The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§291.22, 291.102, 291.105, and 291.113.

Section 291.113 is adopted *with change* to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8731). Sections 291.22, 291.102, and 291.105 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2011, the 82nd Legislature passed Senate Bill (SB) 573, relating to the granting of certificates of public convenience and necessity (CCNs). SB 573 amended Texas Water Code (TWC), §§13.245, 13.2451, 13.246, and 13.254. TWC, §13.245(b) and (c-1) - (c-3) were amended to specify that if a municipality has not consented to the inclusion of a CCN within its boundaries or extraterritorial jurisdiction (ETJ) before the 180th day after a landowner or retail public utility has made a formal request for service then the TCEQ may grant the CCN to the retail public utility without the municipality's consent under certain conditions. SB 573 also provided additional criteria which the TCEQ shall consider before it grants the CCN to the retail public utility. If the CCN is granted, the TCEQ must include a condition that facilities will be designed and constructed according to the municipality's standards. TWC, §13.245(c-4) and (c-5) were added by SB 573 to specify the counties in which the provisions of the TWC, §13.254(c-1) - (c-3)

do not apply.

TWC, §13.2451(b) was amended by SB 573 to specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out as allowed by TWC, §13.246(h). TWC, §13.2451(b-1) and (b-2) were added to specify the counties in which the provision does not apply.

TWC, §13.246(h) was amended by SB 573 to stipulate that a CCN applicant that has land removed by landowner election may not be required to provide service to the removed land for any reason.

TWC, §13.254 was amended by SB 573 to change the requirements for when the TCEQ may revoke a CCN, modify the requirements for petitioning for the release of land from a CCN, and also shorten the TCEQ's review period for reviewing a release petition from 90 to 60 calendar days. TWC, §13.254(a-5) and (a-6) created a process allowing a landowner of at least a 25-acre tract to request an expedited release from a CCN in counties meeting specific criteria. TWC, §13.254(a-7) added requirements for notice of utility rate changes. TWC, §13.254(a-8) modified the criteria for reviewing a release petition filed under TWC, §13.254(a-1). TWC, §13.254(a-9) - (a-11) were added to specify the counties in which the modifications to the CCN release process made by TWC, §13.254(a-8) do not apply.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts revisions to 30 TAC Chapter 293, Water Districts.

Section by Section Discussion

In addition to implementation of the state law discussed previously, the commission adopts administrative changes to conform with *Texas Register* requirements.

§291.22, Notice of Intent to Change Rates

The commission amends §291.22(a)(4) to remove the word "and"; add §291.22(a)(5) - (7); and renumber existing subsection (a)(5). The adopted amendment specifies that a utility shall include with the statement of intent provided to each landowner or ratepayer: a notice of a proceeding under §291.113, the reason or reasons for the proposed rate change, and any bill payment assistance program available to low-income ratepayers. The commission adopts this amendment to implement the changes made to TWC, §13.254, in SB 573 and for consistency with *Texas Register* requirements.

§291.102, Criteria for Considering and Granting Certificates or Amendments

The commission amends §291.102(h) to specify that an applicant for a CCN that has land removed from its proposed service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any

reason, including the violation of law or commission rules by the water and/or sewer system of another person. The commission adopts this amendment to implement the changes made to TWC, §13.246(h) in SB 573.

§291.105, Contents of Certificate of Convenience and Necessity Applications

The commission amends §291.105(b)(2) by removing the reference of "paragraph (3)" and replacing it with a reference to "paragraphs (3) - (7)." The adopted amendment specifies that, except as provided by paragraphs (3) - (7), the commission may not grant a CCN to a retail public utility for a service area within the boundaries or ETJ of a municipality without the consent of the municipality. The municipality may not unreasonably withhold its consent. As a condition of the consent, a municipality may require that all water and/or sewer facilities be designed and constructed in accordance with the municipality's standards for facilities. The commission adopts this amendment to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(4) and its subdivisions to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(4) to denote that the commission may grant a CCN to a retail public utility without a municipality's consent under certain circumstances as outlined in adopted §291.105(b)(4)(A) - (C) if the municipality has not consented under §291.105(b) before the 180th day after the date a landowner or a retail public utility submits a formal request for service to the municipality. Adopted §291.105(b)(4)(A) specifies that the commission may grant the CCN without the

