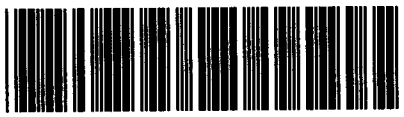

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House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014

43945

SOAH DOCKET NO. 582-06-2023
TCEQ DOCKET NO. 2006-0272-UCR

APPLICATION FROM THE TOWN OF LINDSAY TO AMEND CERTIFICATES OF CONVENIENCE AND NECESSITY (CCN) NOS. 13025 AND 20927 IN COOKE COUNTY TEXAS, APPLICATION NOS. 35096-C &35097-C	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

DIRECT TESTIMONY OF
TAMMY LEE HOLGUIN-BENTER
UTILITIES AND FINANCIAL REVIEW TEAM
UTILITIES AND DISTRICTS SECTION
WATER SUPPLY DIVISION
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUGUST 2008

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Q. Please state your name and business address.

A. Tammy Holguin-Benter, 12015 Park 35 Circle, Building F, Austin, Texas.

Q. By whom are you currently employed and how long have you been employed there?

A. I have been employed by the Texas Commission on Environmental Quality ("TCEQ" or "Commission") and its predecessor agency, the Texas Natural Resource Conservation Commission ("TNRCC"), since October 1999 in the Utilities and Financial Review Team until April 30, 2006. Thereafter, I became the Team Leader of the Utilities and Financial Review Team.

Q. Please describe your educational background and past work experience.

A. I graduated from Angelo State University with a Bachelor of Science in Economics and Biology with a supporting concentration in Mathematics. I also hold a Master of Business Administration from the University of the Incarnate Word. I was previously employed as the Executive Director of Keep San Antonio Beautiful (KSAB), a non-profit organization in San Antonio, Texas. While employed by KSAB, my responsibilities included business/financial development, program development, budget/ financial analysis, staff training/development, and board training and development. Prior to working for KSAB, I was employed as a Socioeconomic Analyst by Pacific Western Technologies, Ltd., where my responsibilities included conducting socioeconomic research/analysis and document writing/editing of Environmental Baseline Studies (EBS) and other environmental reports submitted under federal contract for publication. I've attached a copy of my current resume to my testimony (Exhibit TB-ED1).

Q. Please describe ~~current~~ your current work responsibilities.

A. My current responsibilities include supervising a team of staff whose primary responsibility is to process applications related to obtaining or amending Certificates of Convenience and Necessity ("CCNs") and rate related applications or appeals. Furthermore, I am responsible for reviewing and processing CCN related applications; assisting with the negotiation of settlements; preparing and mentoring staff to provide expert testimony for contested hearings regarding investor-owned, nonprofit, and governmental water and sewer utilities; and for reviewing business plans or financial and managerial information. In addition to these responsibilities, I work closely with the Capacity Development Program; the Financial, Managerial and Technical (FMT) Contract Team of the TCEQ; and with the Water Utilities Database (WUD) Team.

Q. How many separate CCN cases have been previously assigned to you?

A. I have been assigned over 260 separate CCN related applications during my employment with the TCEQ.

Q. Have you testified as an expert witness in contested matters before the State Office of Administrative Hearings ("SOAH")?

A. Yes, in addition to filing prefiled testimony in numerous contested CCN and rate related matters, I have also provided live testimony before SOAH on these type of applications.

Q. For which applications have you provided live testimony?

A. I have testified in two hearings regarding contested CCN applications and in one hearing regarding a contested rate application. The applications were for the CCN application of City of Crandall, Texas, (SOAH Docket No. 582-00-1479); Petition Appealing Water Rates Established by Chisholm Trail Special Utility District (SOAH Docket No. 582-05-

0003) and the CCN application of the Town of Prosper (SOAH Docket No. 582-03-1994).

Q. Are you familiar with the matter known as (SOAH) Docket No. 582-06-2023, TCEQ Docket No. 2006-0272-UCR?

A. Yes, this is the matter regarding the contested applications (the "Applications") filed by the Town of Lindsay ("Lindsay" or the "Applicant") to amend its water and sewer CCNs in Cooke County.

Q. Have you reviewed the Applications filed by Lindsay to amend water and sewer CCN Nos. 13025 and 20927 in Cooke County, all prefiled testimonies and the other information filed with the Commission in regard to this matter?

A. Yes, I have.

Q. What is the purpose of your testimony?

A. I will present the Executive Director's ("ED's") position as to Lindsay's proposed amendments to water and sewer CCN Nos. 13025 and 20927.

Q. Please explain the scope of your participation in the present proceeding.

A. My participation regarding SOAH Docket No. 582-06-2023 can be summarized as follows:

A. I reviewed the Applications with respect to the criteria necessary to amend a water and/or sewer CCN found in the *Texas Water Code*, Section 13.241, and Title 30, *Texas Administrative Code*, Section 291.102, as they were applicable on August 31, 2005, the date the application was filed with the Commission.

B. I reviewed the most recent comprehensive compliance investigations and all

responses to any violations or deficiencies noted during the investigations for Lindsay's existing water and sewer systems.

C. I reviewed the information filed by all parties as part of formal discovery and all prefiled testimonies. I also reviewed supplemental prefilled testimony filed by Mr. Myrick and the transcript of his deposition for this matter. ~~filed for this proceeding.~~

D. I have presented herein a position on the Applications to amend water and sewer CCN Nos. 13025 and 20927 filed by Lindsay.

CCN APPLICATION

Q. During your review of the information presented in Lindsay's Applications, what standards did you consider?

A. I reviewed the information based on the eight (8) criteria in the *Texas Water Code*, Chapter 13, and the Commission's Rules, Chapter 291, for amending a water or sewer CCN, as they were applicable on August 31, 2005. This is the date Lindsay filed the Applications which are the subject of this proceeding.

Q. What are the eight (8) criteria?

A. They are as follows:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area;

(3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity; and

(8) the probable improvement in service or lowering of cost to consumers in that area.

Q. What is Lindsay proposing to accomplish by filing the Applications?

A. Lindsay proposes to amend water and sewer CCN Nos. 13025 and 20927 in Cooke County. Lindsay is asking for the same water and sewer service areas in both Applications.

Q. Did anyone protest the Applications?

A. Yes, the ED received written protests from Lindsay Pure Water Company ("Lindsay Pure" or "Protestant") and various landowners owning property in the requested area. During the preliminary hearing on this matter, the Applicant, the ED of the TCEQ, the Office of the Public Interest Counsel (OPIC) and Lindsay Pure were admitted as parties.

Q. Has Lindsay indicated why it is applying to amend its water and sewer CCNs?

A. As noted on page 11 of the testimony of the Honorable Donald L. Metzler, Mayor Pro Tempore of Lindsay, the Applicant has received requests for water and sewer service from approximately ~~55~~ 53 property owners in the requested area. Copies of these written requests for service were attached to Mr. Metzler's testimony as exhibits. Additionally, on page 13 of his testimony, Mr. Metzler indicates that Lindsay is seeking the CCNs to

provide water and sewer service to the residents within its city limits, its extraterritorial jurisdiction ("ETJ"), and some additional area outside of its ETJ.

Q. Is Lindsay required to have a CCN?

A. No; as a municipally owned utility Lindsay is not required to possess a CCN to extend service to an area that is not already being lawfully served by another retail public utility.

Q. What is the adequacy of the water and/or sewer service currently provided to the requested area?

A. A small portion is currently certificated to the City of Gainesville ("Gainesville") for water and sewer service. I am unaware if Gainesville is actually providing service to or has water or sewer infrastructure in this portion. Other than that, there are no other retail water or sewer providers obligated to serve the requested area.

Property owners outside the area certificated to Gainesville for water and sewer service must utilize septic or on-site sewage facilities ("OSSF") as a means for sewer service since there are currently no other retail sewer providers in the area. Therefore, sewer service does not appear to be adequate.

As for retail water service, according to page 4 of the testimony of Mr. Jim Myrick, President of Lindsay Pure Water Company, Lindsay Pure is currently providing retail water service to existing homes in areas outside of its CCN. Although Lindsay Pure is meeting minimum requirements for water service, Mr. Myrick adds that these homes are within ¼ mile of the company's current water CCN boundary. Pursuant to Chapter 291 of the Commission's rules, a CCN holder may serve up to ¼ mile outside of its existing CCN boundary without first amending its CCN, unless there is another retail

service provider already lawfully serving the area. With regard to sewer service, Lindsay Pure does not provide retail sewer service at this time nor does it have a sewer CCN.

Q. Is there a need for additional water and/or sewer service in the requested area?

A. Yes; as previously stated in my testimony, Lindsay has received 53 ~~55~~ written requests for water and sewer service in the requested area. In addition to these requests, Mr. Kerry Maroney, P.E., an engineering consultant for Lindsay, explains on page 9 of his testimony that Lindsay's population increased between the years 2000 and 2006. This is further indicative of the need for service in the requested area.

