fails either to file the application as required or to provide public notice, the transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.
- (j) Prior to the expiration of the 120-day period described in subsection (a) of this section, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. The commission may require a hearing if:
  - (1) the application filed with the commission or the public notice was improper;
  - (2) the transferee has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being served under the transferee's existing CCN;
  - (3) the transferee has a history of:
    - (A) noncompliance with the requirements of the TCEQ, the commission, or the Texas Department of State Health Services; or
    - (B) continuing mismanagement or misuse of revenues as a utility service provider;
  - (4) the transferee cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the requested area; or
  - (5) there are concerns that the transaction does not serve the public interest. It is in the public interest to investigate the following factors:
    - (A) whether the transferor or the transferee has failed to comply with any commission or TCEQ order. The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental if conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met;
    - (B) the adequacy of service currently provided to the requested area;
    - (C) the need for additional service in the requested area;
    - (D) the effect of approving the transaction on the transferee, the transferor, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area;
    - (E) the ability of the transferee to provide adequate service;
    - (F) the feasibility of obtaining service from an adjacent retail public utility;
    - (G) the financial stability of the transferee, including, if applicable, the adequacy of the debt-equity ratio of the transferee if the transaction is approved;
    - (H) the environmental integrity; and
    - (I) the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction.
- (k) Unless the commission requires that a public hearing be held, the sale, transfer, merger, consolidation, acquisition, lease, or rental may be completed as proposed:
  - (1) at the end of the 120-day period described in subsection (a) of this section; or
  - (2) at any time after the transferee receives notice from the commission that a hearing will not be requested.
- (l) Within 30 days of the commission order that allows the sale, transfer, merger, consolidation, acquisition, lease, or rental to proceed as proposed, the transferee shall provide a written update on the status of the

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transaction, and every 30 days thereafter, until the transaction is complete. The transferee shall inform the commission of any material changes in its financial, managerial, and technical capability to provide continuous and adequate service to the requested area and the transferee's service area.

- (m) If there are outstanding customer deposits, within 30 days of the actual effective date of the transaction, the transferor and the transferee shall file with the commission, under oath, in addition to other information, a list showing the following:
  - (1) the names and addresses of all customers who have a deposit on record with the transferor;
  - (2) the date such deposit was made;
  - (3) the amount of the deposit; and
  - (4) the unpaid interest on the deposit. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.
- (n) Within 30 days after the actual effective date of the transaction, the transferee and the transferor shall file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed. The signed contract, bill of sale, or other documents, must be signed by both the transferor and the transferee. If there were outstanding customer deposits, the transferor and the transferee shall also file documentation as evidence that customer deposits have been transferred or refunded to the customers with interest as required by this section.
- (o) The commission's approval of a sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility expires 180 days following the date of the commission order allowing the transaction to proceed. If the sale has not been completed within that 180-day time period, the approval is void, unless the commission in writing extends the time period for good cause shown.
- (p) If the commission does not require a hearing, and the transaction is completed as proposed, the commission may issue an order approving the transaction.
- (q) A sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility required by law to possess a CCN, or transfer of customers and/or service area, owned by an entity required by law to possess a CCN that is not completed in accordance with the provisions of TWC §13.301 is void.
- (r) The requirements of TWC §13.301 do not apply to:
  - (1) the purchase of replacement property;
  - (2) a transaction under TWC §13.255; or
  - (3) foreclosure on the physical assets of a utility.
- (s) If a utility's facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its CCN, or a controlling interest in an incorporated utility, unless the utility provides a written disclosure relating to the contributions to both the transferee and the commission before the date of the sale or transfer. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.
- (t) For any transaction subject to this section, the retail public utility that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest shall provide

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the other party to the transaction a copy of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest.