PROJECT NO. 45111

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

ORDER ADOPTING 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, §24.142, §24.143, AND REPEAL OF §24.112 AS APPROVED AT THE DECEMBER 1, 2016 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts 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 of convenience and necessity required; §24.102, relating to criteria for granting or amending a certificate of convenience and necessity; §24.103, relating to certificate of convenience and necessity not required; §24.104, relating to applicant; §24.105, relating to contents of certificate of convenience and necessity applications; §24.106, relating to notice requirements for certificate of convenience and necessity applications; §24.107, relating to action on applications; §24.109, relating to sale, transfer, merger, consolidation, acquisition, lease, or rental; §24.110, relating to foreclosure and bankruptcy; §24.111, relating to purchase of voting stock or acquisition of a controlling interest in a 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 cease and desist order by the commission under TWC §13.252; §24.119, relating to mapping requirements for certificate of convenience and necessity applications; §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 with changes to the proposed text as published in the August 5, 2016 issue of the Texas Register (41 TexReg 5667). The commission adopts the repeal of §24.112, relating

to transfer of certificate of convenience and necessity without changes to the proposed text as published in the August 5, 2016 issue of the Texas Register (41 TexReg 5667). The 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. These amendments and repeal are adopted under Project Number 45111.

A public hearing on the amendments and repeal was held at commission offices on Monday, September 26, 2016 at 1:00 p.m. Representatives from the Water IOUs (Investor Owned Utilities) (comprised of Aqua Texas, Inc., Aqua Utilities, Inc., and Aqua Development, Inc. d/b/a Aqua Texas, SJWTX, Inc. d/b/a Canyon Lake Water Service Company, and SouthWest Water Company) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The following parties provided comments: Aqua Texas, Inc., Aqua Utilities, Inc., and Aqua Development, Inc. d/b/a Aqua Texas (collectively, Aqua); the Water IOUs; the Office of Public Utility Counsel (OPUC); the City of Houston (Houston); the City of Tyler (Tyler); the Texas Press Association (TPA); City of College Station, City of Lake Worth, Lakeside Water Control & Improvement District (WCID) No. 1, Lakeside WCID No. 2B, Lakeside WCID No. 2C, Lakeside WCID No. 2D, Spring Hill Water Supply Corporation, City of Waco, West Travis County Public Utility Agency, Travis County WCID No. 17, Town of Westlake, City of Grand Prairie, and City of Schertz (collectively, Cities and Districts); and the Texas Rural Water Association (TRWA).

Parties provided comments based on the rules as structured in the Proposal for Publication. Due to various changes addressed below, subsections may have been rearranged in response to comments.

Comments on §24.3 generally

OPUC requested that the commission provide a definition for "consolidation," as it is used in §24.3 and §24.109. In their reply comments, the IOUs stated they would like a streamlined procedure to effect "consolidations" and if such a procedure were developed, a definition might be appropriate.

OPUC also requested that the commission define "service area" to mean the area of land in which the water or sewer service provider is certificated to serve, and omit "CCN" from "CCN service area" where the term is used throughout the sections. In their reply comments, the IOUs stated they were uncertain about OPUC's proposed definition and suggested a thorough review of the definition prior to its adoption.

The IOUs requested a definition for "complaint" that clarifies that not every communication with a utility or the commission rises to the level of such. The IOUs also requested the definition of "respondent" be expanded to include CCN holders affected by decertification applications under Texas Water Code §13.254 (TWC).

Commission response

The commission declines to adopt a definition for "consolidation," as it has a plain language meaning within the context of chapter 24. The commission also declines to adopt a definition for "complaint" as it is outside the scope of this project and would be more properly

addressed in a rulemaking project on subchapter E (relating to customer service and protection).

The commission agrees that more consistent terms are needed for referring to service area, certificated service area, and requested area. All references to "CCN service area" have been changed to "certificated service area" for consistency. "Certificated service area" will have a plain language meaning within the context of chapter 24. The commission also adopts the following definitions:

(57) Requested area --The area that a petitioner or applicant seeks to obtain, add to, or remove from a retail public utility's certificated service area.

(63) Service Area -- Area to which a retail public utility is obligated to continue to provide retail water or sewer utility service.

The commission declines to include CCN holders subject to a decertification action under TWC §13.254 in the definition of "respondent." CCN holders subject to a decertification action receive a copy of the petition on the day it is filed, and are able to attain party status and participate in the proceeding by intervening.

Comments on specific sections of the rule §24.3(25)

OPUC supported the addition of a definition for "district." OPUC correctly noted that the definition comes from the TWC chapter 49, and recommends that the chapter 24 definition refer to TWC chapter 49 rather than repeat the language from that chapter, to avoid any inconsistencies

that may occur if chapter 49 is amended independent of chapter 24. OPUC also noted that the reference to Article II should be Article III of the Texas Constitution.

In reply, the Water IOUs suggested referencing the TWC §49.001(a) definition of "district" instead of OPUC's suggested version, as it would be more precise.

Commission response

The commission agrees with OPUC's recommendation that the definition for "district" should be amended to avoid potential inconsistencies that could result if TWC chapter 49 was revised independent of chapter 24. However, the commission adopts the more precise definition proposed in the IOUs' reply comments. The definition of "district" will be as follows:

(23) District -- District has the meaning assigned to it by TWC §49.001(a).

Section 24.3 (47)

Houston requested clarification as to whether a municipality is a "person" under the amended definition.

Commission response

The commission clarifies that the definition of "person" was amended to be consistent with the definition found in TWC. Although the definition no longer expressly excludes municipalities, the application of the term will remain consistent with current practice and will exclude municipalities from being considered a "person."

Section 24.3(63)

OPUC requested that the definition of service be amended to make clear that it does not apply to applications for expedited release from a CCN filed under §24.113. OPUC argued that TWC §13.254 requires an applicant for expedited release to not be receiving "actual service" which is narrower than the current definition of service.

In reply, the IOUs disagreed with OPUC's suggestion to alter the definition of "service," and argued that the statutory definition should remain in the commission's rules for all of chapter 24 so long as it remains in the TWC for all of chapter 13 purposes.

Commission response

The commission declines to adopt OPUC's suggestion that the definition of "service" be revised to exclude applications for expedited release under §24.113. The existing definition of "service" is applicable to §24.113.

Section 24.3(73)

The IOUs, OPUC, and TRWA commented on the addition of the definition of "tract of land." TRWA stated that the definition is consistent with current practice and supports the addition. OPUC recommended that the term "property" be excluded from the definition, and the term "land" be used in the alternative. OPUC argued that "property" could be interpreted to mean such things as transmission lines or easements which could inaccurately segment a tract of land, disqualifying the land for an expedited release request due to the requirement of contiguity. OPUC also

commented that the definition should reflect that there can be multiple owners of a tract of land. OPUC proposed the Commission adopt the following definition:

> *"Any piece of land that has common ownership and is contiguous. To be contiguous, all portions of the land must be in uninterrupted physical contact, and may not be separated by land of different ownership, such as roads and railroads, whether by government or private entities. A tract of land may be part of separate surveys or composed of multiple deeds, and may be owned by more than one owner."*

The IOUs stated that the commission's proposed definition is an improper expansion of the definition found in TWC §13.002(1-a) and should not be adopted. The IOUs also argued that the addition of a definition for "tract of land" causes an expansion in the CCN noticing requirements for landowners of a tract of land greater than 25 acres. In their reply comments, the IOUs agreed with OPUC that "property" includes intangibles and the use of the term in this definition may cause confusion.

Commission response

The commission agrees with TRWA that the definition of "tract of land" is consistent with current practice, which therefore necessitates that the definition be included in chapter 24. The commission agrees with and adopts OPUC's suggested exclusion of the word "property" and replacement with "land" for clarity. However, the commission declines to adopt OPUC's language that states a tract of land may be owned by multiple owners. As the definition states, a tract of land must have common ownership for each separate survey or deed, and the addition of OPUC's language is duplicative and potentially misleading. Although a tract of

land may have multiple owners, the same group of owners must have ownership for each area of land that comprises that tract to have common ownership. Furthermore, the definition does not exclude multiple owners from having common ownership.

The commission disagrees with the IOUs that the definition of "tract of land" is an improper expansion of the definition found in TWC §13.002(1-a). TWC §13.002(1-a) provides a definition for the terms "landowner," "owner of a tract of land," and "owners of a tract of land." It does not define "tract of land." The commission agrees with the IOUs that CCN application notices to landowners are subject to the definition of "tract of land" and will require the aggregation of tracts that are under common ownership and contiguous.

Finally, the commission further clarifies and simplifies the definition of "tract of land" by adopting the following language:

(73) Tract of land -- An area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties; such other land includes roads and railroads. A tract of land may be acquired through multiple deeds or shown in separate surveys.

Section 24.8

The IOUs commented that the applicability of the section may need to be revised to cover all CCN-related applications if a specific listing is used. The Cities and Districts supported the proposed language, and suggested reinserting the word "and" after the third semicolon in §24.8(d) for clarity.

Commission response

The commission agrees with the IOUs, that the applicability of this section should be revised to clarify the types of applications it applies to. The commission has updated §24.8(a) to apply to any application under chapter 24, except as otherwise noted by this chapter, and §24.8(d) to apply to applications under subchapter G of chapter 24.

The commission adopts the suggestion of the Cities and Districts to reinsert the word "and" after the third semicolon in §24.8(d) for clarity.

Section 24.101(b)

OPUC opposed the addition of “retail” and “utility” to the phrase “may not construct facilities to provide *retail* water or sewer *utility* service,” in reference to the prohibition against a person constructing facilities within certificated service area without obtaining written consent from the certificate holder. OPUC stressed that the additional language may conflict with the corresponding statute, TWC §13.242(b), and potentially the intent of the legislature. The term “retail water or sewer utility” is a defined term, which is more limiting than the previous term “water and sewer service.”

In reply, the IOUs noted that OPUC may be correct and this warrants closer review. However, the IOUs also stated that “retail” may be what was intended though not specifically used in TWC §13.242(b), as wholesale service is not the likely target of this provision.

Commission response

The commission disagrees with OPUC on the interpretation of the corresponding statute in TWC §13.242(b). The statute prohibits a person from constructing facilities, within a certificated service area, that would provide for more than one "service connection." The term "service connection" is used when a retail public utility is providing retail service. The addition of "retail" and "utility" is added to further clarify this distinction.

Section 24.101(c)

The Cities and Districts and OPUC commented that the additional requirements in §24.101(c) are unnecessary and redundant due to the requirement to have a CCN stated in §24.101(a). OPUC recommends that the subsection be deleted. In reply, the IOUs agreed.

Commission response

The commission disagrees with the Cities and Districts and OPUC that §24.101(c) is redundant based on the requirements stated in §24.101(a). The requirements of §24.101(a) set forth a general rule, addressing the entities that are required to have a CCN, and therefore what entities can only legally furnish utility service after the issuance of a CCN. §24.101(c) sets forth an exception to that general rule in that a district may serve within the boundaries of a retail public utility without first obtaining a CCN if the district obtains the retail public utility's consent.

The commission is also re-organizing the subsections of §24.101 for clarity.

Section 24.101 (d)

The Cities and Districts, OPUC, and Tyler did not support this additional subsection which requires the consent of a district when a request for CCN area overlaps the district's boundaries. The IOUs agreed in reply comments. The Cities and Districts argued that there is no statutory basis for the commission to require district consent. OPUC recommended the subsection not be adopted as it is unnecessary and redundant. Tyler stated that the language fails to address other utilities that can legally furnish water or sewer services, such as a municipality, and is overly broad because it defines a district's service area by its boundaries rather than the area that is actually being served. Additionally, Tyler argued that the requirement to obtain district consent conflicts with a municipality's ability to extend service to unserved areas within a special utility district as permitted by TWC §13.255 and proposed language to track the statutory language.

Commission response

The commission disagrees that that §24.101(d) is unnecessary and redundant based on the requirements stated in §24.101(a), and that there is no statutory basis for the commission to require district consent. As stated in the response to §24.101(c), the requirements of §24.101(a) set forth a general rule, addressing the entities that are required to have a CCN, and therefore what entities can only legally furnish utility service after the issuance of a CCN. §24.101(d) sets forth an exception to that general rule, in that a retail public utility may serve within the boundaries of a district without first obtaining a CCN if it obtains the district's consent.

The commission agrees with Tyler that clarification is necessary that there are exceptions to proposed subsection (d) and has added the language "except as otherwise provided by this subchapter" to the beginning of that subsection.

The commission is also re-organizing the subsections of §24.101 for clarity.

Section 24.102 generally

Aqua requested that the commission adopt a process that allows for a streamlined application for CCN amendments in such scenarios that includes a request for service from a landowner of 25 acres or more, or to clean up certificated service areas' boundaries that have been changed due to streamlined expedited releases, or have drifted from the area originally requested. Aqua requested that notice be waived entirely for such amendments, and that the application be approved 60 days after it is accepted for filing.

Commission response

The commission declines to adopt a streamlined CCN amendment process as proposed by Aqua. For a landowner request for service, the commission must still take into consideration the factors outlined in TWC §13.246(c) when granting any amendment to a CCN. For the purposes of cleaning up boundaries, the commission has not had the opportunity to determine what would constitute a minor boundary change, and does not have the statutory authority to forgo the noticing requirements and considerations required for all CCN applications.

Section 24.102(a)(1)(B)

OPUC requested clarification on what standard the Commission will use to determine adequacy of water supply and whether that determination will also be required of a long-term contract for purchased water.

Commission response

Commission staff uses the factors contained in §24.93 (relating to adequacy of water utility service*)* when reviewing applications required to meet the adequacy standard under this subsection. The commission uses the following standard contained in §24.93(a): "The water system quantity and quality requirements of the TCEQ shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of the water supplied for household usage." The commission also requires this standard of water utilities that use purchased water to meet the TCEQ production requirements.

Section 24.102(b)

The IOUs requested clarification that this section will not apply to CCN amendments for areas that require construction of physically separate water or sewer facilities; or in the case of an extension of service that will be provided by a region-wide service provider with multiple systems under a previously approved CCN. The IOUs also argued that the TCEQ permit application form already contains a section on regionalization and the commission should either defer to the TCEQ on regionalization issues or at least ensure consistency. Finally, the IOUs asserted that the service inquiry process described in this proposed rule is unfair in that it places burdens on CCN applicants

not within their control, such as requiring information about a neighboring retail public utility's service capabilities.

Commission response

This subsection implements TWC §13.241(d), which requires that the commission consider whether regionalization is economically feasible. Before the commission grants a new CCN for an area which would require the construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation is not economically feasible. This is not an unfair burden as suggested by the IOUs, because any information regarding a neighboring retail public utility's service capabilities should be available once that retail public utility agrees to serve the requested area. The commission issues a new CCN certificate both where a new CCN is granted, and where an existing CCN is amended; however, not all new CCNs and CCN amendments require construction of a physically separate water or sewer system. For example, in such cases an existing system may already be in place, or service area is being expanded. The plain language of TWC §13.241(d) states that the regionalization or consolidation requirements must be met for every CCN amendment that requires construction of physically separate water or sewer facilities, even for region-wide service providers with multiple systems under a previously approved CCN. This requirement originates in the Safe Drinking Water Act (SDWA) and is reflected in the TCEQ requirements for new public water supplies, under 30 TAC Chapter 290 D.

The commission also modifies this subsection to be consistent with the TCEQ drinking water regulations, which require that regionalization efforts be made within 1/2 mile for approval of a new public water supply.

Section 24.102(b)(5)

OPUC suggested that the review of neighboring utilities that can and have offered to provide utility service for a requested area be reviewed with more scrutiny. Specifically, OPUC wished to add additional criteria (type, quality, and reliability) that must be reviewed to determine the adequacy of service of the alternate provider.

In reply, the Water IOU's disagreed with OPUC's suggestion.

Commission response

The commission declines to adopt additional criteria for the review of alternate providers. The CCN application process is to determine the applicant's ability to provide continuous and adequate service. Additional review of alternative providers is outside the scope of the application process as provided by the TWC, would require additional parties, and would complicate applications that involve specific requests for service to a particular utility provider.

Section 24.102(d)(4)

OPUC requested clarification of which TCEQ standards will be considered during the review of applications under this subsection.

Commission response

The commission clarifies that the TCEQ standards referenced in this subsection include:

1) the rules that govern public water supplies and treatment; specifically, the rules and regulations for public water systems established by the TCEQ in 30 TAC Chapter 290;

2) wastewater operational standards derived from the applicable permit; and

3) the design criteria found in 30 TAC Chapter 217.

Section 24.102(h)

The Cities and Districts requested that this subsection be modified to clarify that a landowner must file an opt-out request within the statutory timeframe, and that opt-outs are effective "if timely filed." Additionally, the Cities and Districts requested that the commission adopt an additional subsection requiring a landowner to swear or provide an official, certified document from a Texas county's real property records verifying ownership of the land, and indicating that failing to do so would allow the applicant to contest the landowner's filing.

Commission response

The commission declines to adopt the Cities and Districts' additional proposed language. While the statute does provide a 30-day timeframe for landowners to file opt-out requests, the existing language of the rule adequately captures that requirement. The commission declines to add language that implies that a landowner's opt-out would be automatically ineffective simply due to late filing. In such cases, there may be a good cause exception for allowing the late request, and it would be contrary to the public interest to disallow it.

The commission also declines to adopt a requirement that a landowner seeking to opt out of a requested area provide proof of ownership. The 30-day timeframe for filing an opt-out request may preclude landowners who would wish to opt out from otherwise participating due to the burden of definitively proving ownership at such an early stage in the process. The commission notes that even without the additional proposed language, an applicant is not precluded from contesting a landowner's ownership of land subject to an opt-out request.

Section 24.103(a)

Aqua requested that the commission adopt language clarifying that §24.101(a)(1)(B) allows a utility or water supply corporation making an extension to territory to be served by it under a CCN to commence service when its CCN application for the requested area was found administratively complete.

Commission response

The commission declines to adopt language that allows for service to be provided to any area that has not been granted a CCN by the commission. The TWC requires that a retail public utility must have a CCN to provide service, not an administratively complete CCN application, and the commission believes this proposed language would improperly expand that requirement.

Section 24.103(c)

Both Tyler and Houston commented on the requirements that must be met for a municipality to serve an area in accordance with TWC §13.255. Tyler disagreed with the requirement to file an

application prior to providing utility service in accordance with the single certification statute, and requested that §24.103(c) be revised to make it clear that a municipality may provide service in accordance with TWC §13.255 and this section before filing an application under §24.120.

Houston requested that the commission clarify the necessity for the restrictions outlined in §24.103(c)(2) be explained, and provide clarification for when a municipality is required to obtain a CCN under the proposed rule. The Cities and Districts suggest minor additional edits to §24.103(c)(2).

Commission response

The commission disagrees with Tyler's assertion that a municipality may provide service in accordance with TWC §13.255 prior to filing an application with the commission under §24.120. A municipality is required by TWC §13.255(b) to file an application with the commission *prior* to providing retail water or sewer service to the area. Therefore, the commission rejects Tyler's proposed new subsection §24.103(c)(3).

In response to Houston, the commission clarifies that municipalities are not required to obtain a CCN to provide retail water or sewer service. The commission deletes §24.103(c)(2) to avoid confusion and duplicative content, as this subsection is already contained in §24.120, currently being revised in Project No. 46151.

Section 24.105 generally

Aqua commented that it would like to see commission staff offer more options to support financial capability for CCN applications in lieu of detailed pro-forma type projections, such as incorporation by reference to the utility's most recent Annual Report or SEC filing.

Aqua also proposed that mapping and proof of consent be the only content requirement for its proposed streamlined expedited certification application process under §24.102.

The IOUs also advocated for a streamlined CCN procedure that would not require a showing of financial, managerial, or technical capability, such as the one proposed by Aqua under §24.102. The IOUs suggested this procedure could be used for taking away slivers remaining from expedited release/decertification applications, minor shifts in CCN area due to mapping error, or reorganization of specific systems among regional service areas belonging to the same utility or affiliate.

Commission response

The commission will continue to request detailed pro-forma type projections to demonstrate financial capabilities. The pro-forma type projections provide the most comprehensive basis for commission staff to determine if the applicant will continue to meet its commitments. The commission considers Annual Reports to support the financial capability of an applicant, but the report must be current and timely filed. While an SEC filing will not be ignored by commission staff, SEC filings are federal reports and it is important that the financial information being reviewed is relevant to operations in Texas. The commission is concerned

that filings created for other agencies or for other purposes would unduly delay the process of reviewing financial capability.

The commission declines to adopt Aqua's proposed streamlined expedited certification application under §24.102, and therefore declines to adopt its content requirements in §24.105 or the IOUs' request for the same streamlined procedure.

Section 24.105(a)(2)

The IOUs requested that a rule be added to address what they identified as a "systemic mapping problem" that relates to commission staff's reliance on the TCEQ district layer map to determine when requested area overlaps within a district's boundaries. The IOUs identified a concern that overlaps are being identified due to discrepancies in the positioning when comparing different sets of digital data. The IOUs proposed several potential solutions for resolving this problem: allowing notice to go forward and considering a lack of intervention as consent to the extent consent is needed, developing a standard tolerance level by which commission staff is willing to let an application through because the perceived overlap is so small, or permitting tax records as proof of location within or outside of a district.

Commission response

The commission has, and intends to continue to work with applicants when discrepancies in the district layer are identified. The commission does not have jurisdiction over the mapping and placement of district boundaries. Therefore, any discrepancies should be addressed with TCEQ, and are outside of the scope of this project.

The proposed language of §24.105(a)(5) is consistent with one of the IOUs' proposed solutions, providing that if the requested area overlaps with the corporate boundaries of a district and the district does not intervene after proper notice, the commission will determine that the district is consenting to the applicant's request to provide service. Additionally, commission staff is willing to consider a "standard tolerance" in reviewing overlaps with district boundaries.

Section 24.105(a)(4)

Tyler, Cities and Districts, and the IOUs opposed the adoption of the additional language detailing the necessary consent, franchise, permit, or license to obtain a CCN area and provide retail water or sewer utility service from a municipality, district, or public authority. Tyler argued that the applicability is overly broad because it grants the power to regulate the provision of utility services to public authorities that have not been granted that power by the legislature. Tyler further argued that consent should only be required in CCN areas that overlap the boundaries of a public authority that have been granted franchise-powers, and therefore the ability to regulate utility services by the legislature. The Cities and Districts' comments reflected the same argument; that the requirement to obtain consent expands the authority of districts beyond the scope of the statute. The Cities and Districts also argued that districts should not arbitrarily have "veto" power over a CCN application by their ability to withhold consent. The IOUs reiterated the mapping concerns, as noted in the comment for §24.105(a)(2), as well as the requirement not being supported by statute.

Commission response

The commission disagrees with the position of Tyler, the Cities and Districts, and the IOUs that §24.105(a)(4) is not statutorily appropriate. The definition of a retail public utility includes 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. The statute specifically prohibits a retail public utility from providing 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 in TWC §13.242(a). The statute does not require that the retail public utility have franchise powers in order to govern the utility services provided in its applicable service area, such as within the boundaries of a district that has been authorized to function as a retail public utility. The provisions outlined in this subsection provide the requirements for a retail public utility to obtain a CCN, as required in TWC §13.242(a), to provide water or sewer utility service within the service area of another retail public utility. Further, the commission believes that the proposed language of §24.105(a)(5) provides a solution to the Cities and Districts' concern, and allows for an intervention process as suggested.

Section 24.105(a)(5)

The IOUs generally agreed that the proposed requirement allowing for consent through the notice, and intervention, period could alleviate some of the burden for an applicant with an identified district overlap.

Commission response

The proposed language of §24.105(a)(5) was drafted to eliminate a requirement for affirmative consent from a district, and provide a less cumbersome process by which a lack of intervention after proper notice could be deemed to be consent by a district.

Section 24.105(a)(7)

The IOUs requested clarification on whether there is a specific form that commission staff expects for capital improvement plans, and expressed that if there is no such form, they expected liberal acceptance of the format used to address this requirement.

Commission response

In accordance with the rules, the financial assurance and financial capability of an applicant must be analyzed by the commission. Best practices would express this information in terms of a plan, with capital investment and operations considered. However, the commission will not provide a specific form to be used to meet this requirement. The commission will continue to accept the inclusion of capital improvement plans in CCN applications in diverse formats.

Section 24.105(a)(13)

Tyler opposed the proposed language that would only allow for dual certification where the applicant has entered into an agreement with the current CCN holder to allow for the dual certification. Tyler argued that the commission must have the flexibility to grant overlapping CCNs when such action is in the public interest, and that the proposed language effectively relinquishes the commission's power to grant a CCN to another party. Tyler further argued that

the Texas Constitution prevents the state from creating monopolies, and the inability of an incumbent utility to be granted dual certification without an agreement potentially creates a monopoly.

In reply, the IOUs were not opposed to Tyler's proposed revisions, but disagreed that retail public utilities and CCN holders are not intended to function as monopolies in areas they serve.

Commission response

The commission agrees this subsection should be amended to provide for a situation in which dual certification may be in the public interest, but an agreement with the existing CCN holder is impracticable. Therefore, the commission adopts the following language: "if dual certification is being requested, a copy of the executed agreement that allows for dual certification of the requested area. Where such an agreement is not practicable, a statement of why dual certification is in the public interest."

Section 24.105(a)(14)

The IOUs requested clarification on what is intended here and whether this related to §24.113 requirements.

Commission response

This subparagraph corresponds to TWC §13.254(a), which provides that the commission may revoke or amend a CCN "with the written consent of the certificate holder" or if the commission makes one of the listed findings. This subparagraph requires that if an

application for a CCN amendment is filed with the written consent of the CCN holder, the applicant provide the commission a copy of that agreement. The commission has rephrased the language of this subsection to clarify its intent. The commission further clarifies that this requirement only applies to the provisions of §24.113 that implement TWC §13.254(a).

Section 24.105(a)(15)-(16)

The Cities and Districts and the IOUs opposed some or all of the requirements for TCEQ engineering and wastewater permit approval. The Cities and Districts proposed that a CCN application only be dismissed after a TCEQ engineering review becomes final and non-appealable, and proposed the deletion of the sentence "Failure to provide such approvals within a reasonable amount of time after the application is deemed administratively complete may result in the dismissal of the application without prejudice" from §24.105(a)(15)(A), as a CCN applicant cannot control the timing of TCEQ's processing of public drinking water system authorization requests.

The IOUs requested that the subsection amendment not be adopted. The IOUs argued that the proposed requirements would place a burden on the applicant to spend money on permitting, engineering, and design for an entire project area without a guarantee that a CCN will be granted for the area, eliminate development flexibility, substantially delay the filing and processing of CCN applications, and disregard the substantial time involved within obtaining some of the types of TCEQ approvals required before commission approval.

In reply, the IOUs supported the addition of language that would limit dismissal to such a time that a TCEQ engineering review become final and non-appealable.

Commission response

The commission recognizes the concern expressed by the Cities and Districts, and amends the language in this subsection. Instead of stating that if the applicant receives a TCEQ disapproval letter, the application for a new water CCN or CCN amendment "will be dismissed," this subsection will now state that the application "may be subject to dismissal." This revised language will provide commission staff the ability to exercise discretion in working with an applicant regarding TCEQ disapproval of its plans and specifications.

The commission disagrees with the IOUs. The commission cannot issue a CCN to an applicant that does not have the capability to provide continuous and adequate service to the requested area through facilities that are approved or permitted by TCEQ.

Section 24.105(a)(17)

The IOUs stated that §24.105 should specifically state any other items or information required to submit a complete CCN application; otherwise applicants are not fairly on notice as to what is required and there is a high chance of deficient applications.

Commission response

The commission declines to remove or further specify the items or information that may be required under §24.105(17). §24.105 provides the items that are required in each CCN application. This subparagraph provides the commission a means to require additional information in reviewing applications that are unique and may require additional analysis

not common to the average CCN application. This subparagraph is not intended to impose additional "surprise" requirements on typical CCN applications, or to attempt to hide from applicants what may be required. Rather, it provides commission staff the necessary discretion to require other items or information as needed in special circumstances.

Section 24.105(b)

OPUC supported the inclusion of the proposed language, and recommended an addition to (b)(7). Houston noted that the proposed §24.105(b) appears to delve into rate related issues, which are outside the identified scope of this project. In its initial and reply comments, Houston also expressed concern that it was unclear whether the commission would make a rate determination upon approving the CCN, which would usurp the original jurisdiction of municipalities over rates and services of certain water and sewer utilities. The IOUs commented that the subject matter of this subsection relates to tariff filings, which are the subject of Project No. 45112.

Commission response

The commission agrees with Houston and the IOUs that moving the language currently proposed for §24.105(b) in this project into §24.21, which is currently being revised as part of Project No. 45112, is logical given the subject matter of §24.21. The commission therefore inserts the language in question in §24.21(b)(1)(B). The commission responds to comments received on the language proposed as §24.105(b) in Project No. 45112.

Section 24.106(b)(2)

The IOUs noted that the proposed definition for "tract of land" conflicts with the current practice of noticing landowners of 25 acres or more in a CCN application, with the size determined according to the tax appraisal rolls.

Commission response

The commission notes that TWC §13.246(a-1) requires that notice ". . . be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the utility commission received the application . . ." The plain language of the statute provides that the *owner of the tract,* not the size of the tract, is determined by the most current tax appraisal rolls. Applicants should refer to the tax appraisal rolls to determine the proper owner to mail notice to. The proposed definition of "tract of land" will be applicable to the notice requirements of this section. Therefore, whether a tract is 25 acres will be determined by whether it has common ownership and is not severed by other land under different ownership, not whether it is a 25-acre single deeded tract as shown on the tax appraisal rolls.

Section 24.106(e)

The IOUs stated that "professional cartographers who may be asked to prepare maps" should review the proposed language, specifically the language found in (e)(3). Furthermore, the IOUs requested clarification on what is considered "sufficient vicinity" or "enough detail" for the required maps.

Commission response

The commission developed this language with the assistance of commission Geographic Information Specialists, a state auditor's office job classification which requires manipulation of geographic information to create, maintain, display, update, and produce accurate maps and other representation of data.

The commission agrees with the IOUs that the mapping requirements for CCN applications should be further clarified. In response, the commission has removed "sufficient vicinity" and replaced it with "in reference to," and removed the term "enough detail." The commission has also made other edits to the mapping requirements to clarify its intent, and consolidated all mapping requirements into §24.119 (relating to mapping requirements for certificate of convenience and necessity applications). This consolidation removes mapping requirements from §24.106(e), so that there are no longer multiple duplicative rule sections containing mapping information.

Section 24.107(b)

OPUC proposed language to make clear that the commission can act at any time after the expiration of the intervention period to request a hearing. In reply, the IOUs stated they did not oppose OPUC's suggested language.

Commission response

The commission agrees with OPUC's proposed language and adopts the following:

(b) After proper notice, the commission may take action on an uncontested application at any time after the later of the expiration of the intervention period or for which all interventions are subsequently withdrawn.

Section 24.109 generally

The IOUs objected to a requirement that utilities "take" the seller's or transferor's rate/tariff provisions as their own in CCN or utility sale, transfer, merger (STM) applications when a rate case is not simultaneously filed. The IOUs argued that this approach (1) has resulted in fractured rate structures for the IOUs where consolidation would otherwise be appropriate; (2) has created a situation where customers pay rates based on cost of service considerations not applicable to their provider; and (3) is contrary to the filed rate doctrine as applied in *Entex v. Railroad Commission of Texas*, 18 S.W.3d 858 (Tex. App.-Austin 2000, pet. denied). The IOUs argued that *Entex* requires that a utility charge the rates that have been approved for that utility, not the rates of an acquired utility. The IOUs supported allowing a CCN applicant to simply identify the approved tariff that should apply to an area where service would be extended under a CCN amendment or acquisition followed by commission acceptance if that application is approved. The IOUs argued that this approach would further the policy objective of promoting regionalized rates and services. The IOUs indicated that they would not object to providing evidence of compliance with TWC §13.145 in terms of substantial similarity for consolidation within a tariff. In reply, Houston stressed that to the extent that §24.105(b) applies to §24.109 transactions, the commission should clarify that it does not propose to make rate decisions for customers located within the original jurisdiction of a municipality.

In its reply comments, OPUC disagreed with the IOUs' suggestion to adopt the *Entex* interpretation of the "filed rate doctrine" into the STM process due to the differences in notice requirements for an STM application and a rate application, and uncertainty on how the rates could be determined to be just and reasonable.

Aqua commented that it would like to see commission staff offer more options to support financial capability for CCN and STM applications in lieu of detailed pro-forma type projections, such as incorporation by reference to the utility's most recent Annual Report or SEC filing.

Commission response

The commission declines to adopt the IOUs' suggestion that a CCN applicant simply identify the tariff to be applied to a system added to its certificated service area under a CCN amendment or acquisition. Such a change would be beyond the scope of the changes that were originally noticed in this project, which proposed changes to address non-rate related portions of chapter 24, related to CCNs. The issues raised by the IOUs' suggestion also implicate §24.21, which is currently being amended in Project No. 45112. These issues are better addressed in a separate project after this project and Project No. 45112 have been completed.

In response to Houston, the commission clarifies that it will not attempt to exercise original jurisdiction over rates within the original jurisdiction of a municipality. The commission has also responded to Houston's comments regarding §24.105(b) in Project No. 45112.

As stated in the response to comments on §24.105 generally, the commission will continue to request detailed pro-forma type projections to demonstrate financial capabilities.

Section 24.109(a)

Tyler, OPUC, and the Cities and Districts each commented on the applicability of this subsection to municipalities and districts. Tyler and the Cities and Districts recommended that the language return to the statutory language, which excludes municipalities and districts from the requirements of having to file an STM application. Tyler and the Cities and Districts expressed concern that the commission's jurisdiction does not extend to the review of optional STM applications. OPUC generally supported the inclusion of municipalities and districts in the applicability of the STM section, and suggested the addition of a subsection that would require these public authorities to report any STM without having to complete the entire process currently required by this subsection.

Commission response

The commission clarifies that it intentionally includes entities that are not required to have a CCN, such as municipalities and districts, as entities that may utilize the STM process. This is in no way intended to become a requirement, but to serve as an optional process that these entities may utilize if they so choose. If a utility that is not otherwise subject to the commission's jurisdiction is concerned about submitting itself to that jurisdiction, there are other mechanisms available aside from the STM process. Entities that are required to have a CCN are still required to comply with §24.109, as indicated by TWC §13.301.

OPUC's suggestion to require municipalities and districts to report a STM would be better addressed in another rulemaking project, giving the affected entities an opportunity to comment on the additional requirement.

Section 24.109(c)-(d)

The IOUs and TPA commented on the notice requirements for STM applications under these subsections. The IOUs stated that notice to transferred customers, and to a municipality if the area is within corporate city limits and rate jurisdiction is an issue, is reasonable, but that notice beyond that is overly burdensome, unnecessary, and not required by the TWC. The TPA advocated striking the phrase "public notice may be waived by the commission for good cause shown" in subsection (b), and the phrase "unless notice is waived by the commission for good cause shown" from subsections (c) and (d). TPA also suggested changing the word "may" to "shall" in subsection (e), to require that newspaper notice be provided. The IOUs did not agree with this suggestion, and argued that TWC §13.301 specifically permits waiver of notice for good cause, and that the commission should have discretion on all form of notice issues.

Commission response

When the commission is taking final action on an STM application, it is either granting a CCN or an amendment to a CCN. Therefore, the considerations for CCN applications are also applied to STM applications, which include similar notice requirements for affected parties. TWC §13.301 requires the commission to consider if the proposed STM transaction will serve the public interest. In order for this determination to be made, public notice to affected customers shall be required, so that they have the opportunity to intervene. The

commission will grant intervention by affected parties in an STM application to further any necessary review of the impact on the public interest. The result of an STM could substantially increase a utility's cost of service, or impose new rates outside of the commission's jurisdiction, in the case of a retail public utility acquiring a utility.

The commission agrees with the IOUs that mailed notice to affected parties such as to cities and neighboring retail public utilities could be overly burdensome and unnecessary. Therefore, the commission amends the language to limit the mailed notice requirement to applications for requested area that include unserved area, which corresponds to the notice requirements for a CCN amendment application.

The commission declines to adopt the TPA's proposed changes, as those changes would be contrary to TWC §13.301(a)(2). The commission also agrees with the IOUs that it should have discretion on all form of notice issues.

Section 24.109(g)

The Cities and Districts proposed deleting the phrase "retail public utility or" in the first sentence of this subsection.

Commission response

The commission declines to delete this phrase for purposes of internal consistency.

Section 24.109(h)

The Cities and Districts stated that the phrase "and any related affiliates" should be deleted, as "related affiliates" is not defined, and an acquiring entity should be judged on its own ability to serve, not on that of a separate entity. The IOUs agreed in reply comments.

Commission response

The commission agrees with the Cities and Districts. The commission clarifies that during the review of an STM application, the commission considers the ability of an acquiring entity to serve the requested area, not on the ability of its affiliates. Therefore, the commission removes the phrase "and any related affiliates."

Section 24.109(h)(5)(A)

The IOUs noted concern over the reliance on TCEQ compliance databases during the review of an STM application, and requested that the commission "exercise sound discretion if this becomes an issue."

Commission response

The commission notes the IOUs' concern. Commission staff uses the TCEQ database to review an applicant's compliance history; however, the commission makes every effort to allow the applicant to respond to compliance issues identified through the database. This is accomplished through discovery, and ultimately at a hearing, where the applicant has the opportunity to rebut any issues raised.

Section 24.109(j)(5)(A)

OPUC stated that the addition of "TCEQ Order" to the list of items the commission will consider in making a public interest determination could make the review overly broad while also overlooking other important information. OPUC suggested a more useful approach would be to add a subpart that provides for the review of TCEQ compliance history for drinking water, water quality, and health and safety standards, which would include TCEQ orders, as well as notices of violations and compliance agreements.

In reply the IOUs agreed that only five years of compliance history should be considered, if at all, but stated that the remainder of OPUC's proposed addition seemed overly broad.

Commission response

The commission disagrees with OPUC that the proposed language is overly broad, and declines to adopt OPUC's suggested language. OPUC's proposed revision could preclude the commission's consideration of important and applicable information, such as a TCEQ order appointing a temporary manager. This appointment might not be considered part of a utility's "compliance history" and would therefore not be provided to the commission for review. Additionally, TCEQ orders are issued after the opportunity for response and a hearing. A TCEQ notice of violation can occur without the party being given a chance to respond and dispute the alleged violation. The application of OPUC's proposed language would substantially broaden the commission's review, and could result in denial of an application due to alleged violations, rather than fully adjudicated compliance issues.

Section 24.109(l)

OPUC identified four concerns with this proposed subsection. First, OPUC stated it is unclear what "processing" of the application is required of the transferee and requested clarification of the phrase "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 determined that the proposed transaction serves the public interest." Second, OPUC requested clarification of how the Commission will determine that the transferee has failed to process the application or provide public notice. Third, OPUC expressed concern that the proposed language expands the Commission's 120-day deadline to act on STM applications. Fourth, OPUC noted that this subsection seemed redundant of subsection (i), and could lead to confusion.

In reply comments, the IOUs agreed that this subsection is confusing, and should be clarified.

Commission response

The commission agrees with OPUC that it is unclear how a transferee is required to "process" an application. The commission therefore modifies the language of this subsection to be consistent with the language found in TWC §13.301(g), which requires the applicant to "file the application as required."

The commission will continue to review STM applications to determine whether the transferee has properly filed the application and provided public notice.

The commission further clarifies that this proposed subsection does not expand the 120-day deadline for the commission to investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental, as set out in §24.109(a).

Finally, the commission agrees that the content of §24.109(j) relates to §24.109(l) and believes that these two subsections are properly combined. Therefore, the commission moves the content of §24.109(l) into §24.109(j) to clarify that the commission shall make a public interest determination as to the proposed sale, transfer, merger, consolidation, acquisition, lease, or rental, with or without a public hearing. Further, if the commission decides to hold a hearing, or if the transferee fails to make the application as required or provide public notice, the proposed transaction may not be completed *unless* the commission determines that the proposed transaction serves the public interest.

Section 24.109(m)

The Cities and Districts argued that the transferee should not be required to provide notice of every minor change that may occur during the execution of the sale and the final commission order, and proposed that in the second sentence the word "material" be inserted before the word "changes."

The IOUs stated that the STM procedure needs to involve a single approval process, not a two or three step process. The IOUs expressed concern that proposed §24.109(m) starting with "The transferee shall inform the commission of any changes . . ." seems to open the door for further reevaluation of the transaction post-closing. In reply comments, the IOUs stated that the Cities and Districts' proposed insertion of "material" is sound.

Commission response

The commission agrees with the Cities and Districts and adopts the proposed language to clarify that this subsection only applies to "material changes" that may occur during the execution of the sale and the final commission order. This change should also alleviate the IOUs' concern.

Section 24.109(m)-(q)

OPUC requested clarification on whether or not an STM application can be modified from the filed application, such as when necessary modifications are made following a settlement with intervenors.

Commission response

The commission clarifies that the proposed transaction may be modified from the filed application in limited circumstances, such as in response to a settlement agreement. The modifications may not be material.

Section 24.109(n)-(o)

The IOUs requested clarification of this requirement, and whether it is necessary if all deposits were refunded prior to the effective date of the transaction or prior to closing. The IOUs also stated that they would like the flexibility for the transferee to handle whatever is required after the effective date of the transaction without involving the transferor.

Commission response

The commission agrees that this procedure is only necessary where deposits have not yet been refunded, and is adding clarifying language to that effect. The commission also clarifies that the transferee and transferor are dual applicants during the processing of an STM. A failure of either party to comply with the requirements found in this section could result in the disapproval of the request. Which party should file specific documents, such as the affidavit attesting to the return of customer deposits, is determined between the parties and is not determined by the section.

Section 24.109(u)

The Cities and Districts and Tyler suggested that the notice requirement of this subsection only applies to those parties that §24.109(a) applies to. The Cities and Districts propose that the language of §24.109(u) be replaced with the language currently in §24.109(l). OPUC expressed concern over the lack of guidance on how the notice requirement will be met. OPUC recommended that an agreement or contract between the parties simply acknowledge the requirements of §24.109.

The IOUs' reply comments opposed OPUC's suggestion. The IOUs stated that this would be an unlawful dictation of contract terms, and that the statute does not require a specific format of notification and it should not be limited to the contract.

Commission response

The commission adopts Tyler's proposed language in part, to clarify that the notice requirements of this subsection only applies to transaction subject to this section. The commission is also amending this subsection to provide guidance for how the notice will be provided. To address OPUC's and the IOUs' concerns, the language has been updated to require that the utility ". . . shall provide the other party to the transaction a copy of the requirements of this section. . ."

Section 24.111

Both the IOUs and the Cities and Districts opposed the addition of a requirement for any "person purchasing voting stock" in a utility to file an application, rather than the statutory requirement, which only requires a person that is acquiring a controlling interest in the utility to file an application.

Commission response

The commission agrees and amends this section to be consistent with TWC §13.302.

Section 24.117 generally

The IOUs suggested that this process could be useful as a streamlined CCN process as previously discussed in §24.105, but that if applications under this section are treated as a standard STM or CCN amendment application with the same application it will lose its usefulness in that regard.

Commission response

The commission agrees with the IOUs that the process under §24.117 should be subject to less scrutiny than an application for a new CCN or CCN amendment. However, the commission clarifies that the reason for this lower level of scrutiny is because this process is only for existing CCN holders to trade existing certificated service area. Therefore, these entities have already met the commission's requirements for a new CCN or CCN amendment.

Section 24.117(a)

Tyler and the Cities and Districts asserted that the proposed language of subsection (a) narrows the scope of TWC §13.248 by limiting its applicability to only those retail public utilities that currently hold a CCN. Tyler asserted that municipalities and districts should be given the same opportunity as retail public utilities with CCNs to access the more efficient process provided by this section. The IOUs requested that retail public utilities not required to hold a CCN be able to use this process to obtain existing certificated service areas from CCN holders. The Cities and Districts suggested adding a provision that no mailed notice is required if the party that will receive the requested area is already providing retail water and/or sewer service to the requested area.

Commission response

The commission declines to broaden the applicability of §24.117 to utilities that do not currently hold a CCN. The corresponding statute, TWC §13.248, provides that if such a contract is approved by the commission, areas to be served and customers to be served "are incorporated into the appropriate area of public convenience and necessity." The

commission interprets this provision to indicate that the parties to the contract must each hold a CCN; otherwise, the requested area could not be incorporated into the receiving utility's *certificated service area.* The commission declines to adopt Tyler's and the IOUs' suggestion that this process be available to a retail public utility not required to hold a CCN for the same reasons.

The commission declines to adopt the Cities and District's proposed waiver of mailed notice, as mailed notice to affected customers is in the public interest.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission makes other minor modifications for the purpose of clarifying its intent and using defined terms more consistently.

These amendments and repeal are adopted under 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, and SB 1148.

Cross Reference to Statutes: TWC §13.041 and SB 1148.

§24.1. Purpose and Scope of this Chapter.

(a) This chapter is intended to establish a comprehensive regulatory system under Texas Water Code chapter 13 to ensure that rates, operations, and services 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 by 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 over a utility's rates, operations, and services ceded to the TCEQ continues in effect and shall be deemed to be ceded to the commission.

(c) It is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by TCEQ or other

agencies. Nothing in this chapter relieves a retail public utility from the obligation to file reports or otherwise provide notice and information to TCEQ of regulated activities as required by TCEQ rules.

(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) **Acquisition adjustment --**

(A) The difference between:

(i) the lesser of the purchase price paid by an acquiring utility or the current depreciated replacement cost of the plant, property, and equipment comparable in size, quantity, and quality to that being acquired, excluding customer contributed property, less accumulated depreciation; and

(ii) the original cost of the plant, property, and equipment being acquired, excluding customer contributed property, less accumulated depreciation.

(B) A positive acquisition adjustment results when subparagraph (A)(i) of this paragraph is greater than subparagraph (A)(ii) of this paragraph.

(C) A negative acquisition adjustment results when subparagraph (A)(ii) of this paragraph is greater than subparagraph (A)(i) of this paragraph.

(2) **Active connections --** Water or sewer connections currently being used to provide retail water or sewer service, or wholesale service.

(3) **ADFIT --** Accumulated deferred federal income tax -- The amount of income-tax deferral, typically reflected on the balance sheet, produced by deferring the payment of federal income taxes by using tax-advantageous methods such as accelerated depreciation.

(4) **Affected county --** A county to which Local Government Code, Chapter 232, Subchapter B, applies.

(5) **Affected person --** Any landowner within an area for which an application for a new or amended certificate of public convenience and necessity is filed; any retail public utility affected by any action of the regulatory authority; any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(6) **Affiliated interest or affiliate --**

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions

of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(7) **Agency --** Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Department of Insurance Division of Workers' Compensation, and institutions for higher education) which makes rules or determines contested cases.

(8) **Allocations --** For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas. A non-municipal allocation is the division of plant, revenues, expenses, taxes and reserves between affiliates, jurisdictions, rate regions, business units, functions, or customer classes defined within a retail public utility's operations for all retail public utilities and affiliates.

(9) **Amortization --** The gradual extinguishment of an amount in an account by distributing the amount over a fixed period (such as over the life of the asset or liability to which it applies).

(10) **Annualization --** An adjustment to bring a utility's accounts to a 12 month level of activity

(11) **Base rate --** The portion of a consumer's utility bill that is paid for the opportunity to receive utility service, which does not vary due to changes in utility service consumption patterns.

(12) **Billing period --** The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

(13) **Block rates --** A rate structure set by using blocks, typically inclining cost for increased usage, which changes the cost per 1,000 gallons as usage increases to the next block.