Currently, except for the area already certificated to Gainesville, there is no retail sewer service provider in the proximate area. Therefore, residents in the remainder of the requested area must utilize septic or OSSF for sewer service.

The fact that there are customers currently receiving service in the area demonstrates a need for service. Lindsay Pure is currently providing retail water service to existing homes within ¼ mile of its current water CCN boundary. It should be noted, however, that Lindsay Pure has not filed an application to amend its water CCN to provide service to this area.

Q. What is the effect of granting or amending the water and/or sewer certificates on the recipient of the certificates and on any retail public utility of the same kind already serving the proximate area?

A. If Lindsay's water and/or sewer amendments are granted as requested, then its water and/or sewer CCN service areas would increase. Lindsay's customer base would increase as development in the area occurs. Lindsay in turn would be obligated to

provide retail water and/or sewer service to the area. Other retail public water or sewer utilities already serving the proximate area would not be able to lawfully expand into any of the areas within the proposed CCN territories.

Because Lindsay Pure has protested the referenced Applications, I will specifically discuss the impact to Lindsay Pure if Lindsay were awarded the water and/or sewer service amendments in its Applications. For the water service area, Lindsay Pure would not be able to lawfully expand its water service into any of the area granted to Lindsay as a result of this proceeding without filing an application to decertify. Furthermore, because Lindsay Pure is currently providing water service to customers outside its CCN area, it is in danger of losing these customers to Lindsay as a result of this proceeding. These customers would be affected as they would be required to switch water providers. As for the sewer service area, awarding the requested area would not effect Lindsay Pure since it does not provide retail sewer service. After reviewing Mr. Myrick's testimony, I did not find evidence that Lindsay Pure has any plans to provide retail sewer service in the near future.

A portion of Lindsay's requested area overlaps with Gainesville's existing water and sewer CCN service areas. Gainesville appears capable of adequately serving the area. Additionally, awarding this area to Lindsay may conflict with the Commission's policy on regionalization. I have attached a copy of the Commission's guidance document which discusses its regionalization policy as Exhibit TB-ED2.

Q. Does Lindsay have the ability to adequately provide water service to the proposed area?

A. Yes, as testified by Mr. Metzler on page 8 of his testimony, Lindsay currently has four contract certified groundwater operators. Furthermore, Mr. Maroney states on page 14 of his testimony that Lindsay is currently serving approximately 399 ~~396~~ water connections. Mr. Maroney adds that Lindsay has three existing water wells from which it can provide water service to its existing customers and approximately 301 ~~304~~ additional customers. In addition to this information, Mr. Maroney testifies that Lindsay has two 30,000 gallon ground storage tanks; two 40,000 gallon ground storage tanks; and one 150,000 gallon elevated storage tank.

Q. Does Lindsay have the ability to adequately provide sewer service to the proposed area?

A. Yes, as testified by Mr. Metzler on page 8 of his prefiled testimony, Lindsay currently employs four certified sewer operators under contract. Furthermore, as testified by Mr. Maroney on page 14 of his prefiled testimony, Lindsay is currently providing sewer service to approximately 399 ~~396~~ sewer customers. Mr. Maroney adds that Lindsay is permitted to discharge 0.066 MGD of treated wastewater and it has available capacity to provide sewer service to approximately 467 ~~470~~ additional homes without any expansions to its current wastewater treatment plant.

Q. Is it feasible to obtain water and/or sewer service from an adjacent retail public utility?

A. Yes, but only for portions of the area. Lindsay Pure, CCN No. 12858, and Myra Water System, CCN No. 12514, are existing retail water utilities located within a 2 mile radius of the proposed water amendment. Moreover, Gainesville, CCN Nos. 12957 and 20885,

is certificated to provide retail water and sewer service to a portion of the area requested by Lindsay in the pending applications. At this time, Myra Water System has not expressed an interest in serving the requested area.

Under 30 TAC, § 291.103(a)(1), Lindsay Pure can extend water service into territory if the point of ultimate use is contiguous to and within ¼ mile of its CCN boundary. To provide service beyond the ¼ mile, Lindsay Pure would have to amend its CCN. Although Lindsay Pure has expressed an interest in providing retail water service to the requested area, it has not filed an application to amend its CCN. Therefore, it does not appear feasible for current landowners or developers to obtain water service from Lindsay Pure for any of the area outside of the area it is currently serving.

