

PROJECT NO. 45111

**PROJECT TO AMEND CHAPTER 24 § PUBLIC UTILITY COMMISSION
FOR NON-RATE RELATED §
WATER/SEWER RULES § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §24.1, §24.3, §24.8,
§24.101, §24.102, §24.103, §24.104, §24.105, §24.106, §24.107, §24.109, §24.110,
§24.111, §24.115, §24.117, §24.118, §24.119, §24.120, §24.142, §24.143, AND REPEAL
OF §24.112 AS APPROVED AT THE JULY 20, 2016 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §24.1, relating to Purpose and Scope of this Chapter; §24.3, relating to Definitions of Terms; §24.8, relating to Administrative Completeness; §24.101, relating to Certificate Required; §24.102, relating to Criteria for Considering and Granting Certificates or Amendments; §24.103, relating to Certificates Not Required; §24.104, relating to Applicant; §24.105, relating to Contents of Certificate of Convenience and Necessity Applications; §24.106, relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications; §24.107, relating to Action on Applications; §24.109, relating to Report of Sale, Merger, Etc.; Investigation, Disallowance of Transaction; §24.110, relating to Foreclosure and Bankruptcy; §24.111, relating to Purchase of Voting Stock in Another Utility; §24.115, relating to Cessation of Operations by a Retail Public Utility; §24.117, relating to Contracts Valid and Enforceable; §24.118 relating to Contents of Request for Commission Order Under TWC, §13.252; §24.119, relating to Filing of Maps; §24.120, relating to Single Certification in Incorporated or Annexed Areas; §24.142, relating to Operation of a Utility that Discontinues Operation or is Referred for Appointment of a Receiver; §24.143, relating to Operation of a Utility by a Temporary Manager; and the repeal of §24.112, relating to Transfer of Certificate of Convenience and Necessity. The proposed

amendments and repeal will update provisions regarding applications and mapping requirements for new certificates of convenience and necessity (CCNs) and CCN amendments, administrative completeness, sale/transfer/mergers, and other non-rate related water and sewer provisions. Project Number 45111 is assigned to this proceeding.

Tammy Benter, Division Director, Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Benter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to add clarity and simplicity to the rules governing applications for new water CCNs, amendments to existing CCNs, and the sale, transfer, or merger of existing CCN areas. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

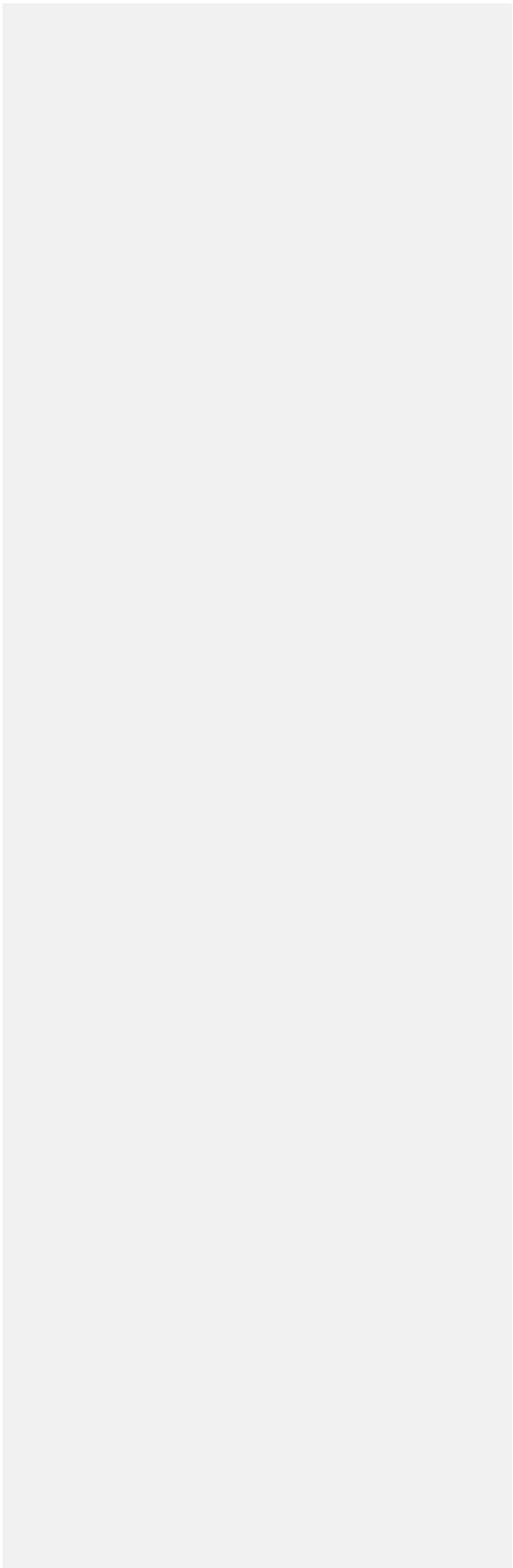
Ms. Benter has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 26, 2016. The request for a public hearing must be received by September 6, 2016.

Comments on the amendments and repeal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by September 6, 2016. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by September 19, 2016. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 45111.

The amendments and repeal are proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)



§24.1. Purpose and Scope of this Chapter.

- (a) This chapter is intended to establish a comprehensive regulatory system under Texas Water Code ~~(TWC)~~, Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.
- (b) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality (TCEQ) related to a power, duty, function, program, or activity transferred pursuant to House Bill 1600 and Senate Bill 567, 83rd Legislature, Regular Session (this Act), continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas (commission) and remains in effect until amended or replaced by the commission. Any jurisdiction ceded to the TCEQ continues in effect and shall be deemed to be ceded to the commission. ~~Beginning September 1, 2013, the commission may propose rules,~~

~~forms, policies, and procedures related to a function to be transferred to the commission under this Act.~~

(c) (No change.)

(d) An application received by the commission and file stamped in the commission's Central Records office shall be processed in accordance with the rules in effect on the date that the application was received by Central Records.

§24.3. Definitions of Terms.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1)-(19) (No change.)

~~(20) — Code — The Texas Water Code (TWC).~~

~~(20)~~~~(21)~~**Commission** -- The Public Utility Commission of Texas or a presiding officer, as applicable.

~~(21)~~~~(22)~~**Corporation** -- Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the TWC.

~~(22)~~~~(23)~~**Customer** -- Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

~~(23)~~~~(24)~~**Customer class** -- A description of utility service provided to a customer that denotes such characteristics as nature of use or type of rate. For rate-setting purposes, a group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

~~(24)~~~~(25)~~**Customer service line or pipe** -- The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

- (25) **District** -- Any district or authority created by authority of either Section 52(b)(1) and (2), Article II, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law, any consideration and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1952 (Article 8280-141, Vernon's Texas Civil Statutes), or any conservation and reclamation district governed by Chapter 36 of the Water Code unless a special law creating the district or amending the law creating the district states that Chapter 49 of the Water Code applies to that district.
- (26) **Facilities** -- All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.
- (27) **Financial assurance** -- The demonstration that sufficient or adequate financial resources exist to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.
- (28) **Functional cost category** -- Costs related to a particular operational function of a utility for which annual operations & maintenance expenses and utility plant investment records are maintained.
- (29) **Functionalization** -- The assignment or allocation of costs to utility functional cost categories.

- (30) **General rate revenue** -- A rate or the associated revenues designed to recover the cost of service other than certain costs separately identified and recovered through a pass-through or any specific rate such as a surcharge. For water and wastewater utilities, generally rates typically include the base rate and gallonage rate.
- (31) **Inactive connections** -- Water or wastewater connections tapped to the applicant's utility and that are not currently receiving service from the utility.
- (32) **Intervenor** -- A person, other than the applicant, respondent, or the commission staff representing the public interest, who is permitted by this chapter or by ruling of the presiding officer, to become a party to a proceeding.
- (33)~~(32)~~ **Incident of tenancy** -- Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.
- (34)~~(33)~~ **Known and measurable (K&M)** -- Verifiable on the record as to amount and certainty of effectuation. Reasonably certain to occur within 12 months of the end of the test year.
- (35)~~(34)~~ **Landowner** -- An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.
- (36)~~(35)~~ **License** -- The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.
- (37)~~(36)~~ **Licensing** -- The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license,

certificates of convenience and necessity, or any other authorization granted by the commission in accordance with its authority under the TWC.

(38)~~(37)~~**Main** -- A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(39)~~(38)~~**Mandatory water use reduction** -- The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(40)~~(39)~~**Member** -- A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(41)~~(40)~~**Membership fee** -- A fee assessed each water supply or sewer service corporation service applicant that entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed under said bylaws. For purposes of TWC

§13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

~~(42)(41)~~**Multi-jurisdictional** -- A utility that provides water and/or wastewater service in more than one state, country, or separate rate jurisdiction by its own operations, or through an affiliate.

~~(43)(42)~~**Municipality** -- A city, existing, created, or organized under the general, home rule, or special laws of this state.

~~(44)(43)~~**Municipally owned utility** -- Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

~~(45)(44)~~**Net Book Value** -- The amount of the asset that has not yet been recovered through depreciation. It is the original cost of the asset minus accumulated depreciation.

~~(46)(45)~~**Nonfunctioning system or utility** -- A system that is operating as a retail public utility that is required to have a CCN and is operating without a CCN; or a retail public utility under supervision pursuant to §24.141 of this title (relating to Supervision of Certain Utilities); or a retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §24.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a

Receiver) and §24.143 of this title (relating to Operation of a Utility by a Temporary Manager).

~~(47)(46)~~ **Person** -- Includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations.~~Any natural person, partnership, cooperative, corporation, association, or public or private organization of any character other than an agency or municipality.~~

~~(48)(47)~~ **Point of use or point of ultimate use** -- The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

~~(49)(48)~~ **Potable water** -- Water that is used for or intended to be used for human consumption or household use.

~~(50)(49)~~ **Potential connections** -- Total number of active plus inactive connections.

~~(51)(50)~~ **Premises** -- A tract of land or real estate including buildings and other appurtenances thereon.

~~(52)~~ **Protestor** -- A person who is not a party to the case who submits oral or written comments. A person classified as a protestor does not have rights to participate in a proceeding other than by providing oral or written comments.

~~(53)(51)~~ **Public utility** -- The definition of public utility is that definition given to water and sewer utility in this subchapter.

~~(54)(52)~~ **Purchased sewage treatment** -- Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

~~(55)(53)~~ **Purchased water** -- Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(56)~~(54)~~**Rate** -- Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(57)~~(55)~~**Ratepayer** -- Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(58)~~(56)~~**Rate region** -- An area within Texas for which the applicant has set or proposed uniform tariffed rates by customer class.

(59)~~(57)~~**Reconnect fee** -- A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §24.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request

(60)~~(58)~~**Retail public utility** -- Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(61)~~(59)~~**Retail water or sewer utility service** -- Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

~~(62)(60)~~ **Return on invested capital** -- The rate of return times invested capital.

~~(61)~~ ~~**Safe drinking water revolving fund**~~ ~~The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in TWC §15.602.~~

~~(63)(62)~~ **Service** -- Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the TWC to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

~~(64)(63)~~ **Service line or pipe** -- A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

~~(65)(64)~~ **Sewage** -- Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

~~(66)(65)~~ **Stand-by fee** -- A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

~~(67)(66)~~ **Tap fee** -- A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used.

Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

[\(68\)\(67\)](#)**Tariff** -- The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

[\(69\)\(68\)](#)**TCEQ** -- Texas Commission on Environmental Quality.

[\(70\)\(69\)](#)**Temporary water rate provision for mandatory water use reduction** -- A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

[\(71\)\(70\)](#)**Temporary rate for services provided for a nonfunctioning system** -- A temporary rate for a retail public utility that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider.

[\(72\)\(71\)](#)**Test year** -- The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

[\(73\)](#) **Tract of land** -- Any piece of land that has common ownership and is contiguous. To be contiguous, all portions of the property must be in uninterrupted physical contact. A single tract may not be separated by other property with different ownership, such as roads and railroads, whether owned by government entities or private parties. A

[single tract of land may be part of separate surveys or be acquired through multiple deeds.](#)

[\(74\) TWC -- Texas Water Code.](#)

[\(75\)\(72\) Utility](#) -- The definition of utility is that definition given to water and sewer utility in this subchapter.

[\(76\)\(73\) Water and sewer utility](#) -- Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

[\(77\)\(74\) Water use restrictions](#) -- Restrictions implemented to reduce the amount of water that may be consumed by customers of the [utility system](#) due to emergency conditions or drought.

~~(78)(75)~~ **Water supply or sewer service corporation** -- Any nonprofit corporation organized and operating under TWC Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

- (A) All members of the corporation meet the definition of “member” under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.
- (B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.
- (C) A majority of the directors and officers of the corporation must be members of the corporation.
- (D) The corporation’s bylaws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(79)(76) **Wholesale water or sewer service** -- Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§24.8. Administrative Completeness.

- (a) An application to change rates, including a minor rate change, applications for sale, transfer, merger, consolidation, acquisition, lease, or rental, ~~merger, or consolidation~~, assignment of facilities or certificates; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility and applications for certificates of convenience and necessity (CCN) shall be reviewed for administrative completeness within 30~~thirty~~ calendar days from the date the application is file stamped by the commission's Central Records office of receipt of the application. If the applicant is required to issue notice, the applicant shall be notified~~If notice is required~~, upon determination that the notice or application is administratively complete, ~~the applicant shall be notified of that determination.~~
- (b) (No change.)
- (c) In cases involving a proposed sale, transfer, merger, consolidation, acquisition, lease, or rental, ~~merger, or consolidation~~ of any water or sewer system or utility owned by an entity required by law to possess a CCN~~certificate of convenience and necessity~~, the proposed effective date of the transaction must be at least 120 days after the date that an application is received and file stamped by the commission's Central Records office~~commission~~ and public notice is provided, unless notice is waived for good cause shown.

- (d) ~~Applications for the A-report of~~ sale, ~~transfer, merger, consolidation,~~ acquisition, lease, ~~or rental, of a retail public utility merger, or consolidation;~~ requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility; ~~and~~ applications to obtain or amend a CCN for certificates of convenience and necessity are not considered filed until the commission makes a determination that the application is administratively complete of administrative completeness.

§24.101. Certificate of Convenience and Necessity Required.

- (a) Unless otherwise specified, a utility, a utility operated by an affected county ~~except an affected county to which Local Government Code, §412.017 applies,~~ or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate of convenience and necessity (CCN) ~~that the present or future public convenience and necessity requires or will require that installation, operation, or extension.~~ Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first ~~obtaining~~ having obtained a CCN certificate of public convenience and necessity that includes the area in which the consuming facility is located.
- (b) A person that is not a retail public utility, ~~or~~ a utility, or a water supply or sewer service corporation that is operating under provisions pursuant to ~~the~~ TWC, §13.242(c) may not construct facilities to provide retail water or sewer utility service to more than one service connection not on the property owned by the person and that ~~is~~ are within the CCN certified service area of a retail public utility without first obtaining written consent from the retail public utility.

- (c) A district may not provide services within the CCN boundaries of an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without the retail public utility's or district's consent, unless the district has a valid CCN certificate of convenience and necessity to provide retail water or sewer utility services to that area.
- (d) A retail public utility may not provide retail water or sewer utility service within the boundaries of a district that provides the same type of retail water or sewer utility service without the district's consent, unless the retail public utility has a valid CCN to provide service to that area.
- (e)(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a CCN certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain a CCN the certificate.

