

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

Subchapter H. CERTIFICATES OF CONVENIENCE AND NECESSITY.

§24.259. Single Certification in Incorporated or Annexed Areas.

- (a) **Applicability.** This section applies to a requested area that also meets the following criteria:
- (1) the requested area has been incorporated or annexed by a municipality;
 - (2) a retail public utility provides service to the requested area under a certificate of convenience and necessity (CCN); and
 - (3) the retail public utility that holds the CCN under which the requested area is currently certificated is one of the following:
 - (A) a water supply or sewer service corporation, a special utility district under chapter 65 of the Texas Water Code, or a fresh water supply district under chapter 53 of the Texas Water Code; or
 - (B) not a water supply or sewer service corporation, and its service area is located entirely within the boundaries of a municipality that has a population of at least 1.7 million according to the most recent federal census.
- (b) **Definitions.** In this section, the following words and terms have the definitions provided by this subsection.
- (1) **Impaired property** -- Property remaining in the ownership of the current CCN holder after single certification that would sustain damages from the transfer of property to the municipality.
 - (2) **Franchised utility** -- A retail public utility that has been granted a franchise by a municipality to provide service inside the municipal boundaries.
 - (3) **Current CCN holder** -- The retail public utility that holds a CCN to provide service to the municipality's requested area.
 - (4) **Transferred property** -- Property that the municipality has requested be transferred to it or to a franchised utility from the current CCN holder.
 - (5) **Useless or valueless property** -- Property that would be rendered useless or valueless to the current CCN holder by single certification.
- (c) **Notice of intent to provide service in incorporated or annexed area.** A municipality that intends to provide service itself or through a franchised utility to all or part of an annexed or incorporated area shall notify the current CCN holder in writing of the municipality's intent. The written notice to the current CCN holder shall specify the following information:
- (1) the municipality's requested area;
 - (2) any transferred property;
 - (3) the municipal ordinance or other action that annexed or incorporated the municipality's requested area;
 - (4) what kind of service will be provided;
 - (5) whether a municipally owned utility or franchised utility will provide the service; and
 - (6) the municipally owned utility's or the franchised utility's identity and contact information.
- (d) **Written agreement regarding service to area.** The municipality and the current CCN holder may agree in writing that all or part of the area incorporated or annexed by the municipality may receive service from a municipally owned utility, a franchised utility, or the current CCN holder, or any combination of those entities.
- (1) If a franchised utility is to provide service to any part of the area, the franchised utility shall also be a party to the agreement.

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- (2) The executed agreement may provide for single or dual certification of all or part of the area incorporated or annexed by the municipality, for the purchase of facilities or property, and may contain any other terms agreed to by the parties.
 - (3) The executed agreement shall be filed with the commission. The commission shall incorporate the agreement's terms into the respective CCNs of the municipality, current CCN holder, and franchised utility, as appropriate.
- (e) **Application for single certification.** If an agreement is not executed within 180 calendar days after the municipality provides written notice under subsection (c) of this section and the municipality intends to provide service to the municipality's requested area, the municipality shall submit an application to the commission to grant single certification to a municipally owned utility or a franchised utility.
- (1) If a franchised utility will provide service to any part of the municipality's requested area, the franchised utility shall join the application.
 - (2) The application shall include all of the information listed in this paragraph.
 - (A) The application shall identify the municipal ordinance or other action that annexed or incorporated the municipality's requested area.
 - (B) The application shall identify the type of service that will be provided to the municipality's requested area.
 - (C) The application shall identify the municipally owned utility or franchised utility that will provide service to the municipality's requested area and, if each will serve part of the area, the area that each will serve.
 - (D) The application shall identify contact information for the current CCN holder.
 - (E) The application shall demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems if the municipality owns a public drinking water system.
 - (F) The application shall demonstrate that at least 180 calendar days have passed since the date that the municipality provided written notice under subsection (c) of this section.
 - (G) The application shall identify with specificity any property that the municipality requests be transferred from the current CCN holder.
 - (H) The application shall identify the boundaries of the municipality's incorporated area or extraterritorial jurisdiction by providing 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 shall include a single, continuous polygon record.
 - (I) The application shall identify the municipality's requested area by providing mapping information to clearly identify the area the municipality is seeking in accordance with §24.257 of this title relating to Mapping Requirements for Certificate of Convenience and Necessity Application. Commission staff may request additional mapping information after the application is submitted.
 - (3) Within 30 calendar days of the filing of the application, commission staff shall file a recommendation regarding whether the application meets the requirements of this subsection.
- (f) **Notices for single-certification application.** The applicant shall send a copy of the application to the current CCN holder by certified mail or hand-delivery on the same day that the applicant submits the application to the commission.