municipality's consent if the commission makes findings required by §291.105(b)(3). Adopted §291.105(b)(4)(B) specifies that the commission may grant the CCN without the municipality's consent if the municipality has not entered into a binding commitment to serve the requested area on or before the 180th day after the date the formal request was made. In addition, the commission adds §291.105(b)(4)(C) and its subdivisions to specify that the commission may grant the CCN without the municipality's consent if the landowner or retail public utility that submitted the formal request has not unreasonably refused to comply with the municipality's service extension and development process; or if the landowner or retail public utility have not entered into a contract for water and/or sewer services with the municipality. The commission also adds §291.105(b)(5) to denote that if a municipality refuses to provide service in the proposed service 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. The commission adopts this addition to implement changes made to TWC, §13.245(b) by SB 573. The commission adds §291.105(b)(6) to implement changes made to TWC, §13.245(b) by SB 573 by stipulating that the commission must include as a condition of a CCN granted under TWC, §13.245(c-1) or (c-2) that all water and sewer facilities shall be designed and constructed in accordance with the municipality's standards for water and sewer facilities. The commission adds §291.105(b)(7) to specify

that paragraphs (4) - (6) do not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties. The commission adopts this addition to implement the changes made to TWC, §13.245(b) by SB 573. The commission further renumbers existing §291.105(b)(4) and (5) to §291.105(b)(8) and (9) for consistency purposes.

The commission amends §291.105(c)(1) to specify that, except as provided by paragraph (2), if a municipality extends its ETJ to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its CCN area under the rights granted by its certificate and Chapter 291. The adopted rule changes implement TWC, §13.2451(a) - (b-3) as amended by SB 573. The commission amends §291.105(c)(2), adds subsection (c)(3), and renumbers existing subsection (c)(3) to implement changes made to TWC, §13.2451(a) - (b-3) by SB 573. The adopted amendment specifies that the commission may not extend a municipality's CCN beyond its ETJ if an owner of land that is located wholly or partly outside the ETJ elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC, §13.246(h), this subsection does not apply to a transfer of a certificate as approved by the commission. The adopted amendment also specifies that paragraph (2) does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

§291.113, Revocation or Amendment of Certificate

The commission amends §291.113(a) - (d) and (h) and adds §291.113(r) - (v). Section 291.113(a) is amended to remove a reference to the source of a motion or petition to revoke or amend a CCN. Section 291.113(b) is amended to specify that the fact that the certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of a petitioner's land and the receipt of services from an alternative provider. The adopted amendment to this subsection also requires that on the day the petitioner submits the petition to the commission, the petitioner shall send a copy of a petition to the certificate holder. The commission adopts this amendment to implement changes made to TWC, §13.245 by SB 573. The commission amends §291.113(b)(1)(C) to remove the word "and" and adds §291.113(b)(1)(D) and (E) to provide additional criteria that a petitioner must demonstrate when requesting to have the petitioner's land removed from a CCN under §291.112(a). Section 291.113(b)(1)(D) is added to denote that a petitioner shall provide a written request for service to the certificate holder identifying the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder. Section 291.113(b)(1)(E) is added to specify that the petitioner shall also identify the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested. In addition, the commission renumbers existing §291.113(b)(1)(D) - (F) for consistency purposes. The adopted rule changes implement TWC, §13.245(a-1) as

amended by SB 573. Furthermore, the commission amends §291.113(b)(3)(B) to clarify that the commission shall consider whether the certificate holder is capable of providing the service at the approximate cost and that the alternative provider is capable of providing a comparable level of service. The adopted rule changes implement TWC, §13.245(a-1) as amended by SB 573. Moreover, the commission amends §291.113(b)(4) to remove the phrase "is capable of providing" and instead specifies that the alternate service provider must possess the financial, managerial, and technical capability to provide continuous and adequate service to the area being removed from the certificate. Also, the adopted amendment specifies that service must be provided at a reasonable cost to support the existing and projected service demands in the area. The commission adopts this amendment to implement changes made to TWC, §13.245(a-1) by SB 573. The commission amends §291.113(c) to update cross-references to other subsections. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Additionally, the commission amends §291.113(d) by changing the time frame from 90 to 60 calendar days for which the commission or executive director shall grant or deny the petition to remove the property from the certificated area to implement changes made to TWC by SB 573. The commission also amends §291.113(h) to clarify that a retail public utility may not provide retail water and/or sewer service in an area that has been decertified under this section unless the retail public utility or petitioner provides compensation for any property rendered useless or valueless. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB

573. The commission adds §291.113(r) to denote that an owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for the expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Smith County, a county with a population of a least one million, or a county adjacent to a county with a population of at least one million (except for Medina County). The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. The commission adds §291.113(s) to require the petitioner to provide a copy of the petition to the CCN holder, specify that the CCN holder may file a response to the petition, and to indicate that the commission or the executive director shall grant a petition received under adopted subsection (r) no later than 60 calendar days after the date the landowner files the petition. The commission or the executive director may not deny a petition filed under adopted subsection (r) based on the fact that a certificate holder is a borrower of federal debt. The commission may require an award of compensation by the petitioner to a decertified retail public utility. In response to comments, §291.113(s) was amended to remove the phrase "required by a retail public utility seeking to serve the decertified area" to be consistent with SB 573, which allows for compensation by the petitioner. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Additionally, the commission adds §291.113(t) to specify that the commission is not required to find that the proposed alternative provider is capable of providing better service than the CCN holder, but only that the alternative provider is capable of providing service to the area

that a petitioner seeks to have released from a CCN under subsection (b) if the CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. The commission adds §291.113(u) to specify that subsection (t) does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573. Lastly, the commission adds §291.113(v) to indicate that a certificate holder that has land removed in accordance with this section may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person. The commission adopts this amendment to implement changes made to TWC, §13.254 by SB 573.

Final Regulatory Impact Analysis Determination

The commission has reviewed these adopted amendments to Chapter 291 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking project is not a "major environmental rule" as defined in the Texas Administrative Procedure Act and thus is not subject to the other provisions of Texas Government Code, §2001.0225.

A "major environmental rule" is a rule that is specifically intended to protect the

environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state (See Texas Government Code, §2001.0225(g)(3)). Here, the adopted amendments do not meet those qualifications where the primary purpose of this rulemaking initiative is to create and amend other rules in Chapter 291 to remain consistent with the statutory changes set forth in SB 573. This rulemaking initiative adopts modifications to the rules within Chapter 291 to accomplish the following: (1) altering the conditions under which the TCEQ may grant CCNs within a municipality's ETJ without consent from that municipality; (2) specify that the TCEQ may not extend a municipality's CCN beyond its ETJ if a landowner elects to opt-out as allowed by the TWC; (3) stipulate that a CCN applicant that has land removed by landowner election may not be required to provide service to the removed land for any reason; (4) change the requirements for when the TCEQ may revoke a CCN and shorten the review period for an expedited release from 90 to 60 calendar days; (5) create a process allowing a landowner of at least a 25-acre tract to request expedited release in counties meeting specific criteria; and, (6) add additional requirements for a utility rate change notice. While the commission has jurisdiction over retail public utilities and authority to draft rules impacting those utilities, these adopted changes to the operating processes of water and/or sewer utilities are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the adopted rulemaking does not constitute a major

environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this adopted rulemaking action is to keep the commission's rules consistent with the changes in TWC, Chapter 13 made by the legislature in SB 573. The adopted rules would substantially advance this stated purpose because these changes impact the abilities of municipalities and retail public utilities to obtain a CCN or have a CCN revoked, and impact the requirements for notice of rate changes by investor-owned utilities.

Promulgation and enforcement of these adopted rules regarding the operation of water and/or sewer utilities would be neither a statutory nor a constitutional taking of private real property. The adopted regulations do not affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does

not burden, restrict, or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The statutory changes set forth in SB 573 also do not impact private real property rights. Specifically, private real property rights do not pertain to certification of retail water and/or sewer service areas by the commission. Thus, these adopted rules do not impose a burden on private real property but instead benefit society by improving and streamlining the process by which certain areas are certified for water and/or sewer service, which should ultimately improve the quality of service that is provided to utility customers. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the Coastal

Management Program.

Public Comment

The commission held a public hearing on December 4, 2012. The comment period closed on December 10, 2012. The commission received comments from Aqua Water Supply Corporation (Aqua WSC), Markout Water Supply Corporation (Markout WSC), SouthWest Water Company (SWWC), and Texas Rural Water Association (TRWA).

All commenters suggested changes to proposed §291.113, related to the implementation of SB 573, as described in the RESPONSE TO COMMENTS section of the preamble.