§24.102. Criteria for Granting or Amending a Certificate of Convenience and Necessity~~Criteria for Considering and Granting Certificates or Amendments.~~

(a) In determining whether to grant or amend a certificate of ~~public~~ convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For retail water utility service, the commission shall ensure that the applicant has:

(A) a TCEQ approved public water system that it is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341, ~~TCEQ's and TCEQ rules,~~ and the TWC; and

(B) ~~has~~ access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.

(2) For retail sewer utility service, the commission shall ensure that the applicant has:

(A) a TCEQ approved system that it is capable of meeting the TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the TWC; and

(B) access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of paragraph (2)(A) of this subsection.

- (b) ~~When applying for a new CCN or a CCN amendment~~~~Where a new CCN is being issued~~ for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:
- (1) ~~for applications to obtain or amend a water CCN, a list of all retail public water and/or sewer utilities within two miles from the outer boundary of the proposed service area(s)~~~~a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;~~
 - (2) ~~for applications to obtain or amend a sewer CCN, a list of all retail public sewer utilities within two miles from the outer boundary of the proposed service area(s);~~
 - (3)~~(2)~~ copies of written requests seeking to obtain service from each of the ~~retail public utilities~~~~public drinking water supply systems or sewer systems~~ referenced in paragraph (1) and/or (2) of this subsection or ~~evidence~~~~demonstrate~~ that it is not economically feasible to obtain service from ~~the retail public utilities~~ referenced in paragraph (1) or (2) of this subsection~~a neighboring public drinking water supply system or sewer system;~~
 - (4)~~(3)~~ copies of written responses from each of the ~~retail public utilities~~ referenced in paragraph (1) and/or (2) of this subsection~~systems~~ from which written

requests for service were made or evidence that they failed to respond within 30 days of the date of the request;

~~(5)(4)~~ if a neighboring retail public utility has agreed to provide service to an area where a new CCN is being requested, then the following information must also be provided by the applicant:

~~(A)~~ a description of the type of service that ~~the~~ neighboring retail public utility~~public drinking water supply system or sewer system~~ is willing to provide and comparison with service the applicant is proposing;

~~(B)(5)~~ an analysis of all necessary costs for constructing, operating, and maintaining the new facilities~~system~~ for at least the first five years of operations, including such items as taxes and insurance; and

~~(C)(6)~~ an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility~~public drinking water supply system or sewer system~~ for at least the first five years of operations.

- (c) The commission may approve applications and grant or amend a CCN~~certificate~~ only after finding that granting or amending the CCN~~the certificate or amendment~~ is necessary for the service, accommodation, convenience, or safety of the public. The commission may grant~~issue~~ or amend the CCN~~certificate~~ as applied for, or refuse to grant~~issue~~ it, or grant~~issue~~ it for the construction of a portion only of the contemplated facilities~~system or facility~~ or extension thereof, or for the partial

exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a [CCN certificate](#), the commission shall also consider:

(1)-(2) (No change.)

(3) the effect of granting or amending a CCN on the CCN recipient, on the landowner(s) in the area, and on any retail public utility that provides the same service and that is~~the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility the same kind~~ already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the [TCEQ and the](#) commission, taking into consideration the current and projected density and land use of the area;

(5)-(9) (No change.)

(e) The commission may require an applicant seeking to obtain a new CCN or CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer~~for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate~~ utility service is provided. The commission shall set the amount of financial

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

(f) Where applicable, in addition to the other factors in this ~~chaptersection~~ the commission shall consider the efforts of the applicant to extend retail water and/or sewer utility service to any economically distressed areas located within the applicant's requested CCN service areas ~~certificated to the applicant~~. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001.

(g) For two or more retail public utilities that apply for a CCN to provide retail water ~~and/or~~ sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC §15.001, the commission shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted considering the following information~~using a standard form designed by the commission and will include:~~

(1)-(7) (No change.)

(8) credit-worthiness~~credit worthiness~~;

(9)-(11) (No change.)

- (h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed CCN service area may elect to exclude some or all of the landowner's property from the proposed CCN service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an a new application for a CCN or for a CCN amendment of to an existing CCN. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the proposed area in the application shall be modified to remove so that the electing landowner's property is not included in the proposed service area. An applicant for a CCN that has land removed from its proposed CCN service area because of a landowner's election under this subsection may not be required to provide retail water or sewer utility service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

(1) The landowner's request to opt-out of the proposed CCN service area shall be filed with the commission shall include the following information:

(A) the commission docket number and CCN number(s) if applicable;

(B) the total acreage amount of the tract of land subject to the landowner's opt-out request; and

- (C) a metes and bounds survey (legal description) for the tract of land subject to the landowner's opt-out request, certified by a licensed state land surveyor or registered professional land surveyor.
- (2) The applicant shall file the following maps, and information, to address each landowner's opt-out request:
- (A) a large scale (detailed) map showing the revised proposed service area(s) after removing the tract(s) of land subject to each landowner's opt-out request. The map shall also show the outer boundary of each tract of land, subject to each landowner's opt-out request, in relation to the revised proposed service area(s). The map shall have enough detail to accurately locate each tract of land and the proposed service area(s) in reference to verifiable man-made and/or natural landmarks such as roads, rivers, or railroads;
- (B) digital data as required by §24.106(e)(3) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) for the revised proposed service area(s) after the removing each tract of land subject to landowner's opt-out request(s); and
- (C) the approximate total acreage for the revised proposed service area(s) after the removing each tract of land subject to landowner's opt out requests. The total acreage for the revised proposed service area(s) must correspond to the approximate total acreage included with the digital data.

- (i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to [file a request to intervene in order to](#) contest the inclusion of the landowner's property in the proposed service area at a hearing regarding the application if the proposed [CCN](#) service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a [retail public](#) utility owned by the municipality is the applicant.

§24.103. Certificates Not Required.**(a) Extension of Service.**

(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of ~~public~~ convenience and necessity ~~(CCN)~~, a retail public utility is not required to ~~obtain a CCN~~~~secure a certificate of public convenience and necessity~~ for:

(A) an extension into territory contiguous to that already served by ~~the retail public utility~~ if:

(i) ~~the point of ultimate use is within one quarter mile of the outer boundary of its existing CCN area;~~

(ii) ~~the area is not receiving similar service from another retail public utility; and~~

(iii) ~~the area is not located inside another retail public utility's CCN~~~~it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area, and not receiving similar service from another retail public utility; and not within the area of public convenience and necessity of another retail public utility; or~~

(B) an extension within or to territory already served by it or to be served by it under a ~~CCN~~~~certificate of public convenience and necessity~~.

(2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making

the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the ~~service~~certificated area clearly showing the extension, accompanied by a written explanation of the extension.

- (b) **Construction of Facilities.** A CCN is not required for the construction or upgrading of distribution facilities within the retail public utility's service area, or for the purchase or condemnation of real property for use as facility sites or rights-of-way. Prior acquisition of facility sites or rights-of-way, and prior construction or upgrading of distribution facilities, does not entitle a retail public utility to be granted a CCN or CCN amendment without a showing that the proposed CCN or CCN amendment~~A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right of way. However, prior acquisition of such sites or right of way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension~~ is necessary for the service, accommodation, convenience, or safety of the public.

- (c) **Municipality Pursuant to ~~the~~ TWC, §13.255.**

(1) A municipality which has given notice under TWC §13.255 that it intends to provide retail water or sewer utility service to an area or to customers not

currently being served is not required to obtain a CCN prior to commencing service in the area if the municipality:

(A) provides a copy of the notice required in TWC §13.255, to the retail public utility;

(B) files a copy of the notice provided pursuant to paragraph (1) of this subsection with the commission;

(C) files mapping documents showing the area affected under TWC §13.255 as required by §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications), and the location of new connections in the area affected which the municipality proposes to serve.

(2) This subsection applies only in cases where:

(A) the retail public utility that is authorized to serve in the CCN area that is annexed or incorporated by the municipality is a non-profit water supply or sewer service corporation, a special utility district under TWC Chapter 65, or a fresh water supply district under TWC Chapter 53; or

(B) the retail public utility that is authorized to serve in the CCN area that is annexed or incorporated by the municipality that is a retail public utility, other than a non-profit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.

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~~A municipality which has given notice under the TWC, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:~~

- ~~(1) a copy of the notice required pursuant to the TWC, §13.255, and~~
- ~~(2) a map showing the area affected under the TWC, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.~~

(d) Municipal Systems in Unserved Area

- (1) This section applies only to a home-rule municipality that is:
 - (A) located in a county with a population of more than 1.75 million; and
 - (B) adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district.
- (2) If a district does not establish a fire department under TWC §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment.
- (3) For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC §13.255, except that the municipality may

file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC §13.255(b).

(e)(4) **Water Utility or Water Supply Corporation With Less Than 15 Potential Connections.**

- (1) A water utility or water supply corporation is exempt from the requirement to possess a CCN certificate of convenience and necessity in order to provide retail water utility service if it:
 - (A) has less than 15 potential service connections;
 - (B) is not owned by or affiliated with a retail public water utility or any other provider of potable water service;
 - (C) is not located within the CCN service certified area of another retail public water utility; and
 - (D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.
- (2) Water utilities~~Utilities~~ or water supply corporations with less than 15 potential connections currently operating under a CCN certificate of convenience and necessity may request revocation of the CCN certificate at any time.

- (3) The commission may revoke the current ~~CCN certificate of convenience and necessity~~ upon written request by the exempt utility or water supply corporation.
- (4) An ~~exempt~~ utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the commission which shall not be more stringent than those in §§24.80 - 24.90 of this title ~~(relating to Customer Service and Protection)~~.
- (5) The ~~exempt~~ utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.
- ~~(6)~~ An applicant requesting exempt utility registration status from the commission shall comply with the mapping documents as prescribed in §24.106(e)(2)-(3) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications).
- ~~(7)(6)~~ Exempt Utility Tariff and Rate Change Requirements. An ~~exempt~~ utility operating ~~under exempt utility registration status with or without a certificate of convenience and necessity:~~
- (A) must maintain a current copy of the exempt ~~utility~~ utility tariff ~~form~~ with its current rates at its business location; and
- (B) may change its rates without following the requirements in §24.22 of this title (relating to Notice of Intent ~~and Application to Change Rates Pursuant to Texas Water Code §13.187 or §13.1871 to Change Rates~~) if it provides each customer with written notice of the rate

~~changechanges~~ prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written comments or requests to intervene may be filed with the commission at the following mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. If the commission receives written comments or requests to intervene to ~~aprotests may be submitted to the commission at that address. If the commission receives written~~ protests to a proposed rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the commission shall~~will~~ review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments or requests to intervene from customers or the exempt utility, the commission shall~~will~~ establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the commission. The exempt utility shall refund any rates collected in excess of the rates established by the commission in accordance with the time frames or other requirements established by the commission.

- (C) The exempt utility or water supply corporation, Office of Public Utility Counsel~~office of public utility counsel~~, commission staff, or any affected customer may file a written motion for rehearing. The rates determined by the commission shall remain in effect while the commission considers the request to intervene or comments~~or protest~~.
- ~~(D) A rate change application filed by an exempt utility that follows the rate change procedures in §24.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.~~
- ~~(8)(7)~~ Unless authorized in writing by the commission, an exempt water~~a~~ utility or a water supply corporation operating under these requirements may not cease ~~utility~~ operations. An exempt water~~A~~ utility may not discontinue service to a customer with or without notice except in accordance with its commission approved~~the~~ Exempt Utility Tariff ~~Form~~ and an exempt~~a~~ water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.
- ~~(9)(8)~~ An exempt water~~A~~ utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff approved~~specified~~ by the commission shall be subject to any and all enforcement remedies provided by this chapter and ~~the~~ TWC, Chapter 13.

~~(e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under TWC, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC, §13.255(b).~~

§24.104. Applicant.

- (a) It is the responsibility of the owner of the utility, the utility's designated representative or authorized agent, ~~or~~ the president of the board of directors or designated representative of the water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality to file~~submit~~ an application for a certificate of convenience and necessity (CCN) with the commission to obtain or amend a CCN.
- (b) (No change.)

§24.105. Contents of Certificate of Convenience and Necessity Applications.

(a) **Application.** ~~To obtain or amend a certificate of convenience and necessity (CCN), a person, public water or sewer utility, water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality shall file an application for a new CCN or CCN amendment with the commission. Applications must contain the following materials, unless otherwise specified in the application form.~~
~~To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment. Applications for CCNs or for an amendment to a certificate must contain the following materials, unless otherwise specified in the application:~~

(1) (No change.)

(2) ~~mapping documents as prescribed in §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) and §24.119 of this title (relating to Filing of Maps); a map and description of only the proposed service area by:~~

~~(A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;~~

~~(B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;~~

- ~~(C) — a state county base map, scale one inch equals two miles showing the area to be served that clearly defines the proposed location of the applicant and each neighboring water or sewer utility within five miles of the applicant's proposed service area for a CCN and within two miles of the applicant's proposed service area for a CCN amendment;~~
 - ~~(D) — verifiable landmarks, including a road, creek, or railroad line; or a copy of the recorded plat of the area, if it exists, with lot and block number~~
 - ~~(E) — maps as described in §24.119 of this title (relating to Filing of Maps);~~
 - ~~(F) — a separate map for each county in which the applicant seeks a CCN or CCN amendment;~~
 - ~~(G) — a general location map; and~~
 - ~~(H) — other maps as requested~~
- (3) information to demonstrate a need~~a description of any requests~~ for service in the proposed service area, including;
- (A) a copy of each written request for service received, if any; and
 - (B) a map showing the location of each request for service, if any;
- (4) if applicable, a statement that the proposed service area overlaps with the corporate boundaries of a district, municipality, or other public authority, including:
- (A) a list of the entities that overlap with the proposed area; and
 - (B) evidence to show that the applicant

has received the necessary approval(s) including consent(s), franchise(s), permit(s), or license(s) to provide retail water or sewer utility service in the proposed service area(s) from the applicable municipality, district, or other public authority that:

(i) currently provides retail water or sewer utility service in the proposed service area;

(ii) is authorized to provide retail water or sewer service by enabling statute or order; or

(iii) has an ordinance in effect that allows it to provide retail water or sewer service in the proposed service area, if any.

any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;

(5) If the proposed service area overlaps with the corporate boundaries of a district, and the district does not intervene in the docket by the intervention deadline after propose notice of the application is given, the commission will determine that the district is consenting to the applicant's request to provide service in the proposed area.

(6)(5) an explanation from the applicant demonstrating that issuance of a new CCN or CCN amendment is necessary for the service, accommodation, convenience, or safety of the public; an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

- (7)(6) if the infrastructure is not already in place or if existing infrastructure needs repairs and improvements to provide continuous and adequate service to the proposed area, a capital ~~improvement~~improvements plan, including a budget and an estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to a map~~maps~~ showing where such facilities will be located to provide service;
- (8)(7) a description of the sources of funding for all facilities that will be constructed to serve the proposed service area, if any;
- (8) ~~for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;~~
- (9) disclosure of all affiliated interests as defined by §24.3 of this title ~~(relating to Definitions of Terms)~~;
- (10) to the extent known, a description of current and projected land uses, including densities;
- (11) a current financial statement of the applicant;
- (12) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owner(s)~~owner~~ of each tract of land that is:
- (A)-(B) (No change.)