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- (g) **Response to single-certification application.** The current CCN holder shall file a response to the application for single certification in conformance with this subsection.
- (1) The response shall be filed within 40 calendar days of the filing of the application.
 - (2) The response shall state the following information:
 - (A) whether the single certification is agreed to; and
 - (B) if there is no agreement for single certification, any conditions that, if met, would cause the current CCN holder to agree to single certification.
 - (3) In its response, the current CCN holder shall identify any useless or valueless property, or impaired property, that would result from certification of the municipality's requested area to the municipality.
 - (4) There is a rebuttable presumption that there is no useless or valueless property or impaired property if the current CCN holder fails to timely respond as required under paragraph (1) of this subsection. Upon motion and proof of service consistent with the requirements of subsection (f) of this section, the presiding officer may issue an order determining that there is no useless or valueless property or impaired property.
- (h) **Referral to SOAH.**
- (1) Within 50 calendar days of the filing of the application, a presiding officer shall determine whether an application for single certification meets the requirements of subsection (e) of this section.
 - (2) If the presiding officer determines that the application meets the requirements of subsection (e) of this section, the application shall be referred to the State Office of Administrative Hearings (SOAH) for a hearing. SOAH shall fix a time and place for a hearing on the application and shall notify the current CCN holder, municipality, and franchised utility, if any, of the hearing.
 - (3) Except as provided under paragraph (4) of this subsection, if the presiding officer determines that the application does not meet the requirements of subsection (e) of this section, the applicant shall supplement its application to correct the identified deficiencies within a timeframe, and under a process, established by the presiding officer.
 - (4) The application shall be denied if the municipality fails to demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems. This paragraph does not apply to a municipality that does not own a public drinking water system.
- (i) **Hearing at SOAH.**
- (1) The hearing at SOAH shall be limited to determining what property, if any, is useless or valueless property, impaired property, or transferred property.
 - (2) The current CCN holder bears the burden to prove what property is useless or valueless property or impaired property.
 - (3) The transferred property shall be limited to the specific property identified in the application.
 - (4) The SOAH administrative law judge shall issue a proposal for decision for the commission's consideration.
- (j) **Interim order.** The commission shall issue an interim order identifying what property, if any, is useless or valueless property, impaired property, or transferred property.
- (k) **Administrative Completeness.** Section 24.8 of this title relating to Administrative Completeness does not apply to the determination of administrative completeness under this section. After the commission has issued its interim order under subsection (j) of this section, a presiding officer shall determine that the application for single certification is administratively complete and shall establish a procedural schedule that will allow total compensation for any property identified in the interim order to be determined not later than 90 calendar days after the application is determined to be administratively complete.

