

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

### **Subchapter H. CERTIFICATES OF CONVENIENCE AND NECESSITY.**

#### **§24.227. Criteria for Granting or Amending a Certificate of Convenience and Necessity.**

- (a) In determining whether to grant or amend a certificate of convenience and necessity (CCN), the commission will ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.
  - (1) For retail water utility service, the commission will ensure that the applicant has:
    - (A) a public water system approved by the Texas Commission on Environmental Quality (TCEQ) that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC; and
    - (B) access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.
  - (2) For retail sewer utility service, the commission will ensure that the applicant has:
    - (A) a TCEQ-approved system that is capable of meeting TCEQ design criteria for sewer treatment plants, TCEQ rules, and the TWC; and
    - (B) access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of paragraph (2)(A) of this subsection.
- (b) When applying for a new CCN or a CCN amendment for an area that would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:
  - (1) for applications to obtain or amend a water CCN, a list of all retail public water and/or sewer utilities within one half mile from the outer boundary of the requested area;
  - (2) for applications to obtain or amend a sewer CCN, a list of all retail public sewer utilities within one half mile from the outer boundary of the requested area;
  - (3) copies of written requests seeking to obtain service from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection or evidence that it is not economically feasible to obtain service from the retail public utilities referenced in paragraph (1) or (2) of this subsection;
  - (4) copies of written responses from each of the retail public utilities referenced in paragraph (1) or (2) of this subsection from which written requests for service were made or evidence that they failed to respond within 30 days of the date of the request;
  - (5) if a neighboring retail public utility has agreed to provide service to a requested area, then the following information must also be provided by the applicant:
    - (A) a description of the type of service that the neighboring retail public utility is willing to provide and comparison with service the applicant is proposing;
    - (B) an analysis of all necessary costs for constructing, operating, and maintaining the new facilities for at least the first five years of operations, including such items as taxes and insurance; and
    - (C) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.
- (c) Notwithstanding any other provision of this chapter, a Class A utility may apply to the commission for an amendment of a water or sewer CCN held by a municipal utility district, other than a municipal utility district located wholly or partly inside of the corporate limits or extraterritorial jurisdiction of a municipality with a population of two million or more, to allow the Class A utility to have the same rights and powers under the CCN as the municipal utility district.
  - (1) An application filed under this subsection must include:
    - (A) information identifying the applicant;
    - (B) the identifying number of the CCN to be amended;
    - (C) the written consent of the municipal utility district that holds the certificate of convenience and necessity;
    - (D) a written statement by the municipal utility district that the application is supported by a contract between the municipal utility district and the utility for the utility to provide

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- services inside the certificated area and inside the boundaries of the municipal utility district; and
- (E) a description of the proposed service area by:
    - (i) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;
    - (ii) the Texas State Plane Coordinate System;
    - (iii) verifiable landmarks, including roads, creeks, or railroad lines; or
    - (iv) if a recorded plat of the area exists, lot and block number.
  - (2) No later than the 60<sup>th</sup> day after the Class A utility files the application, the commission will review an application filed under this subsection and determine whether the application is sufficient.
  - (3) Once the application is found sufficient, the commission will:
    - (A) find that the amendment of the certificate is necessary for the service, accommodation, convenience, or safety of the public; and
    - (B) grant the application and amend the certificate.
  - (4) Chapter 2001 of the Texas Government Code does not apply to a petition filed under this subsection. The applicant, municipal utility district, or commission staff 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 application may not be appealed.
  - (5) The commission may approve an application filed under this subsection that requests to amend a CCN with area that is in the extraterritorial jurisdiction of a municipality without the consent of the municipality.
  - (6) TWC §13.241(d) and §13.245 and subsections (e), (f), and (g) of this section do not apply to an application filed under this subsection.
- (d) The commission may approve applications and grant or amend a CCN only after finding that granting or amending the CCN is necessary for the service, accommodation, convenience, or safety of the public. The commission may grant or amend the CCN as applied for, or refuse to grant it, or grant it for the construction of only a portion of the contemplated facilities or extension thereof, or for only the partial exercise of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.
- (e) In considering whether to grant or amend a CCN, the commission will also consider:
- (1) the adequacy of service currently provided to the requested area;
  - (2) the need for additional service in the requested area, including, but not limited to:
    - (A) whether any landowners, prospective landowners, tenants, or residents have requested service;
    - (B) economic needs;
    - (C) environmental needs;
    - (D) written application or requests for service; or
    - (E) reports or market studies demonstrating existing or anticipated growth in the area;
  - (3) the effect of granting or amending a CCN on the CCN recipient, on any landowner in the requested area, and on any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested area. These effects include but are not limited to regionalization, compliance, and economic effects;
  - (4) the ability of the applicant to provide adequate service, including meeting the standards of the TCEQ and the commission, taking into consideration the current and projected density and land use of the requested area;
  - (5) the feasibility of obtaining service from an adjacent retail public utility;
  - (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
  - (7) environmental integrity;