(13) if dual certification is being requested, a copy of the executed agreement that allows for dual certification of the proposed service area(s) and an agreement between the affected utilities exists, a copy of the agreement;

(14) if decertification is being requested with an existing CCN holder, a copy of the executed agreement to decertify the existing CCN area; for a water CCN for a new or existing system, a copy of:

~~(A) the approval letter for the plans approved by the TCEQ and specifications for the system or proof that the applicant has submitted either a preliminary engineering report or plans and specification for the first phase of the system unless 30 TAC §290.39(j)(1)(D) (relating to General Provisions) applies;~~

~~(B) other information that indicates the applicant is in compliance with §24.93 of this title (relating to Adequacy of Water Utility Service) for the system; or~~

~~(C) a contract with a wholesale provider that meets the requirements in §24.93 of this title;~~

(15) for an application for a new water CCN or CCN amendment that will require the construction of a new public drinking water system or facilities to provide retail water utility service, a copy of:

(A) the approval letter for the plans and specifications issued by the TCEQ for the public drinking water system(s) or facilities. Proof that the applicant has submitted plans and specifications for the proposed drinking water system is sufficient for a determination of

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administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new water CCN or CCN amendment will be dismissed without prejudice. Approval letter(s) for the proposed public drinking water system or facilities must be filed with the commission before the issuance of a new CCN or CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in the dismissal of the application without prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required pursuant to TCEQ rules;

(B) other information that indicates the applicant is in compliance with §24.93 of this title (relating to Adequacy of Water Utility Service) for the system; or

(C) a contract with a wholesale provider that meets the requirements in §24.93 of this title;

~~(15) for a sewer CCN for a new or existing facility, a copy of:~~

~~(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the Texas Commission on Environmental Quality;~~

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- ~~(B) other information that indicates that the applicant is in compliance with §24.94 of this title (relating to Adequacy of Sewer Service) for the facility; or~~
- ~~(C) a contract with a wholesale provider that meets the requirements in §24.94 of this title; and~~
- (16) for an application for a new sewer CCN or CCN amendment that will require the construction of a new sewer system or new facilities to provide retail sewer utility service, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for the additional facility has been filed with the TCEQ. Proof that the applicant has submitted an application for a wastewater permit is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new sewer CCN or CCN amendment will be dismissed without prejudice. Approval letter(s) for the permit application must be filed with the commission before the issuance of a new CCN or CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in the dismissal of the application within prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required pursuant to TCEQ rules.

- (B) other information that indicates that the applicant is in compliance with §24.94 of this title (relating to Adequacy of Sewer Service) for the facility; or
- (C) a contract with a wholesale provider that meets the requirements in §24.94 of this title; and
- ~~(17)~~(16) any other item or information required by the commission.

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- (b) If an applicant is a utility as defined in §24.3(75) of this title, and does not currently have a tariff applicable to the area subject to the CCN application being proposed (e.g., a subdivision currently being built or proposed), the utility shall file a proposed tariff with the commission. The application requesting the new tariff shall provide:
- (1) a rate study or other documentation supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;
 - (2) all calculations supporting the proposed rates;
 - (3) all assumptions for any projections included in the rate study;
 - (4) an estimated completion date(s) for the physical plant(s);
 - (5) an estimate of the date(s) service will begin for all phases of construction;
 - (6) notice to the commission once billing for service begins; and
 - (7) a Class A or B rate change application within 18 months from the date service begins to adjust the rates to a historic test year with the appropriate regulatory authority and true up the new tariff rates to the historical test year.

(c)(4) **Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.**

- (1) This subsection applies only to a municipality with a population of 500,000 or more.
- (2) Except as provided by paragraphs (3) - (7) of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.
- (3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:
 - (A) does not have the ability to provide service; or
 - (B) has failed to make a good faith effort to provide service on reasonable terms and conditions.
- (4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission,

including a capital ~~improvement~~~~improvements~~ plan required by TWC, §13.244(d)(3) or a subdivision plat, the commission may grant the new CCN or CCN amendment without the consent of the municipality if:

- (A) the commission makes the findings required by paragraph (3) of this subsection;
 - (B) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and
 - (C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:
 - (i) comply with the municipality's service extension and development process; or
 - (ii) enter into a contract for retail water or sewer utility services~~services~~ with the municipality.
- (5) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.
- (6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and sewer facilities be

- designed and constructed in accordance with the municipality's standards for water and sewer facilities.
- (7) Paragraphs (4) - (6) of this subsection do not apply in the following counties: Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson.
 - (8) A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.
 - (9) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(d)(e) **Extension beyond extraterritorial jurisdiction.**

- (1) Except as provided by paragraph (2) of this subsection, if a municipality extends its extraterritorial jurisdiction to include an area in the CCN of ~~certificated to~~ a retail public utility, the retail public utility may continue and extend service in its CCN service ~~area of public convenience and necessity~~ under the rights granted by its CCN certificate and this chapter.
- (2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with

- TWC~~7~~ §13.246(h). This subsection does not apply to a sale, transfer, merger, consolidation, acquisition, lease, or rental of a CCNcertificate as approved by the commission.
- (3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.
- (4) To the extent of a conflict between this subsection and TWC~~7~~ §13.245, TWC~~7~~ §13.245 prevails.

(e)(4) **Area within municipality.**

- (1) If an area is within the boundaries of a municipality, all retail public utilities holding or entitled to hold a CCNcertified or entitled to certification under this chapter to provide retail water and sewer utility service or operate facilities in that area may continue and extend service in its CCN area ~~of public convenience and necessity~~ within the area under the rights granted by its CCNcertificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by TWC~~7~~ §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the CCN area ofcertificated to another retail public utility without first having obtained from the commission a CCN that includes the area(s)area to be served.

- (2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.
- (3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.
 - (A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.
 - (B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action upon notification of acquisition of the system.

§24.106. Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications.

- (a) If an application ~~to obtain a new~~~~for issuance or amendment of a~~ certificate of ~~public~~ convenience and necessity (CCN) or CCN amendment is filed, the applicant will prepare ~~the notice(s)~~~~a notice~~~~or notices~~, as prescribed in the commission's application form, which will include the following:
- (1) (No change.)
 - (2) all information stipulated in the commission's instructions for completing an application for a CCN; ~~and~~
 - (3) a statement that persons who wish to intervene or comment upon the action sought must file a request with the commission, within 30 days of mailing or publication of notice, whichever occurs later; ~~and-~~
 - (4) except for publication of notice, the notice(s) must include a map showing the proposed service area.
- (b) After reviewing and, if necessary, modifying the proposed notice(s), the commission will provide the notice(s)~~send the notice~~ to the applicant for publication and/or mailing.
- (1) For applications for ~~issuance of~~ a new CCN or CCN amendment, the applicant shall mail the notice to the following:
 - (A) cities, districts, and neighboring retail public utilities providing the same utility service whose corporate boundaries or CCN service

~~area(s) are located within two miles from the outer boundary of the proposed service area(s) cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within five miles of the requested service area boundaries, and any city with an extraterritorial jurisdiction that overlaps the proposed service area boundaries. Applicants are also required to provide notice to the county judge of each county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified.~~

~~(B) the county judge of each county that is wholly or partially included in the proposed service area; and~~

~~(C) each groundwater conservation district that is wholly or partially included in the proposed service area(s);~~

~~(2) For applications for an amendment of a CCN, the applicant 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 of the requested service area boundaries, and any city with an extraterritorial jurisdiction that overlaps the proposed service area boundaries. If decertification or dual certification is being requested, the applicant shall provide notice by certified mail to the current CCN holder. Applicants are also required to provide notice to the county judge of each~~

~~county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified.~~

~~(2)~~(3) Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant shall mail notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the proposed service area(s)~~area proposed to be certified~~. Notice required under this subsection must be mailed by first class mail to the owner of the tract of land according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the CCNcertificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

- (A) TWC, §13.248 or §13.255; or
- (B) TWC, Chapter 65.