(14) **Certificate of Convenience and Necessity (CCN) --** A permit issued by the commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area. **Certificate** or **Certificate of Public Convenience and Necessity** have the same meaning.

(15) **Class A Utility --** A public utility that provides retail water or sewer utility service to 10,000 or more taps or active connections. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(16) **Class B Utility --** A public utility that provides retail water or sewer utility service to 500 or more taps or active connections but fewer than 10,000 taps or active connections. If a

public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

(17) **Class C Utility --** A public utility that provides retail water or sewer utility service to fewer than 500 taps or active connections. A Class C utility filing an application under TWC §13.1871 shall be subject to all requirements applicable to Class B utilities filing an application under TWC §13.1871. If a public utility provides both water and sewer utility service, the number of active water connections determines how the utility is classified.

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

(19) **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.

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

(21) **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.

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

(23) **District --** District has the meaning assigned to it by TWC §49.001(a).

(24) **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.

(25) **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 utility's service area and/or requested area.

(26) **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.

(27) **Functionalization** -- The assignment or allocation of costs to utility functional cost categories.

(28) **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, rates typically include the base rate and gallonage rate.

(29) **Inactive connections** -- Water or wastewater connections tapped to the applicant's utility and that are not currently receiving service from the utility.

(30) **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.

(31) **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.

(32) **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.

(33) **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.

(34) **License** -- The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(35) **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.

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

(37) **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.

(38) **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 within a water supply or sewer service corporation's service area, 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.

(39) **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.

(40) **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.

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

(42) **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.

(43) **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.

(44) **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 in accordance with §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, in accordance with §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).

(45) **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.

(46) **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.

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

(48) **Potential connections** -- Total number of active plus inactive connections.

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

(50) **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.

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

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

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

(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.

(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.

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

(57) **Requested area** -- The area that a petitioner or applicant seeks to obtain, add to, or remove from a retail public utility's certificated service area.

(58) **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.

(59) **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.

(60) **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.

(61) **Return on invested capital** -- The rate of return times invested capital.

(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.

(63) **Service area** -- Area to which a retail public utility is obligated to provide retail water or sewer utility service.

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

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

(67) **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) **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) **TCEQ** -- Texas Commission on Environmental Quality.

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

(72) **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** -- An area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties;

such other land includes roads and railroads. A tract of land may be acquired through multiple deeds or shown in separate surveys.

(74) **TWC** -- Texas Water Code.

(75) **Utility** -- The definition of utility is that definition given to water and sewer utility in this subchapter.

(76) **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) **Water use restrictions** -- Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility due to emergency conditions or drought.

(78) **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) **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) Any application under chapter 24, except as otherwise noted by this chapter, shall be reviewed for administrative completeness within 30 calendar days from the date the application is file stamped by the commission's Central Records office. If the applicant is required to issue notice, the applicant shall be notified upon determination that the notice or application is administratively complete.

(b) If the commission determines that any deficiencies exist in an application, statement of intent, or other requests for commission action addressed by this chapter, the application or filing may be rejected and the effective date suspended, as applicable, until the deficiencies are corrected.

(c) In cases involving a proposed sale, transfer, merger, consolidation, acquisition, lease, or rental, of any water or sewer system or utility owned by an entity required by law to possess a 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 and public notice is provided, unless notice is waived for good cause shown.

(d) Applications under subchapter G of chapter 24 are not considered filed until the commission makes a determination that the application is administratively complete.

§24.101. Certificate of Convenience and Necessity Required.

(a) Unless otherwise specified, a utility or a water supply or sewer service corporation may not in any way provide 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). Except as otherwise provided by this subchapter, a retail public utility may not provide, make available, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully provided by another retail public utility without first obtaining a CCN that includes the area in which the consuming facility is located.

(b) A district may not provide services within the certificated service area of a retail public utility or within the boundaries of another district without the retail public utility's or district's consent, unless the district has a CCN to provide retail water or sewer utility service to that area.

(c) Except as otherwise provided by this subchapter, 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 CCN to provide retail water or sewer utility service to that area.

(d) A person that is not a retail public utility, a utility, or a water supply or sewer service corporation that is operating under provisions in accordance with TWC §13.242(c) may

not construct facilities to provide retail water or sewer utility service to more than one service connection that is not on the property owned by the person and that is within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.

(e) A supplier of wholesale water or sewer service may not require a purchaser to obtain a CCN if the purchaser is not otherwise required by this chapter to obtain a CCN.

§24.102. Criteria for Granting or Amending a Certificate of Convenience and Necessity.

(a) In determining whether to grant or amend a certificate of 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 is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC; and

(B) 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 is capable of meeting TCEQ 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 for an area that 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 one half mile from the outer boundary of the requested area;

(2) for applications to obtain or amend a sewer CCN, a list of all retail public sewer utilities within one half mile from the outer boundary of the requested area;

(3) copies of written requests seeking to obtain service from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection or evidence that it is not economically feasible to obtain service from the retail public utilities referenced in paragraph (1) or (2) of this subsection;

(4) copies of written responses from each of the retail public utilities referenced in paragraphs (1) or (2) of this subsection 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) if a neighboring retail public utility has agreed to provide service to a requested area, 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 is willing to provide and comparison with service the applicant is proposing;

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

(C) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.

(c) The commission may approve applications and grant or amend a CCN only after finding that granting or amending the CCN is necessary for the service, accommodation, convenience, or safety of the public. The commission may grant or amend the CCN as applied for, or refuse to grant it, or grant it for the construction of only a portion of the contemplated facilities or extension thereof, or for only the partial exercise 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, the commission shall also consider:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including, but not limited to:

(A) whether any landowners, prospective landowners, tenants, or residents have requested service;

(B) economic needs;

(C) environmental needs;

(D) written application or requests for service; or

(E) reports or market studies demonstrating existing or anticipated growth in the area;

(3) the effect of granting or amending a CCN on the CCN recipient, on any landowner in the requested area, and on any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the

requested area. These effects include but are 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 requested area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the new CCN or a CCN amendment; and

(9) the effect on the land to be included in the requested area.

(e) The commission may require an applicant seeking to obtain a new CCN or a CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer 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 chapter 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 certificated service area. 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 unserved 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 cannot agree among themselves regarding who will provide service. The assessment shall be conducted considering the following information:

(1) all criteria from subsections (a)-(f) of this section;

(2) source-water adequacy;

(3) infrastructure adequacy;

(4) technical knowledge of the applicant;

(5) ownership accountability;

(6) staffing and organization;

(7) revenue sufficiency;

(8) creditworthiness;

(9) fiscal management and controls;

(10) compliance history; and

(11) planning reports or studies by the applicant to serve the proposed area.

(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 requested area may elect to exclude some or all of the landowner's property from the requested area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an application for a CCN or for a CCN amendment. 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 requested area shall be modified to remove the electing landowner's property. An applicant that has land removed from its requested 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 a violation of law or commission rules.

(1) The landowner's request to opt out of the requested area shall be filed with the commission and shall include the following information:

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

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

(C) a metes and bounds survey for the tract of land subject to the landowner's opt-out request, that is sealed or embossed by either a licensed state land surveyor or registered professional land surveyor.

(2) The applicant shall file the following mapping information to address each landowner's opt-out request:

(A) a detailed map identifying the revised requested area after removing the tract of land subject to each landowner's opt-out request. The map shall also identify the outer boundary of each tract of land subject to each landowner's opt-out request, in relation to the revised requested area. The map shall identify the tract of land and the requested area in reference to verifiable man-made and/or natural landmarks such as roads, rivers, and railroads;

(B) 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) for the revised requested area after removing each tract of land subject to any landowner's opt-out request. The digital mapping data shall include a single, continuous polygon record; and

(C) the total acreage for the revised requested area after removing each tract of land subject to the landowner's opt-out requests. The total acreage for the revised requested area must correspond to the total acreage included with the digital mapping data.

(i) If the requested 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, 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 requested area at a hearing regarding the application.

§24.103. Certificate of Convenience and Necessity Not Required.

(a) **Extension of Service.**

(1) Except for a utility or water supply or sewer service corporation that possesses a facilities-only certificate of convenience and necessity (CCN), a retail public utility is not required to obtain a CCN 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 certificated service 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 certificated service area; or

(B) an extension within or to territory already served by it or to be served by it under a CCN.

(2) Whenever an extension is made under 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 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 certificated 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 is necessary for the service, accommodation, convenience, or safety of the public.

(c) **Single Certification Under TWC §13.255.** A municipality that 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:

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

(2) files a copy of the notice with the commission; and

(3) files an application for single certification as required by TWC §13.255 and §24.120 of this title (relating to Single Certification in Incorporated or Annexed Areas).

(d) **Municipal Systems in Unserved Area.**

(1) This subsection 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) **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 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 entity, that provides potable water service;

(C) is not located within the certificated service 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) A water utility or water supply corporation with less than 15 potential connections currently operating under a CCN may request cancellation of the CCN at any time.

(3) The commission may cancel the current CCN 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 a copy of its tariff to each future customer at the time service is requested and upon request to each current customer.

(6) An applicant requesting registration status as an exempt utility shall comply with the mapping documents as prescribed in §24.119(a)(2)-(3) of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications).

(7) Exempt-Utility Tariff and Rate Change Requirements. An exempt utility operating under registration status as an exempt utility:

(A) must maintain a current copy of the exempt-utility's tariff 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) if it provides each customer

with written notice of the rate change prior to the effective date of the rate change. The written notice shall indicate 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 from at least 50% of the customers of an exempt utility within 90 days after the effective date of the rate change, the commission shall 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 establish the rates to be charged by the exempt utility. Those rates 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 intervenors. 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, 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 motion for rehearing.

