

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

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

#### §24.112. Transfer of Certificate of Convenience and Necessity.

- (a) **Effective date of transfer.** A certificate is issued in personam, continues in force until further order of the commission, and may be transferred only by the approval of the commission. Any attempted transfer is not effective for any purpose until actually approved by the commission.
- (b) **Sale, assignment, or lease of certificate of convenience and necessity.** Except as provided by the TWC, §13.255, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the TWC, §13.246(c). The sale, assignment, or lease shall be on the conditions prescribed by the commission.
- (c) **Notice of proposed sale, acquisition, lease, rental, merger, or consolidation and transfer of a certificate of convenience and necessity.**
  - (1) Unless notice is waived by the commission for good cause shown, mailed notice shall be given to customers of the water or sewer system to be sold, acquired, leased or rented or merged or consolidated and other affected parties as determined by the commission on the form prescribed by the commission and shall include the following:
    - (A) the name and business address of the currently certificated retail public utility and the retail public utility which will acquire the facilities or certificate;
    - (B) a description of the service area of the retail public utility being transferred;
    - (C) the anticipated effect of the acquisition or transfer on the operation or the rates and services provided to customers being transferred; and a statement that persons who wish to comment upon the action sought should file 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.
  - (2) The commission may require the applicant to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the area in which the retail public utility being transferred is located and publication may be allowed in lieu of individual notice as required in this subsection.
  - (3) 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 which overlaps the proposed service area boundaries.
  - (4) If the commission does not require a hearing, the commission may approve the transfer by order at a regular meeting of the commission.
  - (5) The commission may approve a sale, acquisition, lease or rental, or merger or consolidation and/or transfer of a certificate of convenience and necessity if it determines that the transaction is in the public interest after considering:
    - (A) if notice has been properly given;
    - (B) if the retail public utility which will acquire the facilities or certificate is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors set forth in the TWC, §13.246(c). The commission may refuse to approve a sale, acquisition, lease, rental, merger, or consolidation and/or transfer where conditions of a judicial decree, compliance agreement or other enforcement order have not been substantially met;

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- (C) the experience of the person purchasing or acquiring the water or sewer system as a utility service provider;
  - (D) the history of the person or an affiliated interest of the person in complying with the requirements of the commission, the TCEQ, or the Texas Department of State Health Services of properly managing or using revenues as a utility service provider; or
  - (E) the ability of the person purchasing or acquiring the water or sewer system to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system.
- (d) **Reporting of customer deposits.** Within 30 days after the sale or transfer of any utility or operating units thereof, the seller shall file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.
- (e) **Expiration of commission's approval for sale.** The commission's approval of a sale expires one year from the date of the commission's written approval of the sale. If the sale has not been consummated within that period and unless the applicant has requested and received an extension from the commission, the approval is void and the applicant must reapply for approval of the sale. The commission will review the application as though it was being filed for the first time (*de novo*).