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- (8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the new CCN or a CCN amendment; and
  - (9) the effect on the land to be included in the requested area.
- (f) The commission may require an applicant seeking to obtain a new CCN or a CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer utility service is provided. The commission will set the amount of financial assurance. The form of the financial assurance will be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.
- (g) Where applicable, in addition to the other factors in this chapter the commission will consider the efforts of the applicant to extend retail utility service to any economically distressed areas located within the applicant's certificated service area. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001.
- (h) For two or more retail public utilities that apply for a CCN to provide retail water utility service to an unserved area located in an economically distressed area as defined in TWC §15.001, the commission will conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment will be conducted after the preliminary hearing and only if the parties cannot agree among themselves regarding who will provide service. The assessment will be conducted considering the following information:
- (1) all criteria from subsections (a)-(g) of this section;
  - (2) source-water adequacy;
  - (3) infrastructure adequacy;
  - (4) technical knowledge of the applicant;
  - (5) ownership accountability;
  - (6) staffing and organization;
  - (7) revenue sufficiency;
  - (8) creditworthiness;
  - (9) fiscal management and controls;
  - (10) compliance history; and
  - (11) planning reports or studies by the applicant to serve the proposed area.
- (i) Except as provided by subsection (j) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the requested area may elect to exclude some or all of the landowner's property from the requested area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an application for a CCN or for a CCN amendment. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the requested area must be modified to remove the electing landowner's property. An applicant that has land removed from its requested area because of a landowner's election under this subsection may not be required to provide retail water or sewer utility service to the removed land for any reason, including a violation of law or commission rules.
- (1) The landowner's request to opt out of the requested area must be filed with the commission and must include the following information:
    - (A) the commission docket number and CCN number if applicable;
    - (B) the total acreage of the tract of land subject to the landowner's opt-out request; and
    - (C) a metes and bounds survey for the tract of land subject to the landowner's opt-out request, that is sealed or embossed by either a licensed state land surveyor or registered professional land surveyor
  - (2) The applicant must file the following mapping information to address each landowner's opt-out request:

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- (A) a detailed map identifying the revised requested area after removing the tract of land subject to each landowner's opt-out request. The map must also identify the outer boundary of each tract of land subject to each landowner's opt-out request, in relation to the revised requested area. The map must identify the tract of land and the requested area in reference to verifiable man-made and natural landmarks such as roads, rivers, and railroads;
  - (B) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters) for the revised requested area after removing each tract of land subject to any landowner's opt-out request. The digital mapping data must include a single, continuous polygon record; and
  - (C) the total acreage for the revised requested area after removing each tract of land subject to the landowner's opt-out requests. The total acreage for the revised requested area must correspond to the total acreage included with the digital mapping data.
- (j) If the requested area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a retail public utility owned by the municipality is the applicant, a landowner is not entitled to make an election under subsection (i) of this section but is entitled to file a request to intervene in order to contest the inclusion of the landowner's property in the requested area at a hearing regarding the application.