(8) Unless authorized in writing by the commission, an exempt water utility or a water supply corporation operating under these requirements may not cease operations. An exempt water utility may not discontinue service to a customer with or without notice except in accordance with its commission approved exempt-utility tariff and an exempt water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.

(9) An exempt water 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 by the commission shall be subject to any and all enforcement remedies provided by this chapter and TWC chapter 13.

§24.104. Applicant.

(a) It is the responsibility of the owner of the utility, the utility's designated representative or authorized agent, 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 an application for a certificate of convenience and necessity (CCN) with the commission to obtain or amend a CCN.

(b) The applicant shall have the continuing duty to submit information regarding any material change in the applicant's financial, managerial, or technical status that arises during the application review process.

§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 a CCN amendment. Applications must contain the following materials, unless otherwise specified in the application form:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) mapping documents as prescribed in §24.119 of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);

(3) information to demonstrate a need for service in the requested 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 requested 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 requested area; and

(B) evidence to show that the applicant has received the necessary approvals including any consents, franchises, permits, or licenses to provide retail water or sewer utility service in the requested area from the applicable municipality, district, or other public authority that:

(i) currently provides retail water or sewer utility service in the requested 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 requested area, if any.

(5) an explanation from the applicant demonstrating that issuance of a new CCN or a CCN amendment is necessary for the service, accommodation, convenience, or safety of the public;

(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 requested area, a capital improvement plan, including a budget and an estimated timeline for construction of all facilities necessary to provide full service to the requested area, keyed to a map showing where such facilities will be located to provide service;

(7) a description of the sources of funding for all facilities that will be constructed to serve the requested area, if any;

(8) disclosure of all affiliated interests as defined by §24.3 of this title;

(9) to the extent known, a description of current and projected land uses, including densities;

(10) a current financial statement of the applicant;

(11) according to the tax roll of the central appraisal district for each county in which the requested area is located, a list of the owners of each tract of land that is:

(A) at least 25 acres; and

(B) wholly or partially located within the requested area;

(12) if dual certification is being requested, a copy of the executed agreement that allows for dual certification of the requested area. Where such an agreement is not practicable, a statement of why dual certification is in the public interest;

(13) if an amendment is being requested with the consent of the existing CCN holder, a copy of the executed agreement to amend the existing certificated service area;

(14) for an application for a new water CCN or a 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 or facilities. Proof that the applicant has submitted plans and specifications for the proposed drinking water system 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 water CCN or a CCN amendment may be subject to dismissal without prejudice. Any approval letter for the proposed public drinking water system or facilities must be filed with the commission before the issuance of a new CCN or a CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in dismissal of the application without prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required by 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 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 may be subject to dismissal without prejudice. Any approval letter for the permit application must be filed with the commission before the issuance of a new CCN or a 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 by 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

(16) any other item or information required by the commission.

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

(c) **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 requested 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 plan required by TWC §13.244(d)(3) or a subdivision plat, the commission may grant the new CCN or a 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 requested area 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 service with the municipality.

(5) If a municipality refuses to provide service in the requested 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 to Cameron, Hidalgo, or Willacy Counties, or to a county:

(A) with a population of more than 30,000 and less than 35,000 that borders the Red River;

(B) with a population of more than 100,000 and less than 200,000 that borders a county described by subparagraph (A) of this paragraph;

(C) with 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

(D) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio river.

(E) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this paragraph.

(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) **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 certificated service area of a retail public utility, the retail public utility may continue and extend service in its certificated service area under the rights granted by its CCN and this chapter.

(2) The commission may not extend a municipality's certificated service area 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 the requested area in accordance with TWC §13.246(h). This subsection does not apply to a sale, transfer, merger,

consolidation, acquisition, lease, or rental of a CCN as approved by the commission.

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Hidalgo, or Willacy Counties, or in a county:

(A) with a population of more than 30,000 and less than 35,000 that borders the Red River;

(B) with a population of more than 100,000 and less than 200,000 that borders a county described by subparagraph (A) of this paragraph;

(C) with 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

(D) with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio river.

(E) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this paragraph.

(4) To the extent of a conflict between this subsection and TWC §13.245, TWC §13.245 prevails.

(e) **Area within municipality.**

(1) If an area is within the boundaries of a municipality, any retail public utility holding or entitled to hold a CCN under this chapter to provide retail water and/or sewer utility service or operate facilities in that area may continue and extend service in its certificated service area, 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 §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the certificated service area of another retail public utility without first having obtained from the commission a CCN that includes the 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 Requirements for Certificate of Convenience and Necessity Applications.

(a) If an application to obtain or amend a certificate of convenience and necessity (CCN) is filed, the applicant will prepare the notice prescribed in the commission's application form, which will include the following:

(1) all information outlined in the Administrative Procedure Act, Texas Government Code, Chapter 2001;

(2) all information listed in the commission's instructions for completing a CCN application;

(3) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date."; and

(4) except for publication of notice, the notice must include a map showing the requested area.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will provide the notice to the applicant for publication and/or mailing.

(1) For applications for a new CCN or a 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 certificated service area are located within two miles from the outer boundary of the requested area.

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

(C) each groundwater conservation district that is wholly or partially included in the requested area.

(2) 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 requested area. 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 CCN. 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.

(3) Utilities that are required to possess a CCN but that are currently providing service without a CCN must provide individual mailed notice to all current customers. The

notice must contain the current rates, the effective date of the current rates, and any other information required in the application or notice form or by the commission.

(4) Within 30 days of the date of the notice, the applicant shall file in the docket an affidavit specifying every person and entity to whom notice was provided and the date that the notice was provided.

(c) The applicant shall publish the notice in a newspaper having general circulation in the county where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission. Proof of publication in the form of a publisher's affidavit shall be filed with the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) The commission may require the applicant to deliver notice to other affected persons or agencies.

(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 that grants or amends a CCN and thus changes the CCN holder's certificated service area.

§24.107. Action on Applications.

(a) The commission may conduct a public hearing on any application.

(b) After proper notice, the commission may take action on an uncontested application at any time after the later of the expiration of the intervention period or for which all interventions are subsequently withdrawn.

(c) 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

(a) Any water supply or sewer service corporation, or water and sewer utility, owned by an entity required by law to possess a certificate of convenience and necessity (CCN) shall, and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:

(1) the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or

(2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.

(b) The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days unless good cause is shown. Public notice may be waived by the commission for good cause shown.

(c) Unless notice is waived by the commission for good cause shown, proper notice shall be given to affected customers and to other affected parties as determined by the commission and on the form prescribed by the commission which shall include the following:

(1) the name and business address of the current utility holding the CCN (transferor) and the retail public utility or person which will acquire the facilities or CCN (transferee);

(2) a description of the requested area; and

(3) the following statement: "Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date."

(d) The commission may waive notice under this subsection if the requested area does not include unserved area, or for good cause shown. If notice is not waived by the commission, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.

(e) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located.

(f) The commission may allow published notice in lieu of individual notice as required in this subsection.

(g) A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system (transferee) must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.102(a) of this title (relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity) .

(h) If the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water and/or sewer utility service is provided to both the requested area and any area already being served under the transferee's existing CCN. The commission shall set the amount of financial assurance. The form of the financial assurance shall be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this title does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(i) The commission shall, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental to determine whether the transaction will serve the public interest. If the commission decides to hold a hearing, or if the transferee fails either to file the application as required or to provide public notice, the transaction

proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

(j) Prior to the expiration of the 120-day period described in subsection (a) of this section, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. The commission may require a hearing if:

(1) the application filed with the commission or the public notice was improper;

(2) the transferee has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being served under the transferee's existing CCN;

(3) the transferee has a history of:

(A) noncompliance with the requirements of the TCEQ, the commission, or the Texas Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the transferee cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the requested area; or

(5) there are concerns that the transaction does not serve the public interest. It is in the public interest to investigate the following factors:

(A) whether the transferor or the transferee has failed to comply with any commission or TCEQ order. The commission may refuse to approve a sale,

transfer, merger, consolidation, acquisition, lease, or rental if conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met;

(B) the adequacy of service currently provided to the requested area;

(C) the need for additional service in the requested area;

(D) the effect of approving the transaction on the transferee, the transferor, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area;

(E) the ability of the transferee to provide adequate service;

(F) the feasibility of obtaining service from an adjacent retail public utility;

(G) the financial stability of the transferee, including, if applicable, the adequacy of the debt-equity ratio of the transferee if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction.

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

(1) at the end of the 120-day period described in subsection (a) of this section; or

(2) at any time after the transferee receives notice from the commission that a hearing will not be requested.

(l) Within 30 days of the commission order that allows the sale, transfer, merger, consolidation, acquisition, lease, or rental to proceed as proposed, the transferee shall provide a written update on the status of the transaction, and every 30 days thereafter, until the transaction is complete. The transferee shall inform the commission of any material changes in its financial, managerial, and technical capability to provide continuous and adequate service to the requested area and the transferee's service area.

(m) If there are outstanding customer deposits, within 30 days of the actual effective date of the transaction, the transferor and the transferee shall file with the commission, under oath, in addition to other information, a list showing the following:

(1) the names and addresses of all customers who have a deposit on record with the transferor;

(2) the date such deposit was made;

(3) the amount of the deposit; and

(4) the unpaid interest on the deposit. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.

(n) Within 30 days after the actual effective date of the transaction, the transferee and the transferor shall file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed. The signed contract, bill of sale, or other documents, must be signed by both the transferor and the transferee. If there were outstanding customer deposits, the transferor and the transferee shall also file

documentation as evidence that customer deposits have been transferred or refunded to the customers with interest as required by this section.

(o) The commission's approval of a sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility expires 180 days following the date of the commission order allowing the transaction to proceed. If the sale has not been completed within that 180-day time period, the approval is void, unless the commission in writing extends the time period for good cause shown.

