

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

Subchapter H. CERTIFICATES OF CONVENIENCE AND NECESSITY.

§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 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 §24.257 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:

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- (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 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 §24.205 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 §24.205 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 must 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 §24.207 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 §24.207 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 will 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

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- 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 will 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 36,000 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 170,000 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.

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- (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 36,000 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 170,000 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 standard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality must pay just and adequate compensation for the property. In this subsection, standard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

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- (A) A municipality must 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, may either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality, and the commission will take such requested action upon notification of acquisition of the system.
- (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

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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:
 - (i) 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
 - (ii) 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.