

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** September 24, 2004

**Thru:** LaDonna Castañuela  
Chief Clerk

**From:** Randolph Wood, Deputy Director  
Office of Environmental Policy, Analysis, and Assessment

**Subject:** Consideration of a Petition for Proposed Rulemaking

**Docket No.:** 2004-1397-RUL

**Rule Project No.:** 2004-099-PET-NR

**Who Submitted the Petition:**

The petition was sent by the Greater Houston Builders Association. It was received on August 16, 2004.

**What the Petitioner Requests:**

The petitioner requests amendments to eight existing sections and adoption of three new sections of Chapter 291, Utility Regulations, Subchapter G, Certificate of Convenience and Necessity. The requested amendments would provide for the following:

- Landowner consent to having property included in a certificate of convenience and necessity (CCN) area;
- Additional information in applications for CCNs and amendments;
- Required written notice of certain actions to landowners and purchasers;
- Requirements for the commission to consider additional factors in granting CCNs and amendments;
- Requirements for commission approval before CCN holders apply for federal grants or loans;
- Petitions from landowners to have the commission order a CCN holder to pay off federal debt;
- Recording requirements for CCNs in the county real property records;
- Requirement for a public hearing if requested by an interested party; and
- Amendment of CCNs upon request by a landowner who did not consent to inclusion in the CCN and who is not receiving continuous and adequate service from the CCN holder.

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**Recommended Action and Justification:**

Staff recommends that the commission direct initiation of rulemaking to study the issues and options related to the petition. This action would allow sufficient time to evaluate the issues raised in the petition and to determine the best method to address them. The commission may not have statutory authority for all of the amendments that are requested by the petitioner. Some recommended amendments may limit regionalization if landowners can choose to opt out of a CCN.

**Applicable Law:**

Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule and 30 TAC §20.15, which provides such procedures specific to the commission.

The petition states that the TCEQ has statutory authority to make the amendments requested under Texas Water Code, Chapter 13, Subchapter G, relating to Certificates of Convenience. On initial review of the petition, staff attorneys noted that some of the requested changes may be beyond the agency's statutory authority. Staff have not yet been able to adequately review all statutory implications of the requested amendments.

**Affected Public:**

The petitioned amendments would affect landowners of property covered or proposed to be covered by CCNs and tenants on properties covered or proposed to be covered by CCNs. Landowners who choose to remain in a CCN and the general public might face higher water rates because of a lower customer base to pay for investment costs, which may not be substantially reduced if the amount of piping to reach customers is not reduced. Rate payers (property owners or tenants) may be affected if the utility's cost of service increases due to additional notice requirements, survey requirements and by the requirement to pay for infrastructure to service landowners. The persons occupying properties covered by or proposed to be covered by a CCN are covered in the current rules.

**Affected Agency Programs:**

The Water Supply Division would need to do the following:

- Review more information in CCN applications;
- Prepare, create, and develop an application and procedure for petitions from landowners requesting that areas be removed from a CCN;
- Review requests for permission to apply for federal funding;
- Review plans, specifications and business plans prior to the submittal of a CCN application;
- Prepare processes and guidelines to establish reasonable refunds for landowners;
- Establish procedures to review petitions to retire debt; and
- Establish a mechanism for providing notice to landowners.

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The Field Operations Division would need to respond to complaints if received.

The Permits Administrative Review Section would be responsible for doing an administrative review on all additional applications/petitions that would be a result of this rulemaking.

**Agency Contacts:**

Joseph Thomas, Rule Project Manager, 239-4580  
Michelle Abrams, Program Lead, 239-6014  
Lara Nehman, Staff Attorney, 239-1121  
Patricia Durón, Texas Register Coordinator, 239-6087

Attachment: Petition

cc: 5 copies to the Chief Clerk for distribution  
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cc (without attachments):  
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