

PROJECT NO. 56223

REVIEW OF §24.233 AND §24.245

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER ADOPTING 16 TAC §24.233 AND §24.245

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §24.233, relating to Contents of Certificate of Convenience and Necessity Applications with no changes to the proposed text as published in the May 10, 2024 issue of the *Texas Register* (49 TexReg 3071) and §24.245, relating to Revocation of a Certificate of Convenience and Necessity (CCN) or Amendment of a Certificate of Convenience and Necessity by Decertification, Expedited Release, or Streamlined Expedited Release with changes to the proposed text as published in the May 10, 2024 issue of the *Texas Register* (49 TexReg 3071). These amendments are adopted under Project Number 56223. The adopted rules implement House Bill (HB) 4559 enacted by the 88th Texas Legislature (R.S.).

Adopted §24.233 changes the county population threshold ranges for retail public utility CCN applications within the boundaries of a municipality, within the extraterritorial jurisdiction of certain municipalities, and extensions of a municipality's certificated service area beyond the extraterritorial jurisdiction of the municipality. Adopted §24.245 changes the county population threshold ranges applicable to expedited release and streamlined expedited release proceedings. Adopted §24.245 further specifies a time period for a retail public utility to file a notice of intent to provide service after the commission has revoked, decertified or ordered expedited release.

The commission received comments on the proposed rule from Aqua Texas, INC. (Aqua), Texas Association of Water Companies, INC. (TAWC), Texas Rural Water Association, (TRWA), and Texas Water Utilities, L.P. (TWU).

Proposed §24.245(g)(3) and §24.245(i)(1)

Under proposed §24.245(g)(3), if a CCN holder and prospective purchasing retail public utility have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing within 60 days of the date the notice of intent to provide service is filed. Similarly, under proposed §24.245(i)(1), if a former CCN holder and landowner have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 70 days after the commission has granted streamlined expedited release. In both instances, the filing must include the amount of the compensation and provide sufficient details about how the compensation was calculated.

TRWA and TAWC argued that the parties should not be required to provide “sufficient details about how the compensation was calculated.” TRWA argued that such a requirement would require the disclosure of inadmissible settlement information. TAWC argued that this requirement could discourage settlement negotiations and that the requirement to “provide sufficient details” is vague and burdensome for parties to comply with. TRWA also opposed the requirement that the parties provide the amount of compensation.

Aqua and TWU filed in support with TAWC’s comments.

Commission Response

The commission modifies proposed §24.245(g)(3) and proposed §24.245(i)(1) to remove the requirement that parties submit details on how the compensation was calculated, as requested by TRWA and TAWC. The commission agrees that the proposed requirement would be potentially burdensome and could discourage resolving these matters by mutual agreement. However, the commission declines to modify the rule to remove the requirement that the parties disclose the amount of compensation, because this is a requirement in the existing rule.

TRWA recommended that the commission remove the proposed requirements imposing deadlines for the parties to make a joint filing with an agreed-to compensation amount. TRWA argues that no such deadline exists in the statute. TRWA acknowledges that these are the deadlines for parties to file appraisals but argues that they should not also create a deadline to reach a settled agreement on compensation level. TRWA argues that opposing appraisals often create an impetus for settlement. TRWA argues that this language places an unnecessary time limit on the parties reaching an equitable settlement when continuances often lead to the compensation phase of decertification cases lasting over 90 days.

Commission Response

The commission declines to modify the rule to remove the deadlines for the parties to make a joint filing with an agreed-to amount of compensation, as requested by TRWA. The commission disagrees with TRWA that the commission should remove the deadline to enable

parties to continue to negotiate after each party has submitted initial appraisals. In that instance, the Commission is required to appoint a third appraiser to determine the final compensation amount, resulting in additional expenses associated with the determination.

If the parties wish to negotiate after the submission of initial appraisals, the parties may submit their appraisals prior to the deadline or seek a good cause exception to these requirements.

The amended rules are adopted under the following provisions of the Texas Water Code: Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §13.245, which governs procedures for service extensions within the boundaries or extraterritorial jurisdiction of certain municipalities by a retail public utility; §13.2451 which governs procedures for extension of a municipalities extraterritorial jurisdiction into the service area of a retail public utility; §13.254 which authorizes the commission, after notice and hearing, to revoke or amend a CCN upon written consent of the certificate holder and governs procedures for the expedited release of an area from a CCN's service territory; §13.2541 which governs procedures for the streamlined expedited release of an area from a CCN's service territory as an alternative to decertification or expedited release under §13.254.

