

PROJECT NO. 46151

**PROJECT TO AMEND 16 TEX.
ADMIN. CODE SECTION 24.113
RELATING TO REVOCATION OR
AMENDMENT OF A WATER OR
SEWER CERTIFICATE AND
SECTION 24.120 RELATING TO
SINGLE CERTIFICATION IN
INCORPORATED OR ANNEXED
AREAS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF REPEAL OF §24.113 AND §24.120 AND NEW
§24.113 AND §24.120, AS APPROVED AT THE DECEMBER 1, 2016 OPEN
MEETING**

The Public Utility Commission of Texas (commission) proposes the repeal of §24.113 relating to revocation or amendment of a certificate of convenience and necessity and §24.120 relating to single certification in incorporated or annexed areas. The commission also proposes adoption of new §24.113 relating to revocation or amendment of a certificate of convenience and necessity and new §24.120 relating to single certification in incorporated or annexed areas. The proposed repeals and new sections will update provisions, and provide more clarity, regarding certificate of convenience and necessity (CCN) cancellations, revocations, and amendments, including amendments by expedited release, streamlined expedited release, and single certification in areas that have been incorporated or annexed by a municipality. Project Number 46151 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 sections.

Ms. Benter has determined that, for each year of the first five-year period 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 CCN revocations, amendments by expedited release or streamlined expedited release, and single certification in incorporated or annexed 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 the sections as proposed.

Ms. Benter has also determined that, for each year of the first five-year period 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 under 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 February 13, 2017. The request for a public hearing must be received by January 31, 2017.

Comments on the proposed repeals and new sections may be filed with the filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by January 17, 2017. Sixteen copies of comments to the proposed amendment must be filed as required by §22.71(c) of this title. Reply comments may be filed no later than January 31, 2017. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed repeals and new section. The commission will consider the costs and benefits in deciding whether to adopt the proposed repeals and new sections. All comments should refer to Project Number 46151.

In addition, the commission solicits input on the following questions regarding the proposed new rules:

1. Should the proposed rules specify what qualifications, such as but not limited to, licensure or certification, a qualified appraiser must have?
2. If so, what qualifications should be required?

These repeals and new sections are proposed under the Texas Water Code (TWC) §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.2451(c), which permits the commission to amend the certificated service area of a municipality outside of the

municipality's extraterritorial jurisdiction under certain circumstances; TWC §13.254, which allows the commission to revoke or amend a certificate of convenience and necessity under certain circumstances; TWC §13.255, which requires the commission to grant single certification to a municipality or franchised utility under certain circumstances for an area that has been incorporated or annexed; and §13.2551, which grants the commission authority to place certain conditions on a revocation or amendment ordered under TWC §§13.254 or 13.255.

Cross Reference to Statutes: TWC §§13.041(b), 13.2451(c) 13.254, 13.255, 13.2551.

§24.113. Revocation or Amendment of Certificate. (REPEAL)

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

- (a) **Applicability.** This section applies to revocation or amendment of a certificate of convenience and necessity (CCN).
- (b) **Definitions.**
- (1) **Alternate retail public utility** -- The retail public utility from which a landowner plans to request service after the landowner obtains expedited release under subsection (k) of this section. An alternate retail public utility is limited to the following:
 - (A) an existing retail public utility; or
 - (B) a district proposed to be created under Article 16, §59 or Article 3, §52 of the Texas Constitution.
 - (2) **Current CCN holder** -- An entity that currently holds a CCN to provide service to an area for which revocation or amendment is sought.
 - (3) **Former CCN holder** -- An entity that formerly held a CCN to provide service to an area that was removed from the entity's service area by revocation or amendment under this section.
 - (4) **Prospective retail public utility** -- A retail public utility seeking to provide service to a requested area or to a removed area.
 - (5) **Removed area** -- Area that has been removed under this section from the certificated service area of a former CCN holder.

- (6) **Useless or valueless property** -- Property that has been rendered useless or valueless to a former CCN holder by revocation or amendment, including by expedited release or streamlined expedited release, under this section.
- (c) A CCN or other order of the commission in any proceeding under this section does not create a vested property right.
- (d) An order of the commission issued under this section does not transfer any property, except as provided under subsection (p) of this section.
- (e) A former CCN holder shall not be required to provide service within the removed area.
- (f) If the CCN of any retail public utility is revoked or amended, the commission may by order require one or more other retail public utilities to provide service in the removed area, if the other retail public utility that is to provide service consents.
- (g) **Cancellation.** Upon written request from the current CCN holder, the commission may cancel the CCN if the current CCN holder is authorized to operate without a CCN under §24.103(c) or (e) of this title relating to certificate of convenience and necessity not required.
- (h) **Revocation or amendment by consent.** The commission may revoke or amend any CCN with the written consent of the current CCN holder after notice and a hearing.

(i) **Revocation or amendment.**

(1) At any time after notice and a hearing, the commission may revoke or amend any CCN if the commission finds that any of the circumstances identified in this paragraph exist.

(A) The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area.

(B) The current CCN holder is in an affected county, and the cost of providing service by the current CCN holder is so prohibitively expensive as to constitute denial of service. Absent other relevant factors, for commercial developments started after September 1, 1997 or residential developments started after September 1, 1997, the fact that the cost of obtaining service from the current CCN holder makes the development economically unfeasible does not render such cost prohibitively expensive.

(C) The current CCN holder has agreed in writing to allow another retail public utility to provide service within its certificated service area, except for an interim period, without amending its CCN.

(D) The current CCN holder has failed to file a cease-and-desist action under TWC §13.252 within 180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area,

unless good cause is demonstrated for failure to file the cease-and-desist action within 180 days.

- (2) Within 15 calendar days after the filing of a petition for revocation or amendment of a CCN under this subsection, the current CCN holder shall complete all of the actions listed in this paragraph.
 - (A) The current CCN holder shall file a written list of the names and addresses of any lienholders and the amounts of outstanding debt owed to each lienholder for only the portions of the liens specific to the requested area.
 - (B) The current CCN holder shall notify the lienholders of the petition.
 - (C) The current CCN holder shall request that the lienholders provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the certificated service area that would be removed from the current CCN holder's CCN.
- (3) **Mapping Information.** For petitions filed under this subsection or under subsection (j) of this section, mapping information is required for the requested area in accordance with §24.119 of this title relating to mapping requirements for certificate of convenience and necessity application.
 - (j) After notice to a municipality and an opportunity for a hearing, the commission may remove from the municipality's certificated service area an area that is located outside the municipality's extraterritorial jurisdictional boundary if the municipality has not

provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area. This subsection does not apply to an area that was transferred to a municipality's certificated service area by the commission and for which the municipality has spent public funds.

(k) **Expedited release.**

- (1) This subsection provides an alternative to revocation or amendment under subsections (h) or (i) of this section.
- (2) An owner of a tract of land may petition the commission for expedited release of all or a portion of the tract of land from a current CCN holder's certificated service area if the tract of land is at least 50 acres in size and is not in a platted subdivision actually receiving service.
- (3) The fact that a current CCN holder is a borrower under a federal loan program does not prevent either the granting of a petition under this subsection or an alternate retail public utility from providing service to the removed area.
- (4) A landowner may not file a petition under this subsection until at least 90 calendar days after the landowner has submitted the notice required by paragraph (5) of this subsection to the current CCN holder.
- (5) The landowner shall submit to the current CCN holder a written request for service, other than a request for standard residential or commercial service. The written request shall identify the following:
 - (A) the tract of land or portion of the tract of land for which service is sought;

- (B) the time frame within which service is needed for current and projected service demands in the tract of land;
 - (C) the reasonable level and manner of service needed for current and projected service demands in the area;
 - (D) the approximate cost for the alternate retail public utility to provide service at the same level, and in the same manner, that is requested from the current CCN holder;
 - (E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested, if any; and
 - (F) any additional information requested by the current CCN holder that is reasonably related to determining the capacity or cost of providing service at the level, in the manner, and in the time frame, requested.
- (6) The landowner shall demonstrate the following in the petition:
- (A) the tract of land is at least 50 acres in size and is not in a platted subdivision actually receiving service;
 - (B) a written request
 - (i) was submitted by the landowner to the current CCN holder at least 90 calendar days before the petition was filed, and
 - (ii) complied with paragraph 5 of this subsection;
 - (C) the current CCN holder
 - (i) has refused to provide service;

- (ii) cannot provide service as identified in the notice provided under paragraph (5)(A)-(D) of this subsection on a continuous and adequate basis; or
 - (iii) conditions the provision of service on the payment of costs not properly allocable directly to the landowner's service request, as determined by the commission;
 - (D) the alternate retail public utility can provide service as identified in the notice provided under paragraph (5)(A)-(D) of this subsection on a continuous and adequate basis; and
 - (E) a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner files the petition with the commission.
- (7) The landowner shall file, as part of the petition, the mapping information described in subsection (m) of this section.
- (8) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 30 calendar days.
- (9) A presiding officer shall determine whether the petition is administratively complete. When the petition is determined to be administratively complete, the presiding officer shall establish a procedural schedule that is consistent with paragraph (10) of this subsection. The presiding officer may dismiss the petition if the petitioner fails to supplement or amend the petition after the presiding officer has determined that the petition is not administratively complete.

- (10) The commission shall grant the petition within 60 calendar days from the date the petition was found administratively complete unless the commission makes an express finding that the landowner failed to satisfy all of the requirements of this subsection. The commission shall support its express finding with separate findings of fact and conclusions of law for each requirement based solely on the information provided by the landowner and the current CCN holder. The commission may condition the granting or denial of a petition on terms and conditions specifically related to the landowner's service request and all relevant information filed by the landowner and the current CCN holder.
- (11) Chapter 2001 of the Texas Government Code does not apply to any petition filed under this subsection. The commission's decision on the petition is subject to rehearing on the same timeline that applies to other final orders of the commission. The commission's order ruling on the petition may not be appealed.
- (12) **Finding regarding never having made service available.**
- (A) The commission is required to find only that the alternate retail public utility can provide the requested service if the current CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations to provide service to the tract of land. In such instance, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder.

- (B) This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:
- (i) the county has a population of more than 30,000 and less than 35,000 that borders the Red River;
 - (ii) the county has a population of more than 100,000 and less than 200,000 that borders a county described by clause (i) of this subparagraph;
 - (iii) the county has a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or
 - (iv) the county has a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.
- (C) The commission will maintain on its website a list of counties that are presumed to meet the requirements of subparagraph (B) of this paragraph.
- (13) If the petitioner is a proposed district, then the commission may condition the release and CCN amendment or revocation on the final and unappealable creation of the district. The duty of the proposed district to provide continuous and adequate service is held in abeyance until this condition is satisfied.
- (14) The commission may require an award of compensation to the former CCN holder under subsections (n) and (o) of this section.
- (15) No later than 30 calendar days after a petition filed under this subsection is granted, the petitioner shall file a petition under subsection (n) of this section.

(l) **Streamlined expedited release.**

- (1) This subsection provides an alternative to the following:
 - (A) revocation or amendment under subsections (h) or (i) of this section; or
 - (B) revocation or amendment by expedited release under subsection (k) of this section.
- (2) The owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if the following conditions are met:
 - (A) the tract of land is at least 25 acres in size;
 - (B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and
 - (C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.
 - (D) A qualifying county under subparagraph (C) of this paragraph does not have a population of more than 45,000 and less than 47,500 and is a county
 - (i) with a population of at least one million,
 - (ii) adjacent to a county with a population of at least one million, or
 - (iii) with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a

total enrollment in the most recent fall semester of 40,000 or more.

- (iv) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this subparagraph.
- (3) A landowner seeking streamlined expedited release under this subsection shall simultaneously file the information listed in this paragraph with the commission.
- (A) The landowner shall file a petition that is verified through a notarized affidavit that contains the following information:
- (i) a statement that the petition is being filed under TWC §13.254(a-5) and this subsection;
 - (ii) proof that the tract of land is at least 25 acres in size;
 - (iii) proof that at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county;
 - (iv) a statement of facts that demonstrate that the tract of land is not currently receiving service;
 - (v) copies of all deeds demonstrating ownership of the tract of land by the landowner; and
 - (vi) proof that a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner files the petition with the commission; and

- (B) the mapping information described in subsection (m) of this section.
- (4) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 30 calendar days.
- (5) Within 15 calendar days after the filing of the petition, the current CCN holder shall comply with all of the requirements listed in this paragraph.
- (A) The current CCN holder shall file with the commission a list of the names and addresses of any lienholders and the amounts of outstanding debt owed to each lienholder for only the portions of the liens specific to the area that would be removed from the current CCN holder's certificated service area.
- (B) The current CCN holder shall notify the lienholders of the petition and request that the lienholders provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area that would be removed from the current CCN holder's certificated service area.
- (C) The current CCN holder shall certify to the commission that it has provided the notice required under subparagraph (B) of this paragraph.
- (6) The commission shall grant a petition filed under this subsection no later than the 60th calendar day after a presiding officer by order determines that the petition is administratively complete.
- (7) The fact that a CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection.

- (8) The commission may require an award of compensation by the landowner to the former CCN holder.
- (9) No later than 30 days after the date that the order granting a petition under this subsection is signed, the petitioner shall file a petition under subsection (n) of this section.

(m) **Mapping information.**

- (1) For proceedings under subsections (k) or (l) of this section, the following mapping information must be filed:
 - (A) a general location map identifying the tract of land in reference to the nearest county boundary, city, or town;
 - (B) a detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. If ownership of the tract of land is conveyed by multiple deeds, this map should also identify the location and acreage of land conveyed by each deed; and
 - (C) one of the following for the tract of land:
 - (i) a metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;
 - (ii) a recorded plat; or
 - (iii) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US

Feet) or in NAD 83 Texas Statewide Mapping System (Meters).

The digital mapping data shall include a single, continuous polygon record.

- (2) Commission staff may request additional mapping information.
 - (3) All maps shall be filed in accordance with §22.71 of this title and §22.72 of this title.
- (n) **Determination of property rendered useless or valueless.**
- (1) **Applicability.** A proceeding under this subsection may be initiated only after the revocation or amendment of a CCN under this section. A proceeding under this subsection may not be initiated after a proceeding under subsection (j) of this section.
 - (2) A retail public utility may not provide service directly or indirectly to the public in a removed area until any compensation ordered under subsection (o) of this section is provided to the former CCN holder.
 - (A) Such compensation shall be for useless or valueless property, as such is determined by the commission.
 - (B) Such compensation is not required if the former CCN holder agreed in writing to the revocation or amendment under this section.
 - (3) The former CCN holder has a right to intervene in a proceeding under this subsection unless a determination is made under paragraph (6) of this subsection that the former CCN holder no longer exists.

- (4) There is a rebuttable presumption that there is no useless or valueless property if the former CCN holder fails to intervene by the intervention deadline established by the presiding officer. Upon motion and proof of service consistent with the requirements of paragraph (7)(C) of this subsection, the presiding officer may issue an order determining that there is no useless or valueless property.
- (5) If a landowner, prospective retail public utility, or alternate retail public utility reasonably believes that the former CCN holder no longer exists, the landowner, prospective retail public utility, or alternate retail public utility shall file an affidavit stating the following information:
 - (A) a statement that it believes the former CCN holder no longer exists;
 - (B) a description of the actions taken to locate the former CCN holder and the results of those actions; and
 - (C) any other facts that support its belief that the former CCN holder no longer exists.
- (6) If the former CCN holder fails to file a response within 30 calendar days after an affidavit is filed under paragraph (5) of this subsection, the presiding officer shall determine either that the requirements of paragraph (5) of this subsection have not been met or that the former CCN holder no longer exists.
- (7) A petition under this subsection shall include the following information:
 - (A) a statement that it is a petition under TWC §§13.254(d)-(g-1) and this subsection;

- (B) the docket number of the proceeding in which the commission revoked or amended the former CCN holder's CCN;
 - (C) a statement that a copy of the petition has been mailed to the former CCN holder via certified mail on the day that the petition is filed with the commission; and
 - (D) if applicable, either a written agreement between the former CCN holder and the prospective retail public utility or an affidavit from the former CCN holder stating that there is an agreement and the agreed compensation has been paid. If an agreement is filed, the agreement shall not be evidence in a future rate case.
- (8) The former CCN holder and the petitioner may reach an agreement at any time during the pendency of a proceeding under this subsection regarding what property is useless or valueless property or what is the appropriate amount of compensation for such property. If the former CCN holder and the petitioner reach an agreement under this paragraph, the agreement shall be considered by the commission for approval by an order.
- (9) **Referral to SOAH.**
- (A) If an agreement under paragraph (8) of this subsection is not filed within 30 calendar days of the filing of a petition under this subsection, the presiding officer shall issue an order determining whether the petition meets the requirements of paragraph (7) of this subsection.
 - (B) If the presiding officer determines that the petition meets the requirements of paragraph (7) of this subsection, the proceeding shall

be referred to the State Office of Administrative Hearings (SOAH) for a hearing.

(10) **Hearing at SOAH.**

(A) A hearing at SOAH under this subsection shall be limited to determining what property is useless or valueless property.

(B) The former CCN holder bears the burden to prove what property is useless or valueless property.

(C) The SOAH administrative law judge shall issue a proposal for decision for the commission's consideration.

(11) The commission shall issue an order identifying what property, if any, is useless or valueless property. This order is the commission's final determination of what property, if any, is useless or valueless property, subject to motions for rehearing in accordance with commission rules.

(12) If the commission determines that there is not any useless or valueless property, then no proceeding under subsection (o) of this section is required.

(o) **Compensation for property rendered useless or valueless.**

(1) **Notice of intent to provide service.**

(A) After the commission has issued its order under subsection (n) of this section, if a prospective retail public utility and a former CCN holder have not agreed on compensation, then the prospective retail public utility shall file a notice of intent to provide service.

- (B) A notice of intent to provide service may be filed only after the commission has issued its order under subsection (n) of this section. A notice of intent filed before the commission issues its order under subsection (n) of this section is deemed to be filed on the date the commission's order is signed.
- (C) The notice of intent to provide service shall include all of the information required by this subparagraph.
 - (i) The notice of intent shall state that it is a notice of intent to provide service under TWC §13.254(e) and this subsection.
 - (ii) If applicable, the notice of intent shall include an agreement between the former CCN holder and the prospective retail public utility regarding compensation for the useless or valueless property. If an agreement is filed, the agreement shall not be evidence in a future rate case.
- (2) After the notice of intent to provide service is filed, a presiding officer shall establish a procedural schedule. The schedule shall ensure that the total compensation for any property identified in the order issued under subsection (n)(11) of this section will be determined no later than the ninetieth day after the date the notice of intent is filed.
- (3) Within ten calendar days after the filing of the notice of intent to provide service, the prospective retail public utility shall file one of the following items:
 - (A) a letter identifying the qualified individual or firm serving as the agreed independent appraiser;

- (B) a letter stating that the former CCN holder and prospective retail public utility will each engage its own appraiser, at its own expense; or
 - (C) an affidavit meeting the requirements of paragraph (5) of this subsection.
- (4) The former CCN holder has a right to intervene in a proceeding under this subsection unless a determination is made under paragraph (6) of this subsection that the former CCN holder no longer exists.
- (5) If the prospective retail public utility reasonably believes that the former CCN holder no longer exists, the prospective retail public utility shall file an affidavit stating the following:
 - (A) it believes the former CCN holder no longer exists;
 - (B) the actions taken to locate the former CCN holder and the results of those actions; and
 - (C) any other facts that support the prospective retail public utility's belief that the former CCN holder no longer exists.
- (6) If the former CCN holder fails to file a response or an appraisal within 30 calendar days after the prospective retail public utility files an affidavit under paragraph (5) of this subsection, the presiding officer shall determine either that the requirements of paragraph (5) of this subsection have not been met or that the former CCN holder no longer exists. No compensation is required if the presiding officer determines that the former CCN holder no longer exists. The presiding officer shall issue an order memorializing this determination, and it shall be the final act of the commission, subject to motions for rehearing.