As for Gainesville, it is already certificated to provide retail water and sewer service to a portion of the area requested by Lindsay in the pending Applications. Mr. Metzler's testimony included a copy of the Applications filed by Lindsay as an exhibit to his testimony. On the page labeled "App1002" of Lindsay's Applications, the Applicant responds to Question 2.D. by indicating that it has received a verbal agreement from Gainesville to allow Lindsay to be certificated to the area of overlap. Lindsay also indicates that it will supplement its Applications once the agreement with Gainesville for the areas of overlap is executed. As of the date of my prefiled testimony, I have not seen a written agreement between Gainesville and Lindsay for this area. Therefore, because it does not appear that an agreement between Gainesville and Lindsay has been executed, it is reasonably certain that it is feasible for current landowners and potential developers to obtain water and sewer service from Gainesville in the areas of overlap where Gainesville

is already certificated. Since Gainesville has not expressed an interest in serving the remainder of the area requested by Lindsay in its Applications, it does not appear feasible for Gainesville to serve the additional area requested by Lindsay.

Q. Is Lindsay financially stable?

A. Yes; it appears to be. As a municipality, Lindsay has the financial authority to issue bonds, apply for loans, levy taxes and utilize fees or other general city funds to support its infrastructure and service obligations. Mr. Jack Stowe, business and financial consultant for the Applicant, testified on page 6 of his prefiled testimony that "Lindsay has not issued any debt within its Governmental Funds; therefore, the debt-to-equity ratio is 0 and the capital structure for the Governmental Funds is 100% equity."

Q. Will the environmental integrity be affected by the granting of the water and/or sewer CCN amendments as requested by Lindsay in its Applications?

A. Yes; the environmental integrity will be temporarily disturbed by the construction of water and sewer distribution lines and by the construction of additional pumping and storage facilities by whoever provides service to the area. There would also be a positive effect on the environment by having a centralized retail water and/or sewer service provider for the area. This is primarily because it would eliminate the need for landowners and developers to disturb the ground by drilling private water wells, as well as eliminate the need for landowners and developers to install OSSFs to serve development or property in the area.

Q. Will granting Lindsay's water and sewer CCN amendments improve service or lower costs to consumers in the area?

A. For the area not currently certificated to Gainesville for water and sewer service, and for the customers not already receiving water service from Lindsay Pure, the availability of retail water and sewer service in the additional area would be an improvement. Furthermore, since Lindsay is an adjacent retail water and sewer service provider already serving the adjacent area, Lindsay is promoting the Commission's policy on regionalization. Because the ED does not have original jurisdiction over the rates and service policies of municipalities, the ED is unable to determine whether the water or sewer rates will be lower to consumers in the area. However, economies of scale may ultimately lower the cost to consumers.

LINDSAY PURE'S CURRENT SERVICE AREA

Q. Can you describe the water CCN currently held by Lindsay Pure Water Company?

A. Yes, Lindsay Pure currently holds water CCN No. 12858 in Cooke County. The CCN was issued in 1998 and a copy of the certificate is attached to Mr. Myrick's testimony as Exhibit LPWC 6. As described by Mr. Myrick on page 4 of his prefiled testimony, the current CCN covers only what is known as Phase 1 of the South Ridge of Lindsay Subdivision and a portion of Phase 2.

Q. Do you agree with Mr. Myrick's testimony that Lindsay Pure was awarded only a portion of the area it originally requested in error?

A. No, I do not agree with Mr. Myrick's testimony. Mr. Myrick testifies on page 7 of his testimony that he does not believe there is a current need for service in the surrounding area. I believe the Commission granted Lindsay Pure the water CCN to the area where it was able to demonstrate a need for service only. Furthermore, as testified by Mr. Myrick

on page 1 of his testimony, he has been part owner and President of Lindsay Pure since it was created in 1997. Therefore, he had an opportunity to review the certificate, order, and map awarded in 1998 to Lindsay Pure, and to file either a Motion to Overturn (MTO) after the CCN was granted, or to file a CCN amendment application for the remaining area during the course of this proceeding. Moreover, although the Commission's rules allow Lindsay Pure to serve up to ¼ mile outside of its CCN service area, it is not protected from encroachment from other service providers.

CONCLUSIONS AND RECOMMENDATIONS

Q. Have you drawn any conclusions based on your review of Lindsay's Applications, information presented to you during discovery by all parties, and the testimonies presented by all parties with respect to the Applications, which are the subject of this proceeding?

A. Yes, I have drawn several conclusions. First, I have concluded that although there was a prior agreement reached between Lindsay Pure and Lindsay with respect to future service to the requested area, the agreement is outside the jurisdiction of the TCEQ. Therefore, the agreement will not be used in making my recommendations.