Cross reference to statutes: Texas Water Code §§13.041(a) and (b); 13.245; 13.2451, 13.254, 13.2541.

§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 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 §24.257 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:
 - (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 §24.205 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 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 §24.207 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 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 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.
- (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 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.

§24.245. Revocation of a Certificate of Convenience and Necessity or Amendment of a Certificate of Convenience and Necessity by Decertification, Expedited Release, or Streamlined Expedited Release.

- (a) **Applicability.** This section applies to proceedings for revocation or amendment by decertification, expedited release, or streamlined expedited release of a certificate of convenience and necessity (CCN).
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise:
- (1) **Alternate retail public utility** -- The retail public utility from which a landowner plans to receive service after the landowner obtains expedited release under subsection (f) of this section.
 - (2) **Amendment** -- The change of a CCN to remove a portion of a service area by decertification amendment, expedited release, or streamlined expedited release.
 - (3) **Current CCN holder** -- An entity that currently holds a CCN to provide service to an area for which revocation or amendment is sought.
 - (4) **Decertification amendment** -- A process by which a portion of a certificated service area is removed from a CCN, other than expedited release or streamlined expedited release.
 - (5) **Expedited Release** -- Removal of a tract of land from a CCN area under Texas Water Code (TWC) §13.254(a-1).
 - (6) **Former CCN holder** -- An entity that formerly held a CCN to provide service to an area that was removed from the entity's service area by revocation or amendment.

- (7) **Landowner** -- The owner of a tract of land who files a petition for expedited release or streamlined expedited release.
 - (8) **Prospective retail public utility** -- A retail public utility seeking to provide service to a removed area.
 - (9) **Removed area** -- Area that will be or has been removed under this section from a CCN.
 - (10) **Streamlined Expedited Release** -- Removal of a tract of land from a CCN area under TWC §13.2541.
- (c) **Provisions applicable to all proceedings for revocation, decertification amendment, expedited release, or streamlined expedited release.**
- (1) An order of the commission issued under this section does not transfer any property, except as provided under subsection (l) of this section.
 - (2) A former CCN holder is not required to provide service within a removed area.
 - (3) If the CCN of any retail public utility is revoked or amended by decertification, expedited release, or streamlined expedited release, the commission may by order require one or more other retail public utilities to provide service to the removed area, but only with the consent of each retail public utility that is to provide service.
 - (4) A retail public utility, including an alternate retail public utility, may not in any way render retail water or sewer service directly or indirectly to the public in a removed area unless any compensation due has been paid to the former CCN holder and a CCN to serve the area has been obtained, if one is required.

(d) **Revocation or amendment by decertification.**

(1) At any time after notice and opportunity for hearing, the commission may revoke any CCN or amend any CCN by decertifying a portion of the service area if the commission finds that any of the circumstances identified in this paragraph exist.

(A) The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area. If the current CCN holder opposes revocation or decertification amendment on one of these bases, it has the burden of proving that it is, or is capable of, providing continuous and adequate service.

(B) The current CCN holder is in an affected county as defined in TWC §16.341, and the cost of providing service by the current CCN holder is so prohibitively expensive as to constitute denial of service. Absent other relevant factors, for commercial developments or residential developments started after September 1, 1997, the fact that the cost of obtaining service from the current CCN holder makes the development economically unfeasible does not render such cost prohibitively expensive.

(C) The current CCN holder has agreed in writing to allow another retail public utility to provide service within its certificated service area or a portion of its service area, except for an interim period, without amending its CCN.

(D) The current CCN holder failed to apply for a cease-and-desist order under TWC §13.252 and §24.255 of this title (relating to Content of Request for Cease and Desist Order by the Commission under TWC §13.252) within

180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless the current CCN holder proves that good cause exists for its failure to timely apply for a cease-and-desist order.

- (E) The current CCN holder has consented in writing to the revocation or amendment.
- (2) A retail public utility may file a written request with the commission to revoke its CCN or to amend its CCN by decertifying a portion of the service area.
- (A) The retail public utility must provide, at the time its request is filed, notice of its request to each customer and landowner within the affected service area of the utility.
 - (B) The request must specify the area that is requested to be revoked or removed from the CCN area.
 - (C) The request must address the effect of the revocation or decertification amendment on the current CCN holder, any existing customers, and landowners in the affected service area.
 - (D) The request must include the mapping information required by §24.257 of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications).
 - (E) The commission may deny the request to revoke or amend a CCN if existing customers or landowners will be adversely affected.

- (F) If a retail public utility's request for decertification amendment or revocation by consent under this paragraph is granted, the retail public utility is not entitled to compensation from a prospective retail public utility.
- (3) The commission may initiate a proceeding to revoke a CCN or decertify a portion of a service area on its own motion or upon request of commission staff.
- (4) The current CCN holder has the burden to establish that it is, or is capable of, providing continuous and adequate service and, if applicable, that there is good cause for failing to file a cease and desist action under TWC §13.252 and §24.255 of this title.
- (e) **Decertification amendment for a municipality's service area.** After notice to a municipality and an opportunity for a hearing, the commission may decertify an area that is located outside the municipality's extraterritorial jurisdictional boundary if the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area. This subsection does not apply to an area that was transferred to a municipality's certificated service area by the commission and for which the municipality has spent public funds.
- (1) A proceeding to remove an area from a municipality's service area may be initiated by the commission with or without a petition.
- (2) A petition filed under this subsection must allege that a CCN was granted for the area more than five years before the petition was filed and the municipality has not provided service in the area.

- (3) A petition filed under this subsection must include the mapping information required by §24.257 of this title.
 - (4) Notice of the proceeding to remove an area must be given to the municipality, landowners within the area to be removed, and other retail public utilities as determined by the presiding officer.
 - (5) If the municipality asserts that it is providing service to the area, the municipality has the burden to prove that assertion.
- (f) **Expedited release.**
- (1) An owner of a tract of land may petition the commission for expedited release of all or a portion of the tract of land from a current CCN holder's certificated service area so that the area may receive service from an alternate retail public utility if all the following circumstances exist:
 - (A) the tract of land is at least 50 acres in size;
 - (B) the tract of land is not located in a platted subdivision actually receiving service;
 - (C) the landowner has submitted a request for service to the current CCN holder at least 90 calendar days before filing the petition;
 - (D) the alternate retail public utility possesses the financial, managerial, and technical capability to provide service as identified in the request for service provided under paragraph (5) of this subsection on a continuous and adequate basis; and
 - (E) the current CCN holder:

- (i) has refused to provide service;
 - (ii) cannot provide service as identified in the request for service provided under paragraph (5) of this subsection on a continuous and adequate basis; or
 - (iii) conditions the provision of service on the payment of costs not properly allocable directly to the landowner's service request, as determined by the commission.
- (2) An owner of a tract of land may not file a petition under paragraph (1) of this subsection if the landowner's property is located in the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the current CCN holder.
- (3) The landowner's desired alternate retail public utility must be:
 - (A) an existing retail public utility; or
 - (B) a district proposed to be created under article 16, §59 or article 3, §52 of the Texas Constitution.
- (4) The fact that a current CCN holder is a borrower under a federal loan program does not prohibit the filing of a petition under this subsection or authorizing an alternate retail public utility to provide service to the removed area.
- (5) The landowner must submit to the current CCN holder a written request for service. The request must be sent by certified mail, return receipt requested, or by hand delivery with written acknowledgement of receipt. For a request other than for

standard residential or commercial service, the written request must identify the following:

- (A) the tract of land or portion of the tract of land for which service is sought;
 - (B) the time frame within which service is needed for current and projected service demands in the tract of land;
 - (C) the reasonable level and manner of service needed for current and projected service demands in the area;
 - (D) the approximate cost for the alternate retail public utility to provide service at the same level, and in the same manner, that is requested from the current CCN holder;
 - (E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested, if any; and
 - (F) any additional information requested by the current CCN holder that is reasonably related to determining the capacity or cost of providing service at the level, in the manner, and in the time frame, requested.
- (6) The landowner's petition for expedited release under this subsection must be verified by a notarized affidavit and demonstrate that the circumstances identified in paragraph (1) of this subsection exist. The petition must include the following:
- (A) the name of the alternate retail public utility;
 - (B) a copy of the request for service submitted as required by paragraph (5) of this subsection;