- (7) If the former CCN holder and the prospective retail public utility agree on a qualified individual or firm to serve as an independent appraiser, then all of the requirements listed in this paragraph apply.
 - (A) The independent appraiser shall be limited to appraising the useless or valueless property.
 - (B) The former CCN holder and the prospective retail public utility shall file the appraisal within 65 calendar days after the filing of the notice of intent to provide service.
 - (C) The prospective retail public utility shall bear the costs of the independent appraiser.
 - (D) The commission is bound by the independent appraiser's valuation of the useless or valueless property. The commission shall review the valuation to ensure compliance with the requirements of this section.
- (8) If the former CCN holder and the prospective retail public utility do not agree on an independent appraiser, each shall engage its own qualified appraiser, at its own expense.
 - (A) Each appraiser shall be limited to appraising the useless or valueless property.
 - (B) Each appraiser shall file its appraisal with the commission within 60 calendar days after the filing of the notice of intent to provide service.
 - (C) After the two appraisals are filed, the commission shall appoint a qualified individual or firm to serve as a third appraiser who shall make

a valuation within 30 calendar days of the date the independent appraisals are filed.

- (D) The third appraiser's valuation shall be limited to the useless or valueless property and may not be less than the lower appraisal valuation or more than the higher appraisal valuation.
 - (E) The former CCN holder and the prospective retail public utility shall each pay one-half of the cost of the third appraisal. Payment shall be made directly to the third appraiser. Proofs of payment shall be separately filed with the commission by the former CCN holder and the prospective retail public utility.
 - (F) The commission is bound by the third appraiser's valuation of the useless or valueless property. The commission shall review the valuation to ensure compliance with the requirements of this section.
- (9) **Valuation of real property.** The value of real property that the commission identified in the order issued under subsection (n)(11) of this section shall be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.
- (10) **Valuation of personal property.** The value of personal property that the commission identified in the order issued under subsection (n)(11) of this section shall be determined according to this paragraph. To ensure that compensation to a former CCN holder is just and adequate, the following factors shall be used in valuing such personal property:

- (A) the amount of the former CCN holder's debt allocable to service to the removed area;
 - (B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;
 - (C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;
 - (D) the amount of the former CCN holder's contractual obligations allocable to the removed area;
 - (E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;
 - (F) the impact on future revenues lost from existing customers;
 - (G) necessary and reasonable legal expenses and professional fees; and
 - (H) any other relevant factors as determined by the commission.
- (11) If the presiding officer determines that all requirements of this subsection have been met, the presiding officer shall issue an order setting the compensation due to the former CCN holder at the valuation established by the appraisal. This order shall be the final act of the commission, subject to motions for rehearing. Alternatively, the presiding officer may issue a proposed order for consideration by the commission.

(p) Additional conditions.

- (1) If the current CCN holder did not agree in writing to a revocation or amendment sought under this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:
 - (A) ordering the prospective retail public utility to provide service to the entire service area of the current CCN holder; and
 - (B) transferring the entire CCN of the current CCN holder to the prospective retail public utility.
- (2) The commission shall order the prospective retail public utility to provide service to the entire service area of the current CCN holder if the commission finds that the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers.
 - (A) The commission shall order the prospective retail public utility to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the prospective retail public utility's other customers and shall establish the terms under which service must be provided.
 - (B) The commission may order any of the following terms:
 - (i) transfer of debt and other contract obligations;
 - (ii) transfer of real and personal property;
 - (iii) establishment of interim rates for affected customers during specified times; and

- (iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.
- (3) The prospective retail public utility shall not charge the affected customers any transfer fee or other fee to obtain service, except for the following:
 - (A) the prospective retail public utility's usual and customary rates for monthly service, or
 - (B) interim rates set by the commission, if applicable.
- (4) If the commission orders the prospective retail public utility to provide service to the entire service area of the current CCN holder, the commission shall not order compensation to the current CCN holder, and the prospective retail public utility shall not file a petition under subsection (n) of this section or a notice of intent under subsection (o) of this section.

§24.120. Single Certification in Incorporated or Annexed Areas. (REPEAL)

§24.120 Single Certification in Incorporated or Annexed Areas.

- (a) **Applicability.** This section applies to a requested area that also meets the following criteria:
- (1) the requested area has been incorporated or annexed by a municipality;
 - (2) a retail public utility provides service to the requested area under a certificate of convenience and necessity (CCN); and
 - (3) the retail public utility that holds the CCN under which the requested area is currently certificated is one of the following:
 - (A) a water supply or sewer service corporation, a special utility district under chapter 65 of the Texas Water Code, or a fresh water supply district under chapter 53 of the Texas Water Code; or
 - (B) not a water supply or sewer service corporation, and its service area is located entirely within the boundaries of a municipality that has a population of at least 1.7 million according to the most recent federal census.
- (b) **Definitions.** In this section, the following words and terms have the definitions provided by this subsection.
- (1) **Impaired property** -- Property remaining in the ownership of the current CCN holder after single certification that would sustain damages from the transfer of property to the municipality.

- (2) **Franchised utility** -- A retail public utility that has been granted a franchise by a municipality to provide service inside the municipal boundaries.
 - (3) **Current CCN holder** -- The retail public utility that holds a CCN to provide service to the municipality's requested area.
 - (4) **Transferred property** -- Property that the municipality has requested be transferred to it or to a franchised utility from the current CCN holder.
 - (5) **Useless or valueless property** -- Property that would be rendered useless or valueless to the current CCN holder by single certification.
- (c) **Notice of intent to provide service in incorporated or annexed area.** A municipality that intends to provide service itself or through a franchised utility to all or part of an annexed or incorporated area shall notify the current CCN holder in writing of the municipality's intent. The written notice to the current CCN holder shall specify the following information:
- (1) the municipality's requested area;
 - (2) any transferred property;
 - (3) the municipal ordinance or other action that annexed or incorporated the municipality's requested area;
 - (4) what kind of service will be provided;
 - (5) whether a municipally owned utility or franchised utility will provide the service; and

- (6) the municipally owned utility's or the franchised utility's identity and contact information.
- (d) **Written agreement regarding service to area.** The municipality and the current CCN holder may agree in writing that all or part of the area incorporated or annexed by the municipality may receive service from a municipally owned utility, a franchised utility, or the current CCN holder, or any combination of those entities.
- (1) If a franchised utility is to provide service to any part of the area, the franchised utility shall also be a party to the agreement.
 - (2) The executed agreement may provide for single or dual certification of all or part of the area incorporated or annexed by the municipality, for the purchase of facilities or property, and may contain any other terms agreed to by the parties.
 - (3) The executed agreement shall be filed with the commission. The commission shall incorporate the agreement's terms into the respective CCNs of the municipality, current CCN holder, and franchised utility, as appropriate.
- (e) **Application for single certification.** If an agreement is not executed within 180 calendar days after the municipality provides written notice under subsection (c) of this section and the municipality intends to provide service to the municipality's

requested area, the municipality shall file an application with the commission to grant single certification to a municipally owned utility or a franchised utility.

- (1) If a franchised utility will provide service to any part of the municipality's requested area, the franchised utility shall join the application.
- (2) The application shall include all of the information listed in this paragraph.
 - (A) The application shall identify the municipal ordinance or other action that annexed or incorporated the municipality's requested area.
 - (B) The application shall identify the type of service that will be provided to the municipality's requested area.
 - (C) The application shall identify the municipally owned utility or franchised utility that will provide service to the municipality's requested area and, if each will serve part of the area, the area that each will serve.
 - (D) The application shall identify contact information for the current CCN holder.
 - (E) The application shall demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems if the municipality owns a public drinking water system.
 - (F) The application shall demonstrate that at least 180 calendar days have passed since the date that the municipality provided written notice under subsection (c) of this section.

- (G) The application shall identify with specificity any property that the municipality requests be transferred from the current CCN holder.
 - (H) The application shall identify the boundaries of the municipality's incorporated area or extraterritorial jurisdiction by providing digital-mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data shall include a single, continuous polygon record.
 - (I) The application shall identify the municipality's requested area by providing mapping information for the requested area in accordance with §24.119 of this title relating to mapping requirements for certificate of convenience and necessity application. Commission staff may request additional mapping information after the application is filed.
- (3) Within 30 calendar days of the filing of the application, commission staff shall file a recommendation regarding whether the application meets the requirements of this subsection.
- (f) **Notices for single-certification application.** The applicant shall send a copy of the application to the current CCN holder by certified mail on the same day that the applicant files the application with the commission.

(g) **Reasonable belief that current CCN holder does not exist.**

- (1) If an applicant reasonably believes that the current CCN holder no longer exists, the applicant shall file an affidavit stating the following information:
 - (A) a statement that it believes the current CCN holder no longer exists;
 - (B) a description of the actions taken to locate the current CCN holder and the results of those actions; and
 - (C) any other facts that support its belief that the current CCN holder no longer exists.
- (2) If the current CCN holder fails to file a response within 30 calendar days after an affidavit is filed under paragraph (1) of this subsection, the presiding officer shall determine either that the requirements of paragraph (1) of this subsection have not been met or that the current CCN holder no longer exists.

(h) **Response to single-certification application.** The current CCN holder shall file a response to the application for single certification in conformance with this subsection.

- (1) The response shall be filed within 40 calendar days of the filing of the application.
- (2) The response shall state the following information:
 - (A) whether the single certification is agreed to; and
 - (B) if there is no agreement for single certification, any conditions that, if met, would cause the current CCN holder to agree to single certification.

- (3) In its response, the current CCN holder shall identify any useless or valueless property, or impaired property, that would result from certification of the municipality's requested area to the municipality.
 - (4) There is a rebuttable presumption that there is no useless or valueless property or impaired property if the current CCN holder fails to timely respond as required under paragraph (1) of this subsection. Upon motion and proof of service consistent with the requirements of subsection (f) of this section, the presiding officer may issue an order determining that there is no useless or valueless property or impaired property.
- (i) **Referral to SOAH.**
- (1) Within 50 calendar days of the filing of the application, a presiding officer shall determine whether an application for single certification meets the requirements of subsection (e) of this section.
 - (2) If the presiding officer determines that the application meets the requirements of subsection (e) of this section, the application shall be referred to the State Office of Administrative Hearings (SOAH) for a hearing. SOAH shall fix a time and place for a hearing on the application and shall notify the current CCN holder, municipality, and franchised utility, if any, of the hearing.
 - (3) Except as provided under paragraph (4) of this subsection, if the presiding officer determines that the application does not meet the requirements of subsection (e) of this section, the applicant shall supplement its application to

correct the identified deficiencies within a timeframe, and under a process, established by the presiding officer.