Response to Comments

Markout WSC commented that §291.113(b) would be a burden to water supply corporations and districts that have federal indebtedness. In addition, Markout WSC expressed concern with §291.113(h) regarding the compensation to a retail public utility for removal of property from the retail public utility's certificated service area (also known as the CCN area).

The commission responds that this rulemaking merely adopts and implements new statutory requirements enacted by the 82nd Legislature, 2011. The commission has no authority to substantively alter the statutory

requirements or omit any of them from the commission's rules. No changes have been made in response to this comment.

Aqua WSC, SWWC, and TRWA expressed concern regarding the "timing" of compensation under TWC, §13.254(a-5). Each commenter recommended changes to §291.113(i) to address the timing of compensation; specifically, the commenters requested that the timing of the determination of compensation be based on the date of issuance of a decertification order under TWC, §13.254(a-5).

The commission responds that it lacks the authority to make the requested changes under SB 573, as enacted by the legislature. The commenters assert that the legislature intended for a determination of compensation to take place when an expedited release is granted. Newly added TWC, §13.254(a-6) provides that compensation to a decertified utility be granted "as otherwise provided by this section." TWC, §13.254 provides that compensation take place when another utility seeks to provide service in the decertified area. Texas Government Code, §311.021 provides that in construing a statute, the legislative history of the bill may be considered. The Legislative Budget Board's bill analysis for SB 573 states that under the legislation, "compensation would likely be limited and uncertain, because the award of compensation would not occur until another retail public utility would

propose to serve the area." Based on the plain language of TWC, §13.254, and the Legislative Budget Board's analysis, the commission has construed SB 573 to expressly require that a determination of compensation be made as provided for in TWC, §13.254(d) - (g). Specifically, a determination of whether compensation should be given to the decertified utility will occur at the time another utility seeks to provide service in the decertified area. No changes have been made in response to these comments.

Aqua WSC, SWWC, and TRWA expressed concern that the proposed rule does not provide that the petitioner agree to the independent appraiser for determination of compensation required under §291.113(r). SWWC and TRWA recommended changes to §291.113(j) to specify that the petitioner should participate in the determination of compensation required under §291.113(r).

The commission responds that it lacks the authority to make the requested changes under SB 573, as enacted by the legislature. The commenters have asserted that the legislature intended for compensation to a decertified utility be made to the utility by the petitioner requesting the decertification. For the reasons mentioned elsewhere within this preamble, the commission has construed SB 573 to expressly require that a determination of compensation be made as provided for in TWC, §13.254(d) - (g).

Specifically, the determination of any amount of compensation owed to a decertified utility will be made by an independent appraiser agreed to by that utility and the utility seeking to provide service. No change has been made in response to these comments.

Aqua WSC, SWWC, and TRWA expressed concern that §291.113(s) does not allow that the petitioner provide compensation required under §291.113(r). All three commenters recommended changes to §291.113(s). Aqua WSC and TRWA recommended that a limiting reference to "retail public utility" be removed from §291.113(s). SWWC recommended that a reference to "petitioner in the case of releases granted under subsection (r) of this section" be added.

The commission concurs that newly enacted TWC, §13.254(a-6) provides for "an award of compensation by the petitioner" and agrees with the commenters that a revision of the proposed language in §291.113(s) is appropriate. In response to these comments, the commission revised §291.113(s) to harmonize the commenters' requested edits to be consistent with SB 573.

Aqua WSC and TRWA expressed concern that the proposed rule does not provide a procedure for the timing of payment of compensation required under §291.113(r).

TRWA requests that the commission amend the proposed rule language to require that compensation be paid by the petitioner upon the issuance of the commission's order setting the compensation amount. TRWA further recommends that §291.113(h) be changed to require that compensation be paid upon the issuance of the commission's order setting compensation.

The commission responds that because SB 573 does not provide for compensation at the time the decertification petition is granted, the proposed addition would be inappropriate and unnecessary. No change has been made in response to these comments.

TRWA proposes that the rule language be modified to stipulate that the use of the term "service" in §291.113(r) has the meaning set forth in TWC, §13.002 and the commission's rules in §291.3.

The commission responds that definitions set forth in TWC, §13.002, and the commission's rules in §291.3 apply to the entirety of those chapters. There is no need to specify in any subchapter or section that the definitions specifically apply to those subchapters or sections. No change has been made in response to this comment.

SWWC recommended that the language "or its successors" be added to §291.113(s).