- (C) a copy of the current CCN holder's response to the request for service, if any;
 - (D) copies of deeds demonstrating ownership of the tract of land by the landowner; and
 - (E) the mapping information described in subsection (k) of this section.
- (7) The landowner must mail a copy of the petition to the current CCN holder and the alternate retail public utility via certified mail on the day that the landowner files the petition with the commission.
- (8) The presiding officer will determine whether the petition is administratively complete. If the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and setting a deadline for the petitioner to address the deficiencies. When the petition is determined to be administratively complete, the presiding officer will establish a procedural schedule that is consistent with paragraphs (9) and (10) of this subsection. The presiding officer may recommend dismissal of the petition under §22.181(d) of this title if the petitioner fails to supplement or amend the petition within the required timeframe after the presiding officer has determined that the petition is not administratively complete.
- (9) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete. The response must be verified by a notarized affidavit.

- (10) The commission will grant the petition within 60 calendar days from the date the petition was found to be administratively complete unless the commission makes an express finding that the landowner failed to satisfy all of the requirements of this subsection and makes separate findings of fact and conclusions of law for each requirement based solely on the information provided by the landowner and the current CCN holder. The commission may condition the granting or denial of a petition on terms and conditions specifically related to the landowner's service request and all relevant information submitted by the landowner, the current CCN holder, and commission staff.
- (11) The commission will base its decision on the filings submitted by the current CCN holder, the landowner, and commission staff. Chapter 2001 of the Texas Government Code does not apply to any petition filed under this subsection. The current CCN holder or landowner may file a motion for rehearing of the commission's decision on the same timeline that applies to other final orders of the commission. The commission's order ruling on the petition may not be appealed.
- (12) If the current CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations to provide service to the tract of land, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder, but only that the alternate retail public utility can provide the requested service. This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:

- (A) the county has a population of more than 30,000 and less than 36,000 and borders the Red River;
 - (B) the county has a population of more than 100,000 and less than 200,000 and borders a county described by subparagraph (A) of this paragraph;
 - (C) the county has a population of 170,000 or more and 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) the county has a population of more than 40,000 and less than 50,000 and contains a portion of the San Antonio River.
- (13) If the alternate retail public utility is a proposed district, then the commission will condition the release of the tract of land and required CCN amendment or revocation on the final and unappealable creation of the district. The district must file a written notice with the commission when the creation is complete and provide a copy of the final order, judgment, or other document creating the district.
- (14) The commission may require an award of compensation to the former CCN holder under subsection (g) of this section. The determination of the amount of compensation, if any, will be made according to the procedures in subsection (g) of this section.
- (g) **Determination of compensation to former CCN holder after revocation, decertification amendment or expedited release.** The determination of the monetary amount of compensation to be paid to the former CCN holder, if any, will be determined

at the time another retail public utility seeks to provide service in the removed area and before service is actually provided. This subsection does not apply to revocations or decertification amendments under subsection (d)(2) of this section or to streamlined expedited release under subsection (h) of this section.

- (1) After the commission has issued its order granting revocation, decertification, or expedited release, the prospective retail public utility must file a notice of intent to provide service. A notice of intent filed before the commission issues its order under subsection (d) or (f) of this section is deemed to be filed on the date the commission's order is signed.
- (2) The notice of intent must include the following information:
 - (A) a statement that the filing is a notice of intent to provide service to an area that has been removed from a CCN under subsection (d) or (f) of this section;
 - (B) the name and CCN number of the former CCN holder; and
 - (C) whether the prospective retail public utility and former CCN holder have agreed on the amount of compensation to be paid to the former CCN holder.
- (3) If the former CCN holder and prospective retail public utility have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 60 days of the filing of the notice of intent to provide service. The filing must state the amount of the compensation to be paid.
- (4) If the former CCN holder and prospective retail public utility have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of

compensation must be determined by a qualified individual or firm serving as an independent appraiser as follows:

- (A) If the former CCN holder and prospective retail public utility have agreed on an independent appraiser, they must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser and must file its appraisal with the commission within 60 days of the filing of the notice of intent. The costs of the independent appraiser must be borne by the prospective retail public utility.
- (B) If the former CCN holder and prospective retail public utility cannot agree on an independent appraiser within ten days of the filing of the notice of intent, the former CCN holder and prospective retail public utility must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 60 days of the filing of the notice of intent. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 30 days. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal of the appraisers engaged by the former CCN holder and prospective retail public utility. The former CCN holder and prospective retail public utility must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.
- (C) The appraisers must determine the amount of compensation in accordance with subsection (j) of this section.