- (4) The application shall be denied if the municipality fails to demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems. This paragraph does not apply to a municipality that does not own a public drinking water system.

(j) **Hearing at SOAH.**

- (1) The hearing at SOAH shall be limited to determining what property, if any, is useless or valueless property, impaired property, or transferred property.
- (2) The current CCN holder bears the burden to prove what property is useless or valueless property or impaired property.
- (3) The transferred property shall be limited to the specific property identified in the application.
- (4) The SOAH administrative law judge shall issue a proposal for decision for the commission's consideration.

- (k) **Interim order.** The commission shall issue an interim order identifying what property, if any, is useless or valueless property, impaired property, or transferred property.

- (l) **Administrative Completeness.** Section 24.8 of this title relating to administrative completeness does not apply to the determination of administrative completeness under this section. After the commission has issued its interim order under subsection (k) of this section, a presiding officer shall determine that the application for single certification is administratively complete and shall establish a procedural schedule that will allow total compensation for any property identified in the interim order to be determined not later than 90 calendar days after the application is determined to be administratively complete.
- (m) **Valuation of real property.** The value of real property that the commission identified in the interim order issued under subsection (k) of this section shall be determined according to the standards set forth in Texas Property Code, chapter 21, governing actions in eminent domain.
- (n) **Valuation of personal property.** The value of personal property that the commission identified in the interim order issued under subsection (k) of this section shall be determined according to this subsection.
- (1) This subsection is intended to ensure that the compensation to a current CCN holder is just and adequate as provided by these rules.
 - (2) The following factors shall be used to value personal property that the commission identified in the interim order issued under subsection (k) of this section:

- (A) the impact on the current CCN holder's existing indebtedness and the current CCN holder's ability to repay that debt;
 - (B) the value of the current CCN holder's service facilities located within the municipality's requested area;
 - (C) the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the municipality's requested area;
 - (D) the amount of the current CCN holder's contractual obligations allocable to the municipality's requested area;
 - (E) any demonstrated impairment of service or increase of cost to the current CCN holder's customers that remain after the single certification;
 - (F) the impact on future revenues lost from existing customers;
 - (G) necessary and reasonable legal expenses and professional fees;
 - (H) factors relevant to maintaining the current financial integrity of the current CCN holder; and
 - (I) other relevant factors as determined by the commission.
- (o) **Valuation Process.**
- (1) For an area incorporated by a municipality, the valuation of property that the commission identified in the interim order issued under subsection (k) of this

section shall be determined by a qualified individual or firm serving as an independent appraiser. The independent appraiser shall be limited to appraising the useless or valueless property, transferred property, and impaired property. The current CCN holder shall select the independent appraiser by the 21st calendar after the date of the order determining that the application is administratively complete. The municipality shall pay the independent appraiser's costs. The independent appraiser shall file its appraisal with the commission by the 70th calendar after the date of the order determining that the application is administratively complete. The valuation under this paragraph is binding on the commission. The commission shall review the valuation to ensure compliance with the requirements of this section.

- (2) For an area annexed by a municipality, the valuation of property that the commission identified in the interim order issued under subsection (k) of this section shall be determined by an independent appraiser agreed upon by the municipality and the current CCN holder. The independent appraiser shall be a qualified individual or firm.
 - (A) If the current CCN holder and the municipality cannot agree on an independent appraiser within ten calendar days after the application is found administratively complete, the municipality shall notify the serving CCN holder in writing of the failure to agree.
 - (B) If the parties still cannot agree within 11 calendar days of the written notification, on the 11th day, the current CCN holder and the

municipality shall each file with the commission a letter appointing a qualified individual or firm to serve as an independent appraiser.

- (C) Within 10 business days of their appointment, the independent appraisers shall meet to reach an agreed valuation of property that the commission identified in the interim order issued under subsection (k) of this section. If the appraisers cannot agree on a valuation before the 16th business day after the date of their first meeting under this subsection, then
 - (i) both parties shall file separate appraisals by that date, and
 - (ii) either the current CCN holder or the municipality shall petition the commission to appoint a third appraiser to reconcile the two appraisals.
- (D) The commission may designate a person to appoint the third appraiser.
- (E) The third appraiser shall file an appraisal that reconciles the two other appraisals by the 80th calendar day after the application is found administratively complete.
- (F) The third appraiser's valuation may not be less than the lower or more than the higher of the two original appraisals filed under subparagraph (C)(i) of this paragraph.
- (G) The current CCN holder and the municipality shall each pay one-half of the costs of the independent appraisers. Payment shall be made

directly to the appraiser, and proofs of payment shall be separately filed by the former CCN holder and the prospective retail public utility within 30 calendar days of the date of the invoice.

