

PROJECT NO. 57059

**EXECUTIVE DIRECTOR
AUTHORITY TO CORRECT
WATER AND SEWER CCNS**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

**PROPOSAL FOR PUBLICATION
OF AMENDMENTS TO 16 TAC §24.233**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.233 relating to Contents of Certificate of Convenience and Necessity Applications. The proposed amendments will implement Texas Water Code §§ 13.244 and 13.246 as revised by Senate Bill 893 during the Texas 88th Regular Legislative Session. The amendments grant the Executive Director authority to make minor corrections to water and sewer certificates of convenience and necessity without observing formal amendment procedures.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rules

will not require an increase and will not require a decrease in future legislative appropriations to the agency;

- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability;
and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Iliana De La Fuente, Attorney, Rules and Projects, determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local

government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. De La Fuente has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be reducing the time and administrative burdens associated with making minor corrections to water and sewer CCNs. There will be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by

November 7, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by November 7, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 57059.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

The commission also requests comments on the following question:

Under TWC § 13.244(e)(4), the executive director may make a correction under this rule “to correct another similar non-substantive error or matter if authorized by the utility commission by rule.” Are there any additional types of errors or matters that the commission should authorize the executive director to correct under the proposed rule?

Statutory Authority

The amendments are proposed under Texas Water Code (TWC) §13.041, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rules are also proposed under TWC §13.244 and 13.246 as amended by SB 893 (88th regular session), which provide the commission executive director to make minor corrections to water and sewer CCNs.

Cross Reference to Statute: TWC §§13.041, 13.244, and 13.246.

§24.233. 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 ~~must~~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)-(13) No change.

- (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 ~~must~~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)-(C) No change.

(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 ~~must~~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)-(C) No change.

(16) No change.

(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 ~~will~~shall determine that the district is consenting to the applicant's request to provide service in the requested area.

(c)-(e) No Change.

(f) **Executive corrections.** The executive director may make a correction to a CCN, at the discretion of the executive director or at the request of the CCN holder.

(1) An executive correction may be issued under this subsection only:

(A) to correct a clerical or typographical error;

(B) to correct a mapping error in a CCN:

(i) to reflect the metes and bounds of the certificated area on the map approved in a final order in a prior proceeding; or

(ii) to correct a typographical or grammatical error on the map approved in a final order in a prior proceeding.

(C) to change the name of an incorporated CCN holder on a CCN if:

(i) an amendment to the to the CCN holder's articles of incorporation or certificate of formation is filed with the secretary of state that only changes the name of the CCN holder; and

(ii) the CCN holder provides documentation from the secretary of state that the amendment only changed the name of the CCN holder.

(2) Commission staff will open a dedicated project for processing executive corrections under this subsection. Unless directed otherwise by commission staff on behalf of the executive director, all filings related to executive corrections must be made in this dedicated project.

(3) **Request.** A CCN holder may request the executive director make a correction under this subsection by filing a request for executive correction. The request must provide any information required for the executive director to determine whether to make the requested correction, including:

(A) a precise description of the requested correction;

- (B) an explanation of the correction, including any applicable supporting documentation;
 - (C) a justification for making the correction by executive action rather than other available proceedings; and
 - (D) for a request to correct a mapping error under paragraph (1)(b) of this subsection:
 - (i) a list of any persons or entities whose retail service may be directly affected by the correction; and
 - (ii) a written agreement between the CCN holder any other retail water or sewer service provider whose service area is directly affected by the correction.
- (4) **Notice.** For a request to correct a mapping error under paragraph (1)(b) of this subsection, commission staff will review the request and provide the CCN holder with a notice document. The CCN holder must provide the notice to any water or sewer service customers whose retail service is directly affected by the proposed correction. After providing notice, the CCN holder must file an affidavit specifying every person and entity to whom notice was provided and the date the notice was provided.
- (5) **Executive review.** The executive director will issue an order granting, granting in part, or denying the requested executive correction.
 - (A) The executive director has discretion to determine whether to make an executive correction under this subsection. In evaluating whether to make an executive correction, the executive director will consider whether the requested correction is supported by appropriate documentation, whether it is appropriate to bypass any proceedings that would otherwise be required to make the requested correction, and any other factor deemed relevant by the executive director.

- (B) The executive director must not make an executive correction to address a mapping error under paragraph (1)(b) of this subsection unless the CCN holder:
- (1) files a written agreement between the CCN holder and any other retail water or sewer service provider whose service area is directly affected by the correction; and
 - (2) provides notice of the correction to any water or sewer service customers whose retail service is directly affected by the correction.
- (C) The executive director, or commission staff on behalf of the executive director, may request any additional information from the CCN holder necessary to determine whether to issue an executive correction under this subsection.
- (D) The executive director's order may require commission staff or the CCN holder to take any actions or make any additional filings necessary to appropriately update the commission's records to accurately reflect the correction.
- (E) If the executive director issues an executive correction, commission staff must notify the CCN holder that the correction has been made.

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

**ISSUED IN AUSTIN, TEXAS ON THE 3RD DAY OF OCTOBER 2024 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ**