

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

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

#### §24.113. Revocation or Amendment of Certificate.

- (a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity (CCN) with the written consent of the certificate holder or if it finds that:
- (1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;
  - (2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;
  - (3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate;
  - (4) the certificate holder has failed to file a cease and desist action under TWC, §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days; or
  - (5) in an area certificated to a municipality outside the municipality's extraterritorial jurisdiction, 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, except that an area that was transferred to a municipality on approval of the commission and in which the municipality has spent public funds may not be revoked or amended under this paragraph.
- (b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a CCN so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:
- (1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:
    - (A) the area for which service is sought shown on a map with descriptions according to §24.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);
    - (B) the time frame within which service is needed for current and projected service demands in the area;
    - (C) the level and manner of service needed for current and projected service demands in the area;
    - (D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate 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; and

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- (F) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;
- (2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;
- (3) the certificate holder:
  - (A) has refused to provide the service;
  - (B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or
  - (C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and
- (4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide continuous and adequate service within the time frame, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:
  - (A) an existing retail public utility; or
  - (B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertificated under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.
- (c) A landowner is not entitled to make the election described in subsection (b) or (r) of this section but is entitled to contest under subsection (a) of this section the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:
  - (1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or
  - (2) in a platted subdivision actually receiving water or sewer service.
- (d) Within 60 calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission shall grant the petition unless the commission makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.
- (e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission on the petition is final after any reconsideration authorized by applicable procedural rules and may not be appealed.
- (f) Upon written request from the certificate holder, the commission may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a CCN under TWC, §13.242(c).

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- (g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.
- (h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless the retail public utility, or a petitioner under subsection (r) of this section, provides compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.
- (i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.
- (j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.
  - (1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.
  - (2) After receiving the appraisals, the commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.
- (k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.
- (l) As a condition to decertification or single certification under TWC, §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

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- (1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and
  - (2) the transfer of the entire CCN of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.
- (m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.
- (n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:
  - (1) transferring debt and other contract obligations;
  - (2) transferring real and personal property;
  - (3) establishing interim service rates for affected customers during specified times; and
  - (4) other provisions necessary for the just and reasonable allocation of assets and liabilities.
- (o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.
- (p) The commission shall not order compensation to the decertified retail public utility if service to the entire service area is ordered under this section.
- (q) 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) submit to the commission a written list with the names and addresses of the lienholders and the amount of debt; and
  - (2) notify the lienholders of the decertification process and request that the 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.
- (r) As an alternative to decertification under subsection (a) of this section and expedited release under subsection (b) of this section, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.
- (s) On the same day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the CCN holder. The CCN holder may submit a response to the commission. The commission shall grant a petition received under subsection (r) of this section not later than the 60th calendar day after the date the landowner files the petition. The commission may not deny a petition received under subsection (r) of this section based on the fact that a certificate holder is a borrower under a federal loan program. The commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed

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under subsection (r) of this section as otherwise provided by this section. An award of compensation is governed by subsections (h) - (k) of this section.

- (t) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under subsection (b) of this section, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.
- (u) Subsection (t) of this section does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.
- (v) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.