

## **GROWING PAINS:**

*THE EVOLVING LAW AND REGULATIONS GOVERNING  
RETAIL PUBLIC UTILITY SERVICE IN TEXAS MUNICIPAL ETJ  
DURING TIMES OF URBAN SPRAWL*

*Presented to:*

**UT CLE LAND USE CONFERENCE**

APRIL 21, 2022

**Cole Ruiz**

cruiz@lglawfirm.com  
(512) 322- 5887

## **Overview And Purpose**

- Texas Regulatory Framework for Utilities and Public Water Systems
- Certificates of Convenience and Necessity Basics
- Review of laws applicable to a municipality's rights within its extraterritorial jurisdiction (ETJ)
- Review of the CCN Application Process and Requirements
- Recent Case Law concerning municipality CCN decertification within the ETJ.

## Key Take-Aways

- Water systems and utilities (including CCNs) are historically born out of the concept of regionalization.
- Human health, population demand, and economic need require a regional state-sanctioned monopolies (aka CCNs).
- CCNs provide **municipalities** with certain protections and control over development and investment of public dollars.
- CCNs also protect **customers** by ensuring a level of continuous and adequate service that meets minimum drinking water standards.
- Municipalities should pay attention to recent and ongoing developments in decertification cases implicating 7 USC 1926(b)—which generally protects infrastructure and CCN territory from decertification that is encumbered by federal debt. Fifth Circuit recently adopted a new test for what qualifies for 1926(b) protection.

## “Financial, Managerial & Technical Capability” (FMT)

- Descriptor referenced throughout the Federal and State laws and regulations pertaining to public water systems and retail public utilities.
- Refers to capabilities of the owner/operator of a PWS with regard to **asset management, financial health, compliance, reliability, facility adequacy, technical sophistication, system capacity**.
- FMT barometer is used for gauging :
  - whether a PWS is sufficiently sophisticated to provide continuous and adequate service;
  - which utility is best positioned to serve a particular geographic area; and
  - whether regionalization is feasible.

# Regionalization

## Generally:

- The combining of certain aspects of two or more water and wastewater systems operations, physical plants, and/or service areas.
- Goal is to achieve the best service at reasonable rates that will ensure that the system is maintained and stable (i.e. improve FMT resources and provide quality drinking water).
- Might involve water partnerships, including joint ventures and formal agreement—not always full consolidation.
- Could be as simple as agreeing to buy treatment chemicals together to achieve savings from bulk purchasing, or participating in regional water planning.

## Regulatory Definition:

- *“A pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service...”*

16 Tex. Admin. Code § 24.41(d)(1)(C)(ii)

# Regionalization Examples

- Agreement to share equipment or buy treatment chemicals together to achieve bulk savings.
- Formal partnership to share operators, facilities, or build emergency interconnections.
- Engage in regional water planning with neighboring water systems.
- Consolidation by sale, transfer, or merger of facilities, customers, and finances
- Certificates of Convenience and Necessity (CCNs) (combining of service areas).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Growing Pains: The Evolving Law and Regulations Governing Retail Water Service to Municipal ETJs in Times of Urban Sprawl

Also available as part of the eCourse

[2022 Land Use eConference](#)

First appeared as part of the conference materials for the  
26<sup>th</sup> Annual Land Use Conference session

"Growing Pains: The Evolving Law and Regulations Governing Retail Water Service to Municipal ETJs in Times of Urban Sprawl"