~~(4) Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.~~

~~(3)~~(5) Utilities that are required to possess a CCNcertificate but that are currently providing service without a CCNcertificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the

effective date those rates were instituted, and any other information required by the application or notice form or by the commission in the application.

~~(4)(6)~~ Within 30 days of the date of the notice, the applicant shall file in the docket ~~submit to the commission~~ an affidavit specifying the persons(s) and ~~entity(ies)~~ persons to whom notice was provided and the date ~~of~~ that the notice was provided.

(c)-(d) (No change.)

~~(e) In this section, utility service provider means a retail public utility other than a district subject to TWC, §49.452.~~

~~(e)(f)~~ An application for a new CCN or CCN amendment ~~A utility service provider~~ shall provide the following mapping documents:

- (1) a small scale (general location) map showing only the location of the proposed service area(s) in the vicinity of the nearest town, city, or county; record in the real property records of each county in which the service area, or a portion of the service area is located, a certified copy of the map of the CCN and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area by:
 - ~~(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;~~
 - ~~(B) the Texas State Plane Coordinate System;~~

- ~~(C) — verifiable landmarks, including a road, creek, or railroad line; or~~
- ~~(D) — if a recorded plat of the area exists, lot and block number; and~~
- (2) a large scale (detailed) map showing only the location of the proposed service area(s) with enough detail to accurately locate the proposed service area(s) in reference to verifiable landmarks, such as roads, rivers, or railroads; and submit to the commission evidence of the recording.
- (3) a metes and bounds survey and/or a recorded plat of the proposed service area(s) certified by a licensed state land surveyor or a registered professional land surveyor; or digital mapping data using an industry standard file format acceptable to the commission containing feature class subcomponents of a geodatabase and capable of being manipulated by the commission staff. The digital mapping data shall be provided in a coordinate system and datum (project) in either Texas State Plane Coordinate System or a projection the commission utilizes.

~~(f)(e) The recording in the county records required by this section must be completed not later than the 31st day after the date a CCN holder receives a final order from the commission granting a new CCN or CCN amendment which results in a change to the CCN holder's service area. The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.~~

~~(h) The recording required by this section for holders of certificates of public convenience and necessity already in existence as of September 1, 2005 must be completed not later than January 1, 2007.~~

§24.107. Action on Applications.

- (a) (No change.)
- (b) After proper notice is given, the commission may take action on an application which is uncontested at the end of the intervention period or for which all interventions are subsequently withdrawn~~The commission may take action on an application at a regular meeting without holding a public hearing if 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing has been requested.~~
- ~~(c) The commission may take action on an application which is uncontested at the end of the 30-day protest period following mailed or published notice or for which all protests are subsequently withdrawn.~~
- ~~(c)~~^(d) If a hearing is requested, the application will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

§24.109. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental~~Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.~~

- (a) Any water or sewer utility, 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(s) 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.

~~On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action. The notification shall be on the form required by the commission and the comment period will not be less than 30 days. Public notice may be waived by the commission for good cause shown. The 120-day period begins on the last date of whichever of the following events occur:~~

- ~~(1) — the date the applicant files an application under this section;~~

- ~~(2) — if mailed notice is required, the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or~~
- ~~(3) — if newspaper notice is required, the last date of the publication of the notice in the newspaper as stated in the affidavit of publication.~~

(b) The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days. Public notice may be waived by the commission for good cause shown.~~A person purchasing or acquiring the water or sewer system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area currently certificated to the person.~~

(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 proposed service area being transferred; and
- (3) a statement that persons who wish to protest or intervene upon the action sought should file comments with the commission within 30 days of mailing or publication of notice, whichever occurs later

- (d) If notice is not waived by the commission for good cause shown, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or CCN boundaries are within two miles from the outer boundary of the proposed service area, and any city with an extraterritorial jurisdiction which overlaps the proposed service 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(s) and any area(s) currently located within the CCN of the transferee as required by §24.102(a) of this title (relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity) .

(h)(e) If the ~~transferee person purchasing or acquiring the water or sewer system~~ cannot demonstrate adequate financial capability, the commission may require that the ~~transferee person~~ provide financial assurance to ensure continuous and adequate retail water and/or sewer utility service is provided to the requested area plus any area already being served under the transferee's existing CCN and any related affiliates.

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

(i)(d) The commission shall, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental, ~~merger or consolidation~~ to determine whether the transaction will serve the public interest.

(j)(e) Prior to the expiration of the 120-day ~~notification~~ period, 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 person purchasing or acquiring the water or sewer system~~ has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to ~~the transferee that person~~;

- (3) the ~~transferee person or an affiliated interest of the person purchasing or acquiring the water or sewer system~~ 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 person purchasing or acquiring the water or sewer system~~ cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the ~~proposed service area(s); or customers of the water or sewer system;~~
- (5) ~~there are concerns that the transaction does not serve the public interest. It is~~ is in the public interest to investigate the following factors:
- (A) whether the ~~transferor or transferee has~~ ~~seller has~~ failed to comply with ~~any~~ a commission or TCEQ order. ~~The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental where 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 area;
 - (C) the need for additional service in the requested area;
 - (D) the effect of approving the transaction on the ~~transferee utility or water supply or sewer service corporation,~~ the ~~transferor person purchasing or acquiring the water or sewer system,~~ and on any retail public utility of the same kind already serving the proximate area;

- (E) the ability of the ~~transferee person purchasing or acquiring the water or sewer system~~ to provide adequate service;
- (F) the feasibility of obtaining service from an adjacent retail public utility;
- (G) the financial stability of the ~~transferee person purchasing or acquiring the water or sewer system~~, including, if applicable, the adequacy of the debt-equity ratio of the ~~transferee person purchasing or acquiring the water or sewer system~~ if the transaction is approved;
- (H) the environmental integrity; and
- (I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

~~(k)(f)~~ Unless the commission requires that a public hearing be held, the sale, ~~transfer, merger, consolidation,~~ acquisition, lease, or rental ~~or merger or consolidation~~ may be completed as proposed:

- (1) at the end of the 120-day period; ~~or~~
- (2) ~~or may be completed~~ at any time after the ~~transferee utility or water supply or sewer service corporation~~ receives notice from the commission that a hearing will not be requested.

(l) If the commission decides to hold a hearing, or if the transferee fails to process 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.

(m) 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 transaction, and every 30 days thereafter, until such a time that the transaction is complete. The transferee shall inform the commission of any changes in financial, managerial, and technical capability for providing continuous and adequate service to the requested area plus any area already being lawfully served by the transferee during the time before the transaction has been approved.

(n) Within 30 days of the actual effective date of the transaction, the transferor and 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 thereon. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.

~~(o)(g)~~ Within 30 days after the actual effective date of the transaction, the transferee and transferor shall~~utility or water supply or sewer service corporation must~~ file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed in the corresponding docket. The signed contract, bill of sale, or other documents, must be signed by both the transferor and transferee. The transferor and transferee shall also file~~been made final and~~ documentation as evidence that customer deposits have been transferred or refunded to the customer~~customer~~ with interest as required by this section~~these rules~~.

~~(h)~~ ~~If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, merger, consolidation, or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.~~

~~(p)~~ 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 as proposed. If the sale has not been consummated within that period and unless the transferee or transferor have requested and received an extension from the commission, the approval is void.

~~(q)~~ If the commission does not require a hearing, and the transaction is closed as proposed, the commission may issue an order approving the transaction.

(r)(+) 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 certificate of public convenience and necessity that is not completed in accordance with the provisions of ~~the~~ TWC §13.301 is void.