The commission responds that because SB 573 provides only for compensation to be paid by a petitioner for decertification, the proposed addition would be inappropriate and unnecessary. No change has been made in response to this comment.

Aqua WSC recommended that the language "as otherwise provided by this section" be removed from §291.113(s).

The commission responds that this language was adopted directly from SB 573 and serves to effectuate the intent of the statute. No change has been made in response to this comment.

Aqua WSC supports the notification requirement in §291.113(s), which requires a petitioner on the same day that the petition is submitted to the commission, to also send via certified mail, a copy of the petition to the CCN holder.

The commission acknowledges the commenter's support of the rule. No change has been made in response to this comment.

SUBCHAPTER B: RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

§291.22

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendment implements TWC, §13.254(a-7).

§291.22. Notice of Intent to Change Rates.

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail, e-mail, or hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Notice must be provided on the notice form included in the commission's rate application package and must contain the following information:

(1) the utility name and address, current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test

year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the new rates may not apply to service received before the effective date of the new rates;

(2) information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, and the time frame for protests;

(3) a billing comparison showing the existing rate and the new computed water rate using 10,000 gallons of water and 30,000 gallons of water;

(4) a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services;

(5) disclosure of an ongoing proceeding under §291.113 of this title (relating to Revocation or Amendment of Certificate), if any;

(6) the reason or reasons for the proposed rate change;

(7) any bill payment assistance program available to low-income ratepayers; and

(8) any other information that is required by the executive director in the rate change application form.

(b) Notice requirements. The governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail, e-mail, or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 60 days after the date of the final decision on a rate change. The governing body of a municipally owned utility or political subdivision may provide the notice electronically if the municipality or political subdivision has access to a ratepayer's e-mail address. The commissioners court of an affected county that provides water or sewer service shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal within 30 days after the date of the final decision on a rate change. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notice delivery requirements. Notices may be mailed separately, e-mailed, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed, e-mailed, or hand delivered to the customers at least 60 days prior to the effective date of the rate increase.

(d) Notice and statement of intent. The applicant utility shall mail, e-mail, or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed, e-mailed, or delivered to other affected persons or agencies.

(e) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date.

(f) Standby fees. A utility may request in a rate change application that standby fees be approved for property or lots for which the utility has previously entered into an agreement to serve or construction of water or sewer utility facilities has already begun or been completed if the developer owning the property at the time the rate change application is filed is given individual written notice by certified mail of the request and an opportunity to protest.

(g) Emergency rate increase in certain circumstances. After receiving a request, the commission or executive director may authorize an emergency rate increase under Texas Water Code (TWC), §5.508 and §13.4133 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for a utility:

(1) for which a person has been appointed under TWC, §13.4132; or

(2) for which a receiver has been appointed under TWC, §13.412; and

(3) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application must include the proposed tariff and other information requested by the executive director. The request may be made with a request to change one or more of the utility's other rates.

SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY

§§291.102, 291.105, 291.113

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of Texas.

The adopted amendments implement TWC, §§13.245(b) - (c-5), 13.2451(a) - (b-3), 13.246(h), and 13.254(a-1) - (a-3), (a-5), (a-6), (a-8) - (a-11), and (h).

§291.102. Criteria for Considering and Granting Certificates or Amendments.

(a) In determining whether to grant or amend a certificate of public convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Texas Health and

Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules, and the Texas Water Code (TWC).

(b) Where a new CCN is being issued for an area which 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) a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) an analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance;

(6) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the

partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall 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 the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the 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;

(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC, §15.001.

(g) For two or more retail public utilities that apply for a CCN to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC, §15.001, the executive director shall 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 shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

(1) all criteria from subsections (a) - (f) 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) credit worthiness;

(9) fiscal management and controls;

(10) compliance history; and

(11) planning reports or studies by the applicant to serve the proposed area.

(h) Except as provided by subsection (i) 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 proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a CCN or for an amendment to an existing CCN. 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 application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a CCN that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service 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 utility owned by the municipality is the applicant.

§291.105. Contents of Certificate of Convenience and Necessity Applications.