Second, as previously stated, although the Commission's rules allow Lindsay Pure to provide service up to ¼ mile outside of its CCN service area, it is not protected from encroachment from other providers. ~~By filing a CCN amendment application during the course of this proceeding, Lindsay Pure may have protected its existing customers from encroachment by another retail provider. However, Lindsay Pure did not file such an application.~~

~~Third, although I believe Lindsay Pure may be able to demonstrate the financial, managerial, and technical capability to provide water service to a portion of the requested area, that application has not been filed with the Commission so it cannot be taken into consideration at this time.~~

Q. Do you have a recommendation on Lindsay's CCN Applications to amend water and sewer CCN Nos. 13025 and 20927 in Cooke County?

A. Yes, I do. I recommend that Lindsay's water CCN amendment Application be granted to all of the requested area except for the area of overlap with Gainesville's existing water CCN service and for the area for which Lindsay Pure is already providing service, where Lindsay Pure has facilities already in place, and any of the area in the South Ridge Subdivision. As for Lindsay's sewer CCN amendment Application, I recommend that it be granted for all of the requested area except for of the area of overlap with Gainesville's existing sewer CCN.

Q. Are granting of the water and/or sewer certificates necessary for the service, convenience, accommodation, and safety of the public?

A. Yes, it is my professional opinion that granting the certificates to serve the recommended water and sewer service areas are necessary for the service, convenience, accommodation, and safety of the public.

Q. Does the ED need additional information in order to grant the recommended water and sewer CCN service areas?

A. Yes, the ED would need, on separate water and sewer maps, four hard copies of maps showing the area and projectable digital data depicting the recommended area for both

the water and sewer service areas separately. This information would be needed in order to correctly illustrate the areas on the final maps. In turn, these maps would be submitted along with the final order for this proceeding.

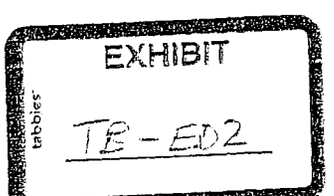
Q. Does this conclude your direct, prefiled testimony?

A. Yes, it does; but I reserve the right to supplement this testimony during the course of the proceeding as new facts or other evidence is presented.

January 2003
RG-357

The Feasibility of Regionalizing Water and Wastewater Utilities:

A TCEQ Policy Statement



Water Supply Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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The Feasibility of Regionalizing Water and Wastewater Utilities:

A TCEQ Policy Statement

Prepared by
Water Supply Division

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Introduction

Building and operating a successful water or wastewater system is not easy. To comply with the state and federal requirements that ensure that drinking water is safe and wastewater is treated adequately, you must have—or have access to—these and other resources:

- for drinking water systems, an adequate and reliable source of water that either is or can be made safe for human consumption;
- the financial resources and technical ability to design and build a system that can provide service effectively and reliably;
- the financial resources and technical ability to operate and maintain the system so it operates safely for your workers, your customers, and, in the case of wastewater systems, the environment;
- the ability to read and understand the many, highly technical state and federal regulations associated with water and wastewater systems;
- the management skill to successfully operate a business that is critical to public welfare.

Recognizing the critical role these resources play in the success of a water system, Congress amended the Safe Drinking Water Act in 1996. Under these amendments, states must determine whether new community water systems are likely to be able to comply with regulatory requirements. In 1997, the 75th Texas Legislature made similar amendments to Chapter 341 of the Texas Health and Safety Code and Chapter 13 of the Texas Water Code.

Along with other recent legislative changes—and wastewater regulations that were already on the books—these amendments establish a clear message: All new public water systems and any wastewater systems owned and operated by entities required to obtain a CCN must be capable of operating efficiently and effectively for the long term. In Texas, the Texas Commission on Environmental Quality (TCEQ, "we") is responsible for reviewing and approving the design and operating plans of proposed water systems, and the Texas Water Development Board (TWDB) can assist growing areas with water resource planning.

This document states the TCEQ's policy for evaluating applications for new systems to determine whether regionalization—the consolidation of the operations, physical systems, or both of two or more existing or proposed water or domestic wastewater systems—is a viable option for the

proposed new system The goal of this policy is to achieve the best service to the consumer at rates that will ensure that the system is maintained for the long term

In this policy, we also address the issue of when existing systems that are struggling to remain in compliance with state and federal regulations should consider the option of regionalization.

See Appendix B for details on the statutory authority for this policy

A Few Important Terms

Before discussing this policy further, we need to define some important terms. These simplified definitions are intended to help you understand these terms as we use them in this policy statement. However, the official definitions are as stated in the relevant statute or rule.