(s)(+) The requirements of ~~the~~ TWC §13.301 do not apply to:

- (1) the purchase of replacement property;
- (2) a transaction under ~~the~~ TWC §13.255; or
- (3) foreclosure on the physical assets of a utility.

(t)(+) 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 certificate of convenience and necessity or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee and to the commission before the date of the sale or transfer a written disclosure relating to the contributions. 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.

(u)(4) A retail public utility that holds a CCN, or that is required by law to hold a CCN, that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area or controlling interest shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities. A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

§24.110. Foreclosure and Bankruptcy.

- (a) If a utility that is required by law to possess a certificate of convenience and necessity (CCN)~~A utility that~~ receives notice that all or a portion of the utility's or system's facilities or property used to provide utility service ~~is~~^{are} being posted for foreclosure, the utility shall notify the commission in writing of that fact and shall provide a copy of the foreclosure notice to the commission not later than the tenth day after the date on which the retail public utility or system receives the notice.
- (b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing retail public water or sewer services~~utility service~~ unless the person has a completed application for a CCN~~certificate of convenience and necessity~~ or to transfer the current CCN~~certificate of convenience and necessity~~ on file with the commission within 30 days after the foreclosure is completed.
- (c) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by TWC₇ §13.301, but shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

- (d) The financial institution may operate the utility for an interim period not to exceed 12 months before selling, transferring, merging, consolidating, acquiring, leasing, or renting its facilities or otherwise obtaining a CCN unless the commission in writing extends the time period for good cause shown~~transferring or otherwise obtaining a certificate of convenience and necessity unless the commission in writing extends the time period.~~ A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.
- (e) Not later than the 48th hour after a retail public~~the hour in which a~~ utility files a bankruptcy petition, the retail public utility shall report this fact to the commission and the TCEQ in writing.

§24.111. Purchase of Voting Stock or Acquisition of a Controlling Interest in a ~~in~~ Another Utility.

- (a) A utility may not purchase voting stock in and a person may not acquire a controlling interest in a utility doing business in this state unless the utility or person files a written application with the commission ~~not~~ later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as a person or a combination of a person and other family members possessing at least 50% of the voting stock of the utility; or a person that controls at least 30% of the stock and is the largest stockholder.
- (b) A person purchasing voting stock or acquiring a controlling interest in a utility ~~shall~~may be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.
- (c) If the person purchasing voting stock or acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require ~~that~~ the person provide financial assurance to ensure continuous and adequate utility service is provided to the CCN service area. The commission shall set the amount of financial assurance. The form of the financial assurance ~~shall~~must be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any

requirements to obtain financial assurance in satisfaction of another state agency's rules.

(d)-(e) (No change.)

~~(f) — The utility or person must notify the commission within 30 days after the date that the transaction is completed.~~

~~(f)(e)~~ If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase of voting stock or acquisition of a controlling interest may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

~~(g) — The utility or person shall notify the commission within 30 days after the date that the transaction is completed.~~

~~(h) — Within 30 days of the commission order that allows the purchase of voting stock or acquisition of a controlling interest to proceed as proposed, the person purchasing voting stock or acquiring a controlling interest shall provide a written update on the status of the transaction, and every 30 days thereafter, until such time that the transaction has been completed.~~

(i) The commission's approval of the purchase of voting stock or acquisition of a controlling interest in a utility expires 180 days following the date of the commission order that allows the purchase of stock or a controlling interest to proceed as proposed. If the transaction has not been consummated within the 180-day time period and unless the utility or person purchasing voting stock or acquiring a controlling interest has requested and received an extension from the commission, the approval is void.

§24.112. Transfer of Certificate of Convenience and Necessity. (REPEALED)**§24.115. Cessation of Operations by a Retail Public Utility.**

(a) Any retail public utility which possesses or is required to possess a certificate of convenience and necessity (CCN) desiring to discontinue, reduce or impair retail water or sewer utility service, except under the conditions listed in ~~the~~ TWC, §13.250(b), must file a petition with the commission which sets out:

(1)-(3) (No change.)

(4) the area affected by the action, including maps as described by §24.106~~(e)(1)-~~ (2)(f)(+) of this title (relating to Notice and Mapping Requirements for Certificates of Convenience and Necessity Applications).

(b) The retail public utility shall file a proposed notice to customers and any other affected parties. The proposed notice shall include:~~The retail public utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following:~~

(1) the name, CCN number(s) (if any), and mailing~~business~~ address, and business telephone number of the retail public utility which seeks to cease operations;

(2) (No change.)

(3) the anticipated effect of the cessation of operations on the rates and services provided to the customers; and

- (4) ~~and~~ a statement that ~~persons(s)~~~~persons~~ who wish to intervene or comment upon the action sought should file a request to intervene or comments with the commission at the commission's mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 ~~within 30 days of mailing or publication of notice, whichever occurs later.~~
- (c) After reviewing and, if necessary, modifying the proposed notice. ~~review by~~ the commission will provide the notice to; the applicant for mailing shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the outer boundary of the petitioner's service area and any city whose extraterritorial jurisdiction overlaps the ~~petitioner's~~~~applicant's~~ service area, ~~and to~~ the customers of the ~~petitioner~~~~applicant~~ proposing to cease operations, and to any person(s) that have requested service from the petitioner but that have not yet received service.
- (d) The ~~petitioner~~~~applicant~~ may be required by the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the ~~county(ies)~~~~county~~ of operation which shall include, in addition to the information specified in subsection (b) of this section:
- (1) (No change.)
 - (2) the name, CCN number(s) (if any), and mailing address of the owner(s) or authorized representative~~owner~~ of the retail public utility; and

- (3) the business telephone of the retail public utility.
- (e) The commission may require the ~~petitioner~~applicant to deliver notice to other affected persons or agencies.
- (f) If, 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing is requested, the commission may consider the ~~petition~~application for final decision without further hearing.
- (g) If a hearing is requested, the ~~petition~~application will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).
- (h) In no circumstance may a retail public utility which possesses or is required to possess a ~~CCN certificate of convenience and necessity~~, a person who possesses facilities used to provide retail water or sewer utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a ~~CCN certificate of convenience and necessity~~ pursuant to §24.103 of this title (relating to Certificates Not Required) cease operations without commission authorization.
- (i) In determining whether to grant authorization to the retail public utility for discontinuation, reduction, or impairment of retail water or sewer utility service, the commission shall consider, but is not limited to, the following factors:

- (1) the effect on the ~~customer(s)~~customers and ~~landowner(s)~~landowners;
 - (2) the costs associated with bringing the ~~utility~~system into compliance;
 - (3) (No change.)
 - (4) the applicant's efforts to sell the ~~utility~~system, such as running advertisements, contacting similar adjacent retail public utilities, or discussing cooperative organization with the customers;
 - (5) the asking price for purchase of the ~~utility~~system as it relates to the undepreciated original cost of the system for ratemaking purposes;
 - (6)-(8) (No change.)
- (j) If a utility ~~abandons~~~~does~~ ~~abandon~~ operation of its facilities without commission authorization, the commission may appoint a temporary manager or place the utility into supervision to take over operations, management, and finances of the utility and its facilities to ensure continuous and adequate retail water and/or sewer utility service is provided.

§24.117. Contracts Valid and Enforceable.

- (a) Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the corresponding certificates of ~~public~~ convenience and necessity (CCNs). This section is applicable to the transfer of service area(s) and customer(s) only between existing CCN holders. Nothing in this provision negates the requirements of TWC, §13.301 to obtain a new CCN and document the transfer of assets and facilities between retail public utilities.
- (b) Retail public utilities may request approval of a contract by filing a written petition with the commission~~contracts by filing a written request with the commission~~ including:
- (1) maps of the area(s)~~area~~ to be transferred pursuant to §24.119(a) of this title (relating to Filing of Maps);
 - (2) a copy of the executed contract or agreement;
 - (3) the number of customer(s) to be transferred, if any;~~if applicable, an affidavit that notice has been provided under TWC, §13.301; and~~
 - (4) information described in subsection (c)(3) of this section; and
 - (5)~~(4)~~ any other information required by the commission.

