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**PUC Update on CCN Decertifications
Landowner's Perspective****C. Joe Freeland**

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I. INTRODUCTION

The concept of an exclusive geographic service area (a Certificate of Convenience and Necessity or CCN) for water and sewer utilities has evolved over the 40 years since the passage of PURA in 1975. Initially, under the PUC, the geographic scope of the CCNs for the various types of utilities reflected the nature of the utility. Investor Owned Utilities (IOUs) were generally awarded geographically-limited service areas reflecting the fact that IOUs were usually created by the developer of a particular subdivision to serve that subdivision. Water supply and sewer service corporations (WSCs) were generally awarded CCNs that tracked their distribution lines ("facilities-only CCN") reflecting their mission of providing service to rural areas. Districts and municipalities were awarded CCNs that matched their district and municipal boundaries reflecting their intention to provide service primarily to residents.

Over time, with the rise of suburban development and the transfer of regulatory authority from the PUC to the TWC/TNRCC/TCEQ in 1985, the agency moved away from granting geographically-limited CCNs to granting geographically-expansive CCNs, if requested by the utility. CCNs were awarded that covered many square miles, even when the vast majority of the service area did not need utility service. These expansive CCNs were granted mostly to WSCs, Districts and Municipalities, and to a few IOUs. The following are some examples of the larger water CCNs: Coleman County SUD (1,454 square miles), Aqua WSC (985 square miles), North Alamo WSC (973 square miles), SAWS (914 square miles), and Canyon Lake Water Services Company (IOU) (250 square miles). When granting these CCNs, the agency typically did not require a demonstration of how service would be provided throughout the service area. The utilities simply asked for the area, and if no party objected, the CCNs were granted.

The granting of the expansive CCNs with geographic boundaries extending far beyond current, and even planned, service areas created a number of problems for landowners, particularly with regard to development of property. In many cases, the landowner's property in an expansive CCN would be located far from the CCN holder's facilities, but adjacent to a municipal system with a robust water system capable of meeting the water service needs of a densely populated subdivision (higher per capita flows, fire flows), or even if the landowner's property was located near the existing utility's facilities, those facilities were inadequate for the type of development planned by the landowner. In these situations, the cost of obtaining the required level of water utility service from the municipality would be significantly less expensive than obtaining the same level of service from the CCN holder.

Under Chapter 13 of the Texas Water Code, the only avenue available to the landowner to get out of the existing CCN would have been to petition the agency to revoke or amend the CCN to remove the landowner's property. Under Section 13.254(a), the agency could grant such a request only if the CCN holder had never provided, was no longer providing, or was incapable of providing service to the property. Since service at any level could usually be provided if enough money was spent on facility upgrades, and since the landowner would be responsible for

paying the costs of upgrading the system, the landowner would face a difficult time getting such a petition granted. To get the level of service needed, the landowner would have to pay the price demanded by the existing CCN holder, even service could be obtained from a neighboring utility at a significantly lower cost. On top of that, even if the landowner was successful, any new provider of utility service to the property would have to compensate the prior CCN holder, under Section 13.254(d), for any property rendered useless or valueless to the prior CCN holder as a result of the decertification.

In 2005, the Texas Legislature responded to landowner dissatisfaction over not getting to chose lower cost/superior service utilities by passing HB 2876, which provided a method for landowners to petition the TCEQ for “expedited release” of undeveloped property of greater than 50 acres that is not currently receiving service. The bill, codified at Texas Water Code §13.254(a-1) requires that the landowner make a detailed request for service to the incumbent utility and then essentially demonstrate that an alternative provider can more economically provide service to the property. If a landowner can make this demonstration, then the TCEQ will determine the compensation owed to the incumbent utility for any property rendered useless or valueless by the decertification.

A few expedited release petitions were filed with TCEQ over the years, but landowners generally determined that the process set out in §13.254(a-1) was too uncertain, too slow, and too costly. The process was uncertain, in part, because of the lack of information/standards for determining costs. Only the existing utility, not the landowner or even the alternative utility, has access to the information needed to determine costs, and these utilities are reluctant to share this information with landowners prior to the filing of a petition. In an ideal world, this information would be readily available in rate application or in the utility’s books and records. In the world of Texas water utilities, however, this information typically does not exist.

In response to complaints about the process created by HB 2876, the Legislature in 2011 created a new and even more expedited means to remove undeveloped property from a CCN. SB 573 added several new provisions to Texas Water Code §13.254 to create a process referred to as “streamlined expedited release” or “SER”. Under the SER process, the owner of a tract of land with at least 25 acres that is not receiving service, and located in one of 33 referenced counties may petition PUC to have the property removed from a CCN. The referenced counties include: (1) counties with populations greater than 1,000,000; (2) counties adjacent to counties with populations greater than 1,000,000 (except Medina County); and (3) Smith County. The SER process is more attractive to landowners than the “regular” expedited release process because the SER process is available to more tracts (25 acres versus 50 acres), faster, and the SER process requires much less of a demonstration. Since the bill went into effect on September 1, 2011, numerous petitions have been filed with the TCEQ and PUC and a significant amount of acreage has been removed from existing CCNs. Now that more SER petitions are being filed, additional issues are being identified. A brief discussion of some of these issues is set out later in this paper.

Overly expansive CCNs will continue to be a problem for landowners into the future. The passage of HB 1973 and SB 1086 in 2013, and TCEQ’s corresponding rules (particularly 30 TAC §290.46(y)) that allow for municipalities to require IOUs and WSCs to provide fire flows

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