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

(q) A sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility required by law to possess a CCN, or transfer of customers and/or service area, owned by an entity required by law to possess a CCN that is not completed in accordance with the provisions of TWC §13.301 is void.

(r) The requirements of TWC §13.301 do not apply to:

(1) the purchase of replacement property;

(2) a transaction under TWC §13.255; or

(3) foreclosure on the physical assets of a utility.

(s) If a utility's facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its CCN, or a controlling interest in an incorporated utility, unless the utility provides a written disclosure relating to the contributions to both the transferee and the commission before the date of the sale or transfer. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(t) For any transaction subject to this section, the retail public utility that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest shall provide the other party to the transaction a copy of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest.

§24.110. Foreclosure and Bankruptcy.

(a) If a utility that is required by law to possess a certificate of convenience and necessity (CCN) receives notice that all or a portion of the utility's or system's facilities or property used to provide utility service is 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 service shall not charge or collect rates for providing retail public water or sewer service unless the person has a completed application for a CCN or to transfer the current CCN 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 TWC §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. 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 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 Utility.

(a) A utility may not purchase voting stock, 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 no later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as

(1) a person or a combination of a person and the person's family members that possess at least 50% of a utility's voting stock; or

(2) a person that controls at least 30% of a utility's voting stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility shall be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and to the person's certificated service area, if any.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require the person to provide financial assurance to ensure continuous and adequate utility service is provided to the service area. The commission shall set the amount of financial assurance. The form of the financial assurance shall 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) The commission may require a public hearing on the transaction if a criterion prescribed by §24.109(j) of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental) applies.

(e) Unless the commission requires that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60 day period; or

(2) at any time after the commission notifies the person or utility that a hearing will not be requested.

(f) 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 a utility's purchase of voting stock or a person's acquisition of a controlling interest to proceed as proposed, the utility purchasing voting stock or the person acquiring a controlling interest shall file a written update on the

status of the transaction. A written update shall also be filed every 30 days thereafter, until the transaction has been completed.

(i) The commission's approval of a utility's purchase of voting stock or a person's acquisition of a controlling interest in a utility expires 180 days after the date of the commission order approving the transaction as proposed. If the transaction has not been completed within the 180-day time period, and unless the utility purchasing voting stock or the person acquiring a controlling interest has requested and received an extension for good cause 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 that possesses or is required to possess a certificate of convenience and necessity (CCN) and seeks to discontinue, reduce, or impair retail water or sewer utility service, except under the conditions listed in TWC §13.250(b), must file a petition with the commission which sets out the following:

(1) the action proposed by the retail public utility;

(2) the proposed effective date of the actions, which must be at least 120 days after the petition is filed with the commission;

(3) a concise statement of the reasons for proposing the action; and

(4) the part of the petitioner's service area affected by the action, including maps as described by §24.119 of this title (relating to Mapping Requirements for Certificates of Convenience and Necessity Applications).

(b) The petitioner shall file a proposed notice to customers and any other affected parties. The proposed notice shall include:

(1) the name, CCN number, if any, mailing address, and business telephone number of the petitioner;

(2) a description of the service area of the petitioner involved;

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

(4) a statement that a person who wishes to intervene or comment 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.

(c) After reviewing and, if necessary, modifying the proposed notice, the commission will provide the notice to the petitioner for mailing to:

(1) cities and neighboring retail public utilities providing the same utility service within two miles of the outer boundary of the petitioner's certificated service area;

(2) any city whose extraterritorial jurisdiction overlaps the petitioner's certificated service area;

(3) the customers of the petitioner; and

(4) any person that has requested service from the petitioner but that has not yet received service.

(d) The petitioner 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) of operation. In addition to the information specified in subsection (b) of this section, the notice shall include the following:

(1) the sale price of the facilities;

(2) the name, CCN number, if any, and mailing address of the petitioner's owner or authorized representative; and

(3) the business telephone of the petitioner.

(e) The commission may require the petitioner to deliver notice to other affected persons or agencies.

(f) If no hearing is requested by the 30th day after the required notice has been mailed or published, whichever occurs later, the commission may consider the petition for final decision without further hearing.

(g) If a hearing is requested, the petition will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

(h) Under no circumstance may any of the following entities cease operations without the approval of the regulatory authority: a retail public utility that possesses or is required to possess a CCN, 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 under §24.103 of this title (relating to Certificate of Convenience and Necessity Not Required).

(i) In determining whether to authorize a retail public utility to discontinue, reduce, or impair retail water or sewer utility service, the commission shall consider, but is not limited to, the following factors:

(1) the effect on the customers and landowners;

(2) the costs associated with bringing the utility into compliance;

(3) the applicant's diligence in locating alternative sources of service;

(4) the applicant's efforts to sell the utility, such as running advertisements, contacting other retail public utilities, or discussing cooperative organization with the customers;

(5) the asking price for purchase of the utility as it relates to the undepreciated original cost of the system for ratemaking purposes;

(6) the relationship between the applicant and the original developer of the area services;

(7) the availability of alternative sources of service, such as adjacent retail public utilities or groundwater; and

(8) the feasibility of customers and landowners obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.

(j) If a utility discontinues or otherwise abandons operation of its facilities without commission authorization, the commission may appoint a temporary manager or place the utility under supervision to take over the utility's operations, management, finances, and facilities to ensure continuous and adequate retail water and/or sewer utility service.

§24.117. Contracts Valid and Enforceable.

(a) If approved by the commission after notice and hearing, contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities are valid and enforceable and are incorporated into the corresponding certificates of convenience and necessity (CCNs). This section only applies to the transfer of certificated service area and customers 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. The written petition shall include the following:

(1) maps of the requested area in accordance with §24.119(a) of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);

(2) a copy of the executed contract or agreement;

(3) the number of customers to be transferred, if any;

(4) information described in subsection (c)(3) of this section; and

(5) any other information required by the commission.

(c) For the purpose of this section, notice under §24.106 of this title (relating to Notice Requirements for Certificate of Convenience and Necessity Applications) does not apply. Notice under this section shall be as follows:

(1) If affected customers will be transferred as part of the contract, then individual notice shall be provided to the affected customers 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 under this section was discussed at a meeting of a city council, a water supply or sewer service corporation's board, district board, county commissioner's court, or other regulatory authority, a copy of the meeting agenda and minutes for the meeting during which the item was discussed may be considered sufficient notice.

(3) If notice was provided in accordance with paragraph (1) or (2) of this subsection, both parties to the contract under this section shall ensure that the following are filed with the commission: an affidavit attesting to the date that notice was provided and copies of the notice that was sent.

§24.118. Contents of Request for Cease and Desist Order by the Commission Under TWC §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 provides, makes available, 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 convenience and necessity (CCN), the commission may issue an order that prohibits the construction or extension of the interfering line, plant, or system or the provision of service or that prescribes terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for a commission order shall include the following:

(1) the name, CCN number, if applicable,, e-mail address, phone number, and mailing address of the retail public utility making the request;

(2) the name, CCN number, if applicable,, mailing address, phone number, if known, and e-mail address, if known, of the retail public utility which is to be the subject of the order;

(3) a description of the alleged interference or unlawful provision of service;

(4) a map of the service area of the requesting utility that clearly shows the location of the alleged interference or unlawful provision of service;

(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.

(b) A request for a 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 is providing retail water or sewer utility service within the service area of another retail public, unless the petitioner can demonstrate good cause for its failure to file such action within the 180 days.

§24.119. Mapping Requirements for Certificate of Convenience and Necessity Applications.

(a) Applications to obtain or amend a certificate of convenience and necessity (CCN) shall include the following mapping information:

(1) a general location map identifying the requested area in reference to the nearest county boundary, city, or town;

(2) a detailed map identifying the requested area in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads;

(3) one of the following for the requested area:

(A) a metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;

(B) a recorded plat; or

(C) 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; and

(4) if applicable, maps identifying any facilities for production, transmission, or distribution of services, customers, or area currently being served outside the certificated service area. Facilities shall be identified on subdivision plats, engineering planning maps, or other large scale maps. Color coding may be used to distinguish the types of facilities identified. The location of any such facility shall be described with such exactness that the facility can be located “on the ground”

from the map and may be identified in reference to verifiable man-made and natural landmarks where necessary to show its actual location.

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

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

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

(1) has discontinued or abandoned operations or the provision of services; or

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

(A) having expressed an intent to abandon or abandoned operation of its facilities;

(B) having violated a final order of the commission; or

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission.

(b) Appointment under this section may be 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) Abandonment includes, but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities or provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

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

(a) By emergency order under TWC §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 service to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The temporary manager shall serve a term of 180 days, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the commission staff or the temporary manager and granted by the commission;

(3) the temporary manager is discharged from his responsibilities by the commission; or,

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the Attorney General.

(e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement may be approved by the commission.

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(h) The temporary manager shall report to the commission on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the commission.

(i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §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 of convenience and necessity required; §24.102, relating to criteria for granting or amending a certificate of convenience and necessity; §24.103, relating to certificate of convenience and necessity not required; §24.104, relating to applicant; §24.105, relating to contents of certificate of convenience and necessity applications; §24.106, relating to notice requirements for certificate of convenience and necessity applications; §24.107, relating to action on applications; §24.109, relating to sale, transfer, merger, consolidation, acquisition, lease, or rental; §24.110, relating to foreclosure and bankruptcy; §24.111, relating to purchase of voting stock or acquisition of a controlling interest in a 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 cease and desist order by the commission under TWC §13.252; §24.119, relating to mapping requirements for certificate of convenience and necessity applications; §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 are hereby adopted with changes to the text as proposed, and the repeal of §24.112, relating to transfer of certificate of convenience and necessity is hereby adopted without changes.

Signed at Austin, Texas the _____ day of December 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

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