- (5) The determination of compensation by the agreed-upon appraiser under paragraph (4)(A) of this subsection or the commission-appointed appraiser under paragraph (4)(B) of this subsection is binding on the commission, the landowner, the former CCN holder, and the prospective retail public utility.
 - (6) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or to file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the prospective retail public utility fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or to file an appraisal within the timeframes required by this subsection, the presiding officer may recommend denial of the notice of intent to provide service to the removed area.
 - (7) The commission will issue an order establishing the amount of compensation to be paid to the former CCN holder not later than 90 days after the date on which a retail public utility files its notice of intent to provide service to the decertified area.
- (h) **Streamlined expedited release.**
- (1) The owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if all the following conditions are met:
 - (A) the tract of land is at least 25 acres in size;
 - (B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and

- (C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.
- (2) A qualifying county under paragraph (1)(C) of this subsection:
- (A) has a population of at least 1.2 million;
 - (B) is adjacent to a county with a population of at least 1.2 million, and does not have a population of more than 50,500 and less than 52,000; or
 - (C) has a population of more than 200,000 and less than 233,500 and does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more.
- (3) A landowner seeking streamlined expedited release under this subsection must file with the commission a petition and supporting documentation containing the following information and verified by a notarized affidavit:
- (A) a statement that the petition is being submitted under TWC §13.2541 and this subsection;
 - (B) proof that the tract of land is at least 25 acres in size;
 - (C) proof that at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county;
 - (D) a statement of facts that demonstrates that the tract of land is not currently receiving service;
 - (E) copies of deeds demonstrating ownership of the tract of land by the landowner;

- (F) proof that a copy of the petition was mailed to the current CCN holder via certified mail on the day that the landowner filed the petition with the commission; and
 - (G) the mapping information described in subsection (k) of this section.
- (4) The presiding officer will determine whether the petition is administratively complete. If the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and setting a deadline for the petitioner to address the deficiencies. When the petition is determined to be administratively complete, the presiding officer will establish a procedural schedule that is consistent with paragraphs (5) and (6) of this subsection. The presiding officer may recommend dismissal of the petition if the petitioner fails to supplement or amend the petition within the required timeframe after the presiding officer has determined that the petition is not administratively complete.
- (5) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete. The response must be verified by a notarized affidavit.
- (6) The commission will issue a decision on a petition filed under this subsection no later than 60 calendar days after the presiding officer by order determines that the petition is administratively complete. The commission will base its decision on the information filed by the landowner, the current CCN holder, and commission staff. No hearing will be held.

- (7) The fact that a current CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection. The CCN holder must not initiate an application to borrow money under a federal loan program after the date the petition is filed until the commission issues a final decision on the petition.
- (8) The commission may require an award of compensation by the landowner to the former CCN holder as specified in subsection (i) of this section.
- (i) **Determination of compensation to former CCN holder after streamlined expedited release.** The amount of compensation, if any, will be determined after the commission has granted a petition for streamlined expedited release filed under subsection (h) of this section. The amount of compensation, if any, will be decided in the same proceeding as the petition for streamlined expedited release.
- (1) If the former CCN holder and landowner have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 70 days after the commission has granted streamlined expedited release. The filing must state the amount of the compensation to be paid.
- (2) If the former CCN holder and landowner have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser under the following procedure.
- (A) If the former CCN holder and landowner have agreed on an independent appraiser, the former CCN holder and landowner must make a joint filing

with the commission identifying the individual or firm who will be the independent appraiser after the commission grants streamlined expedited release under subsection (h) of this section. The costs of the independent appraiser must be borne by the landowner. The appraiser must file its appraisal with the commission within 70 days after the commission grants streamlined expedited release.

- (B) If the former CCN holder and landowner have not agreed on an independent appraiser within ten days after the commission grants streamlined expedited release under subsection (h) of this section, the former CCN holder and landowner must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 70 calendar days after the commission grants streamlined expedited release. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 100 days after the date the commission grants streamlined expedited release. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal made by the appraisers engaged by the former CCN holder and landowner. The former CCN holder and landowner must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.
- (C) The appraisers must determine the amount of compensation in accordance with subsection (j) of this section.