(c) For the purpose of this section, notice under §24.106 of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) does not apply. Notice for a petition requesting approval of a contract between retail public utilities designating areas to be served and customers to be served shall be as follows:

- (1) if there are affected customers to be transferred as part of the contract, then individual notice to the affected customers shall be provided by mail, e-mail, or hand delivery. The notice must contain the current rates, the effective date those rates were instituted, and any other information required by the commission;
- (2) if the decision to enter into a contract between parties designating area to be transferred was discussed at a city council, board meeting of a water supply or sewer service corporation, district board meeting, county commissioner's court, or other regulatory authority meeting, a copy of the meeting agenda and minutes where the item was discussed may be considered sufficient notice;
- (3) if notices pursuant to paragraphs (1) and/or (2) of this subsection were provided, an affidavit attesting to the date that notice was provided and copies of the items in paragraphs (1) and (2) of this subsection.

§24.118. Contents of Request for Cease and Desist Order by the Commission Under TWC §13.252.~~Contents of Request for Commission Order Under the Texas Water Code, §13.252.~~

(a) If a retail public utility in constructing or extending a line, plant or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of ~~public~~ convenience and necessity (CCN), the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following:

- (1) the name, CCN number(s) (if applicable), e-mail address, phone number, and mailing~~business~~ address of the retail public utility making the request;
- (2) the name, CCN number(s) (if applicable), mailing address, phone number (if known) and e-mail address (if known)~~and business address~~ of the retail public utility which is to be the subject of the order.
- (3) a description of the alleged interference;
- (4) a map showing the service area of the requesting utility which clearly shows the location of the alleged interference;
- (5) copies of any other information or documentation which would support the position of the requesting utility; and

(6) other information as required by the commission ~~may require~~.

(b) A request for commission order under this section shall be filed with the commission in the form of a petition and shall contain the necessary information under subsection (a) of this section. The petition must be filed within 180 days from the date the petitioner becomes aware that another retail public utility is interfering or attempting to interfere with the operation of a line, plant or system or making available, rendering or extending retail water or sewer utility service to any portion of another retail public utility that possesses or is required to possess a CCN, unless the petitioner can demonstrate good cause for its failure to file such action within the 180 days.

§24.119. Filing of Maps.

(a) Applications to obtain or amend a certificate of convenience and necessity (CCN)

shall contain:

(1) a small scale (general location) map showing only the location of the proposed service area(s) in the vicinity of the nearest town, city, or county;

(2) a large scale (detailed) map showing only the proposed service area(s) with enough detail to accurately locate the proposed service area(s) in reference to verifiable landmarks, such as roads, rivers, or railroads;

(3) a metes and bounds survey and/or a recorded plat of the proposed service area(s) certified by a licensed state land surveyor or a registered professional land surveyor; or digital mapping data using an industry standard file format, acceptable to the commission containing feature class subcomponents of a geodatabase and capable of being manipulated by the commission staff. The digital mapping data shall be provided in a coordinate system and datum (project) in either Texas State Plane Coordinate System or a projection the commission utilizes; and

(4) if applicable, a map(s) showing any facilities for production, transmission, and distribution of its services, customers, or area currently being served outside its certificated areas. Facilities shall be shown on subdivision plats, engineering planning maps, or other large scale maps. Color coding~~With applications to obtain or amend a certificate of convenience and necessity, each public utility and water supply or sewer service corporation shall file~~

~~with the commission a map or maps of the area or areas being requested in the application showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas. Facilities shall be shown on United States Geological Survey 7.5" minute series maps, subdivision plats, engineering planning maps, or other large scale maps. A color code may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location.~~

(b) All maps should be filed pursuant to §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (Formal Requisites of Pleadings and Documents to be Filed with the Commission).

§24.120. Single Certification in Incorporated or Annexed Areas.

- (a) ~~If in the event that~~ an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides retail water or sewer utility service to all or part of the area under a certificate of convenience and necessity (CCN) may agree in writing that all or part of the CCN area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase “franchised utility”~~franchised utility~~ means a retail public utility that has been granted a franchise by a municipality to provide retail water or sewer utility service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed on a completed form prescribed by the commission for an application pursuant to TWC §13.255, along with mapping information filed in accordance with §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications). After these items have been properly filed, the commission, with the commission and the commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective CCN~~certificates of convenience and necessity~~ of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail water or sewer utility service to the area, the municipality, prior to providing service to the area, shall file a completed~~an~~ application with the commission along with the corresponding mapping information in accordance with §24.106(e) to grant single certification to the municipally owned retail water or sewer utility or to a franchised utility. The municipality shall also provide to the retail public utility a copy of the application and corresponding mapping information filed with the commission. If an application for single certification is filed without an executed agreement between the parties to the agreement, the commission shall fix a time and place for a hearing and shall give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility. Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

- (1) file a written list with the name(s) and address(es) of the lienholder(s) and the amount of outstanding debt with the commissions~~submit to the commission a written list with the names and addresses of the lienholders and the amount of debt; and~~
- (2) notify the lienholder(s)~~lienholder~~ of the decertification process and request that the lienholder(s)~~lienholder~~ provide information to the commission

sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

- (c) The commission shall grant single certification to the municipality. The commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the commission shall also determine in its order the adequate and just compensation to be paid for such property under the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered under TWC, §13.255(d) or (e). The ~~granting~~ of single certification by the commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation in accordance with the court order, or pays an amount into the registry of the court or to the retail public utility under TWC, §13.255(f). If the court judgment provides that the retail public utility is not entitled to any compensation, the ~~granting~~ of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being

acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the name and contact information~~identity~~ of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d)-(h) (No change.)

(i) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right under TWC~~;~~ §13.255(f).

(j) (No change.)

(k) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the CCN~~certificated~~ area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under TWC~~;~~ Chapter 65, or a fresh water supply district under TWC~~;~~ Chapter 53; or

(2) (No change.)

(l)-(m) (No change.)

- (n) The commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the TCEQ's minimum design requirements for public drinking water and/or has failed to demonstrate compliance with TCEQ's wastewater permit rules~~The commission shall deny an application for single certification by a municipality that fails to obtain a finding from TCEQ that it is will demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems, pursuant to 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems).~~

§24.142. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.

(a) The commission, after providing to ~~a~~the utility notice and an opportunity for a hearing, may authorize a willing person, municipality, or political subdivision to temporarily manage ~~and/or~~and operate a utility that:

(1) (No change.)

(2) is being referred to the attorney general for the appointment of a receiver under TWC, §13.412 for:

(A-C) (No change.)

(b) The commission may appoint a person, municipality, or political subdivision under this section by emergency order under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities). A corporation may be appointed as a temporary manager.

(c)-(d) (No change.)

§24.143. Operation of a Utility by a Temporary Manager.

- (a) By emergency order under TWC, ~~§5.507 and~~ §13.4132, the commission may appoint a person, municipality, or political subdivision under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities) to temporarily manage ~~and/or~~ operate a utility that has discontinued or abandoned operations or the provision of service, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC, §13.412.
- (b) A person, municipality, or political subdivision appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate ~~services~~ services to customers, including the power and duty to:
- (1-9) (No change.)
- (c) (No change.)
- (d) The temporary manager shall serve a term of 180 days~~one year~~, unless:
- (1-4) (No change.)
- (e)-(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 22nd DAY OF JULY 2016 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**