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- (l) **Valuation of real property.** The value of real property that the commission identified in the interim order issued under subsection (j) of this section shall be determined according to the standards set forth in Texas Property Code, chapter 21, governing actions in eminent domain.
- (m) **Valuation of personal property.** The value of personal property that the commission identified in the interim order issued under subsection (j) of this section shall be determined according to this subsection.
- (1) This subsection is intended to ensure that the compensation to a current CCN holder is just and adequate as provided by these rules.
- (2) The following factors shall be used to value personal property that the commission identified in the interim order issued under subsection (j) of this section:
- (A) the impact on the current CCN holder's existing indebtedness and the current CCN holder's ability to repay that debt;
 - (B) the value of the current CCN holder's service facilities located within the municipality's requested area;
 - (C) the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the municipality's requested area;
 - (D) the amount of the current CCN holder's contractual obligations allocable to the municipality's requested area;
 - (E) any demonstrated impairment of service or increase of cost to the current CCN holder's customers that remain after the single certification;
 - (F) the impact on future revenues lost from existing customers;
 - (G) necessary and reasonable legal expenses and professional fees;
 - (H) factors relevant to maintaining the current financial integrity of the current CCN holder; and
 - (I) other relevant factors as determined by the commission.
- (n) **Valuation Process.**
- (1) For an area incorporated by a municipality, the valuation of property that the commission identified in the interim order issued under subsection (j) of this section shall be determined by a qualified individual or firm serving as an independent appraiser. The independent appraiser shall be limited to appraising the property that the commission identified in the interim order issued under subsection (j) of this section. The current CCN holder shall select the independent appraiser by the 21st calendar day after the date of the order determining that the application is administratively complete. The municipality shall pay the independent appraiser's costs. The independent appraiser shall file its appraisal with the commission by the 70th calendar day after the date of the order determining that the application is administratively complete. The valuation of property under this paragraph is binding on the commission.
- (2) For an area annexed by a municipality, the valuation of property that the commission identified in the interim order issued under subsection (j) of this section shall be determined by one or more independent appraisers under the process set forth in this paragraph. All independent appraisers shall be limited to appraising the property that the commission identified in the interim order issued under subsection (j) of this section. All independent appraisers shall be qualified individuals or firms.
- (A) If the current CCN holder and the municipality can agree on an independent appraiser within ten calendar days after the application is found administratively complete, the agreed-upon independent appraiser shall make a valuation of the property that the commission identified in the interim order issued under subsection (j) of this section.

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- (i) The agreed-upon independent appraiser shall file its appraisal with the commission by the 70th calendar day after the date of the order determining that the application is administratively complete.
 - (ii) A valuation of property under this subparagraph is binding on the commission.
 - (B) If the current CCN holder and the municipality cannot agree on an independent appraiser within ten calendar days after the application is found administratively complete, the municipality shall notify the serving CCN holder in writing of the failure to agree.
 - (i) If the parties still cannot agree within 11 calendar days of the written notification, on the 11th day, the current CCN holder and the municipality shall each file with the commission a letter appointing a qualified individual or firm to serve as an independent appraiser.
 - (I) Within 10 business days of their appointment, the independent appraisers shall meet to reach an agreed valuation of property that the commission identified in the interim order issued under subsection (j) of this section.
 - (II) If the independent appraisers reach an agreed valuation of property, the agreed valuation under this subclause is binding on the commission.
 - (ii) If the appraisers cannot agree on a valuation before the 16th business day after the date of their first meeting under this subsection, then both parties shall file separate appraisals by that date, and either the current CCN holder or the municipality shall petition the commission to appoint a third appraiser to reconcile the two appraisals.
 - (I) The commission may delegate authority to appoint the third appraiser.
 - (II) The third appraiser shall file an appraisal that reconciles the two other appraisals by the 80th calendar day after the application is found administratively complete.
 - (III) The third appraiser's valuation may not be less than the lower or more than the higher of the two original appraisals filed under subparagraph (B)(ii) of this paragraph.
 - (IV) A valuation of property under this clause is binding on the commission.
 - (C) The current CCN holder and the municipality shall each pay one-half of the costs of all of the appraisers appointed under this paragraph. Payment shall be made directly to the appraisers, and proofs of payment shall be separately filed by the current CCN holder and the prospective retail public utility within 30 calendar days of the date of the invoice.
- (o) **Action after receipt of appraisals.**
 - (1) An order incorporating the valuation determined under subsection (n) of this section shall be issued by the 90th calendar day after the application is found administratively complete.
 - (2) The commission shall deny the application if the municipality fails to demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems. This paragraph does not apply to a municipality that does not own a public drinking water system.
 - (3) If the commission does not deny the application, the commission shall do the following:
 - (A) determine what property, if any, is useless or valueless property, impaired property, or transferred property;
 - (B) determine the monetary amount that is adequate and just to compensate the current CCN holder for any such useless or valueless property, impaired property, and transferred property; and
 - (C) grant single certification to the municipality or franchised utility.
 - (4) The granting of single certification shall be effective on the date that
 - (A) the municipality or franchised utility pays adequate and just compensation under a court order;

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- (B) the municipality or franchised utility pays an amount into the registry of the court or to the current CCN holder under TWC §13.255(f); or
 - (C) the Travis County district court's judgment becomes final, if the court's judgment provides that the current CCN holder is not entitled to any compensation.
 - (5) The commission's order does not transfer any property, except as provided under subsection (u) of this section. Any other transfer of property under this section shall be obtained only by a court judgment rendered under TWC §13.255(d) or (e).
 - (6) A presiding officer may issue an order under this section. Any such order shall be the final act of the commission subject to motions for rehearing under the commission's rules.
- (p) **Appeal to district court, district court judgment, and transfer of property.**
- (1) Under TWC §13.255(e), any party that is aggrieved by a final order of the commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final.
 - (2) Under TWC §13.255(d), if the commission's final order is not appealed within 30 days, the municipality may request the Travis County district court to enter a judgment consistent with the commission's order.
- (q) **Withdrawal of application for single certification.** A municipality or a franchised utility may withdraw an application for single certification without prejudice at any time before a court judgment becomes final, provided that the municipality or the franchised utility has not taken physical possession of property owned by the current CCN holder or made payment for the right to take physical possession under TWC § 13.255(f).
- (r) **Additional requirements regarding certain current CCN holders.** The following subsection applies to proceedings under this section in which the current CCN holder meets the criteria of subsection (a)(3)(B) of this section.
- (1) The commission or a court, as appropriate, must determine that the service provided by the current CCN holder is substandard or its rates are unreasonable in view of the current CCN holder's reasonable expenses.
 - (2) If the municipality abandons its application, the commission is authorized to award to the current CCN holder its reasonable expenses incurred to participate in the proceeding addressing the municipality's application, including attorney's fees.
 - (3) Unless the current CCN holder otherwise agrees, the municipality shall take all of the current CCN holder's personal and real property that is used and useful to provide service or is eligible to be deemed so in a future rate case.
- (s) **Notice of single certification.** Within 60 days of a transfer of property under a court judgment, the municipality or franchised utility shall provide written notice to each customer within the service area that is now singly certificated. The written notice shall provide the following information: the identity of the municipality or franchised utility, the reason for the transfer, the rates to be charged by the municipality or franchised utility, and the effective date of those rates.
- (t) **Provision of service.**
- (1) A municipally owned utility or a franchised utility may provide service to all or a portion of an incorporated or annexed area on one of the following dates:
 - (A) the date that the commission incorporates the terms of an executed agreement filed with the commission under subsection (d)(3) of this section into the CCNs of the municipality, current CCN holder, and franchised utility, if applicable; or
 - (B) the date that the municipality or franchised utility
 - (i) pays adequate and just compensation under court order, or

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- (ii) pays an amount into the registry of the court or to the current CCN holder under TWC §13.255(f).
 - (2) If the court judgment provides that the current CCN holder is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final.
- (u) **Additional conditions.**
- (1) If the current CCN holder did not agree in writing to a revocation or amendment sought under this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:
 - (A) ordering the municipality or franchised utility, as applicable, 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 municipality or franchised utility, as applicable.
 - (2) The commission shall order the municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder if the commission finds that 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.
 - (A) The commission shall order the municipality or franchised utility, as applicable, to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the municipality's or franchised utility's other customers and shall establish the terms under which service must be provided.
 - (B) The commission may order the following terms:
 - (i) transfer of debt and other contract obligations;
 - (ii) transfer of real and personal property;
 - (iii) establishment of interim service rates for affected customers during specified times; and
 - (iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.
 - (3) The municipality or franchised utility, as applicable, shall not charge the affected customers any transfer fee or other fee to obtain service, except
 - (A) the municipality's or franchised 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 municipality or franchised utility, as applicable, to provide service to the entire service area of the current CCN holder, the proceeding shall not be referred to SOAH for a hearing to determine the useless or valueless property, impaired property, or transferred property, and the commission shall not order compensation to the current CCN holder.