Types of Systems

system—a physical plant plus the lines that connect it to the customer.

public water system (PWS)—any drinking water system that has the potential to serve at least 15 connections or that does serve at least 25 people for at least 60 days out of one year. For example, mobile home parks, truck stops, and restaurants that have their own water supply usually meet the minimum standard of being a PWS. For a PWS, the system comprises the source of the water, the water treatment plant, and the water lines that distribute water to the consumer.

wastewater system—For a wastewater system, the system comprises the sewer lines that collect the wastewater from the customer and carry it to the wastewater treatment facility as well as the treatment facility itself.

Types of Service Providers

retail public utility—any city, county, district, utility (as defined below), or water supply corporation that charges a fee to directly provide water or sewer service to consumers. (***Note:*** "Utility" might seem to be the broader term, but, as defined in the law, "retail public utility" actually includes "utility": All "utilities" are "retail public utilities," and not all "retail public utilities" meet the law's narrower definition of "utility.")

utility—a person, partnership, corporation, or "affected county" that charges a fee to directly provide water or sewer service to consumers. Also called "investor-owned utility," "water" or "sewer utility," or "public utility." (See "Other Terms" below for a definition of "affected county.")

water supply corporation—a nonprofit corporation organized under state law (Texas Water Code Chapter 67) to provide water or sewer service.

Other Terms

affected county—a county within 50 miles of the international border.

certificate of convenience and necessity (CCN)—a TCEQ document that defines your water or sewer service area. Your system might not extend to the limits of this service area, but other utility service providers generally may not encroach upon your service area. If anyone in this area applies for service, you generally must serve them. You may use one or more systems to serve this area. An affected county, investor-owned utility, or water supply corporation must obtain a CCN, but a city, district, or other county does not need one. If your water system or systems cannot serve more than 15 connections, you may ask to be exempted from this requirement. See Title 30 Texas Administrative Code (30 TAC) Chapter 291 for more details about CCNs.

What Is the Regionalization Policy?

Our policy is that regionalization is feasible unless one of these three exceptions applies:

(1) No other systems are reasonably close to your planned system.

(2) You have requested service from neighboring systems, and your request has been denied.

(3) You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.

If you apply for a new certificate of convenience and necessity (CCN), then you must demonstrate that one of these three exceptions applies to your system. You must give our staff related information in sufficient detail for them to determine whether an exception applies. If you wish to construct or operate a new PWS, even if you are not required to obtain a CCN to operate, then you must still demonstrate that one of these three exceptions applies to your system and give our staff related information in sufficient detail for them to determine whether an exception applies.

Why This Policy?

By encouraging the regionalization of water and wastewater systems, we hope to protect the health, safety, and welfare of Texans by ensuring a

long-term supply of safe water at affordable rates and by maintaining the quality of water in the state

The ultimate goal of regionalization is to provide timely and cost-effective solutions for achieving quality service. Drinking water and wastewater systems are facing an ever-increasing demand on their resources to stay in compliance with provisions of the federal Safe Drinking Water Act and federal Clean Water Act The costs associated with compliance are higher per person as the system size decreases.

In applying this policy, we are ensuring a steady decrease in the number of Texans who are being served by systems that are unable to sustain the financial, managerial, and technical capabilities necessary to provide continuous and adequate service. And we are ensuring that fewer new systems will encounter the same financial, managerial, and technical problems being faced by existing weak systems.

Whenever the formation of a regional system is the least expensive long-term solution for providing quality service, we will require proponents of new systems to form a regional system instead. Only a system with adequate financial, managerial, and technical capacity can reliably provide good quality drinking water in sufficient quantities and basic sanitation service that meets regulatory standards.

To Whom Does This Policy Apply?

This policy applies to the following entities regulated by the TCEQ:

- owners and operators of new PWSs;
- applicants requesting approval for a new water or sewer CCN for a proposed facility, or for an existing facility if a CCN was required to be obtained before the system was constructed.

This guidance document will not change our administrative rule requirements and procedures relating to rate making, CCNs, and PWSs. Rather, this guidance document is advising all CCN applicants and owners or operators of proposed PWSs to take proactive measures to either form sound regional systems or demonstrate the ability to operate a viable, stand-alone utility system.

As a CCN applicant or an owner or operator of a proposed PWS, you must evaluate the availability of a regional system before you submit the actual CCN application, plans and specifications, and, if required, business plan. As part of determining whether regionalization is feasible, our staff will evaluate these materials.

This guidance document will not apply to wastewater systems that are not required to hold a CCN and do not apply for a CCN.

Must Existing Systems Regionalize?