(a) Application. To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment as provided by this section. Applications for CCNs or for an amendment to a certificate must contain an original and three copies of the following materials, unless otherwise specified in the application:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) a map and description of only the proposed service area by:

(A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) a copy of the recorded plat of the area, if it exists, with lot and block number; and

(E) maps as described in §291.119 of this title (relating to Filing of Maps);

(F) a general location map; and

(G) other maps as requested by the executive director or required by §281.16 of this title (relating to Applications for Certificates of Convenience and Necessity);

(3) a description of any requests for service in the proposed service area;

(4) any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to maps showing where such facilities will be located to provide service;

(7) a description of the sources of funding for all facilities;

(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which

were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) disclosure of all affiliated interests as defined by §291.3 of this title (relating to Definitions of Terms);

(10) to the extent known, a description of current and projected land uses, including densities;

(11) a current financial statement of the applicant;

(12) according to the tax roll of the central appraisal district for each county in which the proposed service 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 proposed service area;

(13) if dual certification is being requested, and an agreement between the affected utilities exists, a copy of the agreement;

(14) for a water CCN for a new or existing system, a copy of:

(A) the approval letter for the commission-approved plans and specifications for the system or proof that the applicant has submitted either a preliminary engineering report or plans and specification for the first phase of the system unless §290.39(j)(1)(D) of this title (relating to General Provisions) applies;

(B) other information that indicates the applicant is in compliance with §291.93 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 §291.93 of this title;

(15) for a sewer CCN for a new or existing facility, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the commission;

(B) other information that indicates that the applicant is in compliance with §291.94 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 §291.94 of this title; and

(16) any other item required by the commission or executive director.

(b) 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 service 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 improvements plan required by Texas Water Code (TWC), §13.244(d)(3) or a subdivision plat, the commission may grant the CCN 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 area that is the subject of the retail public utility's application to the commission 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 water or sewer services with the municipality.

(5) If a municipality refuses to provide service in the proposed service 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 in the following counties: Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson.

(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.

(c) 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 certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(2) The commission may not extend a municipality's CCN 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 a proposed service area in accordance with TWC, §13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission.

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(4) To the extent of a conflict between this subsection and TWC, §13.245, TWC, §13.245 prevails.

(d) Area within municipality.

(1) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area under the rights granted by its certificate and this chapter, 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 area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas 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.

§291.113. Revocation or Amendment of Certificate.

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity (CCN) with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;

(2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate;

(4) the certificate holder has failed to file a cease and desist action under Texas Water Code (TWC), §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days; or

(5) in an area certificated to a municipality outside the municipality's extraterritorial jurisdiction, 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, except that an area that was transferred to a municipality on approval of the commission or the executive director and in which the municipality has spent public funds may not be revoked or amended under this paragraph.

(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a CCN so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought shown on a map with descriptions according to §291.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);

(B) the time frame within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate 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; and

(F) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide continuous and adequate service within the time frame, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:

(A) an existing retail public utility; or

(B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertificated under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.

(c) A landowner is not entitled to make the election described in subsections (b) or (r) of this section but is entitled to contest under subsection (a) of this section the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within 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 holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(d) Within 60 calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission or executive director shall grant the petition unless the commission or executive director makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission or executive director may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.

(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission or executive

director on the petition is final after any reconsideration authorized under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) and may not be appealed.

(f) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a CCN under TWC, §13.242(c).

(g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless the retail public utility, or a petitioner under subsection (r) of this section, provides compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the

previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.

(2) After receiving the appraisals, the commission or executive director shall appoint a third appraiser who shall make a determination of the compensation

within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.

(k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.

(l) As a condition to decertification or single certification under TWC, §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire CCN of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(p) The commission shall not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section.

(q) Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) submit to the executive director a written list with the names and addresses of the lienholders and the amount of debt; and

(2) notify the lienholders of the decertification process and request that the lienholder provide information to the executive director sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

(r) As an alternative to decertification under subsection (a) of this section and expedited release under subsection (b) of this section, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.

(s) On the same day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the CCN holder. The CCN holder may submit a response to the commission. The commission or the executive

director shall grant a petition received under subsection (r) of this section not later than the 60th calendar day after the date the landowner files the petition. The commission or the executive director may not deny a petition received under subsection (r) of this section based on the fact that a certificate holder is a borrower under a federal loan program. The commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under subsection (r) of this section as otherwise provided by this section. An award of compensation is governed by subsections (h) - (k) of this section.

(t) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under subsection (b) of this section, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(u) Subsection (t) of this section does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(v) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide

service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.