- (3) A valuation under this subsection is binding on the commission. The commission shall review the valuation to ensure compliance with the requirements of this section.

(p) **Action after receipt of appraisals.**

- (1) An order incorporating the valuation determined under subsection (o) of this section shall be issued by the 90th calendar day after the application is found administratively complete.
- (2) The commission shall deny the application if the municipality fails to demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems. This paragraph does not apply to a municipality that does not own a public drinking water system.
- (3) If the commission does not deny the application, the commission's order shall do the following:
 - (A) determine what property, if any, is useless or valueless property, impaired property, or transferred property;

- (B) determine the monetary amount that is adequate and just to compensate the current CCN holder for any such useless or valueless property, impaired property, and transferred property; and
 - (C) grant single certification.
- (4) The granting of single certification shall be effective on the date that
 - (A) the municipality or franchised utility pays adequate and just compensation under a court order;
 - (B) the municipality or franchised utility pays an amount into the registry of the court or to the current CCN holder under TWC §13.255(f); or
 - (C) the Travis County district court's judgment becomes final, if the court's judgment provides that the current CCN holder is not entitled to any compensation.
- (5) The commission's order does not transfer any property, except as provided under subsection (v) of this section. Any other transfer of property under this section shall be obtained only by a court judgment rendered under TWC §13.255(d) or (e).
- (6) A presiding officer may issue an order under this section. Any such order shall be the final act of the commission subject to motions for rehearing.

(q) **Appeal to district court, district court judgment, and transfer of property.**

- (1) Under TWC §13.255(e), any party that is aggrieved by a final order of the commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final.
- (2) Under TWC §13.255(d), if the commission's final order is not appealed within 30 days, the municipality may request the Travis County district court to enter a judgment consistent with the commission's order.

(r) **Withdrawal of application for single certification.** A municipality or a franchised utility may withdraw an application for single certification without prejudice at any time before a court judgment becomes final, provided that the municipality or the franchised public utility has not taken physical possession of property owned by the current CCN holder or made payment for the right to take physical possession under TWC § 13.255(f).

(s) **Additional requirements regarding certain current CCN holders.** The following subsection applies to proceedings under this section in which the current CCN holder meets the criteria of subsection (a)(3)(B) of this section.

- (1) The commission or a court, as appropriate, must determine that the service provided by the current CCN holder is substandard or its rates are unreasonable in view of the current CCN holder's reasonable expenses.

- (2) If the municipality abandons its application, the commission is authorized to award to the current CCN holder its reasonable expenses incurred to participate in the proceeding addressing the municipality's application, including attorney's fees.
 - (3) Unless the current CCN holder otherwise agrees, the municipality shall take all of the current CCN holder's personal and real property that is used and useful to provide service or is eligible to be deemed so in a future rate case.
- (t) **Notice of single certification.** Within 60 days of a transfer of property under a court judgment, the municipality or franchised utility shall provide written notice to each customer within the service area that is now singly certificated. The written notice shall provide the following information: the identity of the municipality or franchised utility, the reason for the transfer, the rates to be charged by the municipality or franchised utility, and the effective date of those rates.
- (u) **Provision of service.**
- (1) A municipally owned utility or a franchised utility may provide service to an incorporated or annexed area on one of the following dates:
 - (A) the date that the commission incorporates into the CCNs of the municipality, current CCN holder, and franchised utility, if applicable,

the terms of an executed agreement filed with the commission under subsection (d)(3) of this section; or

- (B) the date that the municipality or franchised utility
 - (i) pays adequate and just compensation under court order, or
 - (ii) pays an amount into the registry of the court or to the current CCN holder under TWC §13.255(f).

- (2) If the court judgment provides that the current CCN holder is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final.

(v) **Additional conditions.**

- (1) If the current CCN holder did not agree in writing to a revocation or amendment sought under this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:
 - (A) ordering the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder; and
 - (B) transferring the entire CCN of the current CCN holder to the municipality or franchised utility, as applicable.
- (2) The commission shall order the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder if the commission finds that the current CCN holder will be unable to

provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers.

- (A) The commission shall order the municipality or franchised utility, as applicable, to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the municipality's or franchised utility's other customers and shall establish the terms under which service must be provided.
- (B) The commission may order the following terms:
 - (i) transfer of debt and other contract obligations;
 - (ii) transfer of real and personal property;
 - (iii) establishment of interim service rates for affected customers during specified times; and
 - (iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.
- (3) The municipality or franchised utility, as applicable, shall not charge the affected customers any transfer fee or other fee to obtain service, except
 - (A) the municipality's or franchised utility's usual and customary rates for monthly service, or
 - (B) interim rates set by the commission, if applicable.
- (4) If the commission orders the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder, the proceeding shall not be referred to SOAH for a hearing to determine the useless

or valueless property, impaired property, or transferred property, and the commission shall not order compensation to the current CCN holder.

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 2ND DAY OF DECEMBER 2016 BY THE

PUBLIC UTILITY COMMISSION OF TEXAS

ADRIANA A. GONZALES