- (3) The determination of compensation by the agreed-upon appraiser under paragraph (2)(A) of this subsection or the commission-appointed appraiser under paragraph (2)(B) of this subsection is binding on the commission, former CCN holder, and landowner.
- (4) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation, or engage an appraiser, or file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the landowner fails to make a filing with the commission about the amount of agreed compensation, or engage an appraiser, or file an appraisal within the timeframes required by this subsection, the commission will base the amount of compensation to be paid on the appraisal provided by the CCN holder.
- (5) The commission will issue an order establishing the amount of compensation to be paid and directing the landowner to pay the compensation to the former CCN holder not later than 60 days after the commission receives the final appraisal.
- (6) The landowner must pay the compensation to the former CCN holder not later than 90 days after the date the compensation amount is determined by the commission. The commission will not authorize a prospective retail public utility to serve the removed area until the landowner has paid to the former CCN holder any compensation that is required.

(j) **Valuation of real and personal property of the former CCN holder.**

(1) The value of real property must be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.

(2) The value of personal property must be determined according to this paragraph.

The following factors must be used in valuing personal property:

(A) the amount of the former CCN holder's debt allocable to service to the removed area;

(B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;

(C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;

(D) the amount of the former CCN holder's contractual obligations allocable to the removed area;

(E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;

(F) the impact on future revenues lost from existing customers;

(G) necessary and reasonable legal expenses and professional fees, including costs incurred to comply with TWC §13.257(r); and

(H) any other relevant factors as determined by the commission.

(k) **Mapping information.**

- (1) For proceedings under subsections (f) or (h) of this section, the following mapping information must be filed with the petition:
 - (A) a general-location map identifying the tract of land in reference to the nearest county boundary, city, or town;
 - (B) a detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. If ownership of the tract of land is conveyed by multiple deeds, this map must also identify the location and acreage of land conveyed by each deed; and
 - (C) one of the following for the tract of land:
 - (i) a metes-and-bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;
 - (ii) a recorded plat; or
 - (iii) 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 must include a single, continuous polygon record.
- (2) Commission staff may request additional mapping information.
- (3) All maps must be filed in accordance with §22.71 and §22.72 of this title (relating to Filing of Pleadings, Documents and Other Materials and Formal Requisites of Pleadings and Documents to be filed with the Commission, respectively).

(1) **Additional conditions for decertification under subsection (d) of this section.**

(1) If the current CCN holder did not agree in writing to a revocation or amendment by decertification under subsection (d) of this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:

- (A) ordering the prospective retail public utility to provide service to the entire service area of the current CCN holder; and
- (B) transferring the entire CCN of the current CCN holder to the prospective retail public utility.

(2) If the commission finds that, as a result of revocation or amendment by decertification under subsection (d) of this section, the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers, then:

- (A) the commission will order the prospective retail public utility to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the prospective retail public utility's other customers and will establish the terms under which service must be provided; and
- (B) the commission may order any of the following terms:
 - (i) transfer of debt and other contract obligations;
 - (ii) transfer of real and personal property;
 - (iii) establishment of interim rates for affected customers during specified times; and

- (iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.
- (3) The prospective retail public utility must not charge the affected customers any transfer fee or other fee to obtain service, except for the following:
 - (A) the prospective retail public utility's usual and customary rates for monthly service, or
 - (B) interim rates set by the commission, if applicable.
- (4) If the commission orders the prospective retail public utility to provide service to the entire service area of the current CCN holder, the commission will not order compensation to the current CCN holder, the commission will not make a determination of the amount of compensation to be paid to the current CCN holder, and the prospective retail public utility must not file a notice of intent under subsection (g) of this section.

This agency hereby certifies that the rules, as adopted, have 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 §24.233, relating to Contents of Certificate of Convenience and Necessity Applications is hereby adopted with no changes to the text as proposed and §24.245, relating to Revocation of a Certificate of Convenience and Necessity (CCN) or Amendment of a Certificate of Convenience and Necessity by Decertification, Expedited Release, or Streamlined Expedited Release is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of JULY 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER

COURTNEY K. HJALTMAN, COMMISSIONER