

**PROJECT NO. 56223**

**REVIEW OF §24.233 AND  
§24.245**

§  
§  
§

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF 16 TAC §24.233 AND §24.245**

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 (CCN) Applications and §24.245, relating to Revocation of a CCN or Amendment of a CCN by Decertification, Expedited Release, or Streamlined Expedited Release. Revised §24.233 and §24.245 implement Sections 274-277 of House Bill (HB) 4559 enacted by the 88th Texas Legislature (R.S.). The proposed rules amend §24.233 to change the county population threshold ranges for CCN applications within municipal boundaries, extraterritorial jurisdiction of certain municipalities, and extensions beyond extraterritorial jurisdiction. The proposed rules also amend §24.245 to revise the county population threshold ranges for proceedings related to revocation or amendment of a CCN. Additionally, the proposed rule makes minor and conforming changes to §24.245 for clarity and specifies response time periods for filings by a prospective retail public utility or former CCN holders after the commission has issued an order granting CCN revocation, decertification, expedited release or streamlined expedited release.

***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 rules are in effect, the following statements will apply:

- (1) the proposed rules will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rules 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 rules will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rules will not create a new regulation, because they are replacing similar regulations;
- (6) the proposed rules will not repeal an existing regulation;
- (7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rules that are being proposed to replace; and
- (8) the proposed rules 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 rules. 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 rules 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***

Celia Eaves, Utility Outreach Administrator, has determined that for the first five-year period the proposed rules are 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. Eaves has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections is ensuring that the substantive rules governing the water CCN applications continue to be in alignment with statutes as enacted and are not limited in application by population brackets that were revised following the federal census. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Ms. Eaves has determined that the economic costs to persons required to comply with the proposed rules will vary on an individual basis.

***Local Employment Impact Statement***

For each year of the first five years the proposed sections are 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 subsection §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 May 30, 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 May 30, 2024, by 3:00 P.M. 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 56223.

**Each set of comments should include a standalone executive summary as the first 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.**

*Statutory Authority*

The rules are proposed under the following provisions of Texas Water Code (TWC): 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; §13.245, which establishes commission's authority related to CCN for a service area within municipal boundaries or extraterritorial jurisdiction of certain municipalities; §13.2451, which establishes commission's authority related to extension of municipal CCN service area beyond its extraterritorial jurisdiction; §13.254, related to decertification initiated by utility commission or utility, and expedited release initiated by landowner; and §13.2541, related to streamlined expedited release initiated by landowner.

Cross Reference to Statutes: TWC §13.041, 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) (No change.)

(2) mapping documents as prescribed in ~~§24.257~~24.259 of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);

(3) – (16) (No change.)

(b) (No change.)

(c) **Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.**

(1) – (6) (No change.)

(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~~35,000 that borders the Red River;

(B) (No change.)

(C) with a population of 170,000 ~~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) ~~=~~ (E) (No change.)

(8) ~~=~~ (9) (No change.)

(d) **Extension beyond extraterritorial jurisdiction.**

(1) – (2) (No change.)

(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 ~~35,000~~ that borders the Red River;

(B) (No change.)

(C) with a population of 170,000 ~~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) ~~=~~ (E) (No change.)

(4) (No change.)

(e) (No change.)

**§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) – (c) (No change.)

**(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)-(C) (No change.)

(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~~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) (No change.)

(2) – (4) (No change.)



(e) (No change.)

(f) **Expedited release.**

(1) - (11) (No change.)

(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~~35,000 and borders the Red River;

(B) (No change.)

(C) the county has a population of ~~170,000~~130,000 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) (No change.)

(13) – (14) (No change.)

(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 paragraph~~ (d)(2) of this section or to streamlined expedited release under subsection (h) of this section.

(1) - (2) (No change.)

(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~~stating~~ the amount of the compensation to be paid and provide sufficient details about how the compensation was calculated.

(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~~within ten days of the filing of the notice of intent under paragraph (1) of this subsection.~~ 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 ~~calendar~~ 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~~~~dismissal~~ of the notice of intent to provide service to the removed area.

(7) (No change.)

(h) **Streamlined expedited release.**

(1) (No change.)

(2) A qualifying county under paragraph (1)(C) of this subsection:

(A) has a population of at least ~~1.2 one~~ million;

(B) is adjacent to a county with a population of at least ~~1.2 one~~ million, and does not have a population of more than ~~50,500 45,000~~ and less than ~~52,000 47,500~~; or

(C) has a population of more than 200,000 and less than ~~233,500 220,000~~ 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) – (8) (No change.)

(9) 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~~stating~~ the amount of the compensation to be paid and provide sufficient details about how the compensation was calculated.

(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 ~~within ten days~~ 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) - (C) (No change.)

- (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) - (6) (No change.)

(k) Mapping information.

(1) – (2) (No change.)

- (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).

(l) (No change.)

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 25th DAY OF APRIL 2024 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA GONZALES**