Although the purpose of this regulatory guidance document is to provide guidance to new systems, a similar regionalization review will apply to the owners and operators of any existing PWS that:

- was constructed without the necessary approval,
- has a history of noncompliance, or
- is subject to a TCEQ enforcement action.

What Will "Regionalization" Look Like?

The structure and operation of any particular regional system will depend on the individual circumstances. Under this policy, regionalization can take any one of these forms:

- one owner and one large system serving several different communities or subdivisions;
- one owner and several isolated systems, each providing service to one or more communities or subdivisions;
- several owners, each with individual systems operated through a centrally coordinated operating system;
- several owners, each with an isolated system, all served by a central wholesale provider; or
- the existence of permanent emergency interconnections.

We do not presume that any particular ownership structure of a PWS is more appropriate to serve as a regional provider. Any retail public utility could serve as the regional provider if it can meet the necessary requirements under 30 TAC Chapters 290 and 291.

How Does This Policy Outline Responsibilities?

Based on state law and our rules, this policy calls for us, any person proposing a new system, and existing providers to fulfill specific responsibilities.

What the TCEQ Must Do

Through our programs in the Water Supply Division, we must ensure that PWSs supply safe drinking water in adequate amounts and are financially stable and technically sound. We must also promote the use of regional and areawide drinking water systems.

In meeting these responsibilities, we must review the engineering plans and specifications of all proposed PWSs. For any proposed PWS that is to

be privately owned, we must also review the system's business plan. For any water or wastewater system that must have a new CCN, we must review the application, review the system CCN maps, and consider the financial, managerial, and technical capabilities of the applicant.

What You Must Do

If you wish to build a new PWS or apply for a new CCN, then you must comply with our rules for these systems (30 TAC Chapters 290 and 291) and follow the guidance set out in this document.

Among other requirements, our rules state that you must obtain our approval of your engineering plans and specifications before you begin building your proposed PWS. For a privately owned PWS, you must also have our approval of your business plan before construction may begin.

What Existing Providers Must Do

Existing providers that hold CCNs must provide prompt responses to requests for service, treat all applicants equitably, charge application fees that are reasonable, and charge cost-based fees for providing service to the specific development receiving that service.

Where Do I Begin?

The first step in determining whether regionalization is feasible is to identify all the water or wastewater systems within the specified distance that state law considers to be "reasonably close"—that is, half a mile for a new PWS and 2 miles for new CCNs. The second step is to read our policy and see how it applies to you.

Locate Nearby Systems

First, you must identify and locate all neighboring systems. From our records, we can provide you with some information about nearby systems, ***but it is your responsibility to make sure that this information is complete, accurate, and current.*** You might have to do local research—perhaps even some fieldwork—to complete this task. Here are a few tips that can make your research more productive:

- First, contact us as described under "Finding Nearby Water Systems" below and "Finding Nearby Wastewater Systems" on page 7 to get the most recent information we have.
- Drive the area. Systems must have identification at all plant sites
- Look in the Yellow Pages under "Water Companies-Utility"

- Talk to the operators of any systems you discover to find out where they serve or who operates the nearest systems.

- Review our maps for CCN service areas and contact each system's owner or operator to find out the limit of its service area. Don't assume that the limit of the physical system is the same as the limit of the service area.

- Contact county offices to find out about subdivision plats on file. Each city should also have this information for areas inside that city's extraterritorial jurisdiction, or "ETJ."

Finding Nearby Water Systems

You can obtain our most recent information on public water systems or utilities in one or more counties from the online Water Utilities Database (WUD). WUD contains data on public water systems, water and sewer utilities, and water districts.

You can use this database to search for an individual public water system, utility, or district. You can also do an "advanced search" to filter a list of entities from the database. To find WUD, go to the TCEQ Web site (**www.tceq.state.tx.us**) and enter "WUD" in the "Search" box at the upper right of the home page. Online training is available for WUD. There are also some electronic maps showing CCN areas available on WUD and on the TCEQ's GIS Web page (from the home page, enter "GIS" in the "Search" box at upper right).

As an alternative to using WUD, you can contact our Information Resources Division as shown in Table 1 on page 9. The Information Resources Division can provide information such as public water system or utility name, contact person, and address. There may be a charge for obtaining a list of systems from the Information Resources Division.

After you have focused your search on the systems in one particular area, and if a map is not available on our Web site, contact our Utilities and Districts program (512/239-4691). Using our most recent maps, staff in this program can help you identify service areas and the service providers who operate in those areas.

For further information about water service providers, you should also review the regional water plan for your regional water planning area. Contact the Texas Water Development Board at 512/463-7847 or through its Web site (**www.twdb.state.tx.us**) for a map of regional water planning areas and contact names for each of the regional water planning groups.

Finding Nearby Wastewater Systems

Finding nearby wastewater systems is similar to finding nearby water systems, with one exception. You can narrow your search by contacting our Water Quality Assessment program first, as shown in Table 1 on page 9. (If you would like to get a list of *all* systems in one or more counties, go straight to Information Resources instead.)

With the name of the county in which you are proposing to build your system and a map of the area you plan to serve, our Water Quality Assessment program can locate the wastewater outfalls of nearby systems. (An outfall is the point where the system's treated wastewater is discharged into state waters.)

The advantage of locating outfalls is that you may be able to find a wastewater treatment plant that is accessible to your proposed development even if the system served by that plant is not nearby. If the plant has excess capacity, the service provider might allow you to connect your system to that plant or to an interceptor line feeding the plant.

However, once you have this information, keep these points in mind:

- The rules require you to contact systems whose *service areas* are within 2 miles of your proposed service area.
- Our Water Quality Assessment staff can tell you the position of the *outfall,* but they do not know the boundaries of the service area.
- Outfalls generally are located downstream of the systems themselves.

Our Water Quality Assessment staff can also tell you the water quality permit numbers for each plant Once you know these permit numbers, our Information Resources Division can give you the mailing address of each permit holder. If you need more help, contact our Utilities and Districts program.

Information Sources

As stated previously, you can obtain our most recent information on public water systems or utilities in one or more counties from the online Water Utilities Database (WUD). WUD contains data on public water systems, water and sewer utilities, and water districts, and can be accessed from the TCEQ Web site (**www.tceq.state.tx.us**). If you prefer to make a written request for this information, see Table 1 on the facing page for contact information and the information you must include with your request

For further information about water supply sources, you should also review the regional water plan for your regional water planning area Contact the Texas Water Development Board at 512/463-7847 or through

Table 1. How to Get Information about Existing Systems from the TCEQ

For public water systems ...

To get this information:	Include this information in your request:	And send your request to:
A list of all water service providers in one or more counties (do this *first*)	The name of each county for which you want this information *(be sure to indicate that you want a list of public water systems)*	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
Water service area boundaries of systems that have CCNs (*after* you have focused on a specific area or provider)	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Utilities and Districts, MC 153 PO Box 13087 Austin TX 78711-3087 fax: 512/239-6972 phone: 512/239-4691

For wastewater systems ...

To get this information:	Include this information in your request:	And send your request to:
Locations of wastewater outfalls (and the permit number for each outfall) in a specific area	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Water Quality Assessment, MC 150 PO Box 13087 Austin TX 78711-3087 fax: 512/239-4420 phone: 512/239-4671
The mailing address of a permit holder	The permit number for the corresponding outfall	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
A list of all wastewater service providers in one or more counties	The name of each county for which you want this information *(be sure to indicate that you want a list of wastewater systems)*	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
Sewer service area boundaries of systems that have CCNs (*after* you have focused on a specific area or provider)	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Utilities and Districts, MC 153 PO Box 13087 Austin TX 78711-3087 fax: 512/239-6972 phone: 512/239-4691

its Web site (www.twdb.state.tx.us) for a map of regional water planning areas and contact names for each of the regional water planning groups.

Start Reading This Policy

If you plan to build a new PWS, start your reading with "New Public Water Systems" on the next page. If you also need a new CCN and the information in "New Public Water Systems" indicates that your water system qualifies for an exception to this regionalization policy, then you must continue your reading with "New Water and Wastewater CCNs" on page 15.

If you are applying for a new CCN to build a stand-alone sewer system only, start your reading with "New Water and Wastewater CCNs" on page 15.

New Public Water Systems

If you plan to build a new PWS, you must evaluate the feasibility of regionalization before you submit your plans, specifications, and, if required, business plan to us Our policy is that regionalization is feasible unless one of these three exceptions applies:

Do You Need a CCN, Too?

If your proposed PWS will be owned privately or by a water supply corporation *and* you plan to charge your customers a fee for service, then you must also obtain a CCN.

If you need to obtain a CCN, see "New Water and Wastewater CCNs" on page 15 *after* you have read this chapter.

(1) There are no PWSs within one-half mile.

(2) You have requested service, and your request has been denied.

(3) You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.

To develop a new stand-alone system, you must consider these three exceptions in this order and then demonstrate that one of these exceptions applies to your system. To receive an exception from this policy, you must provide us the information identified in this chapter.

See Flowchart 1 on page 12 for an overview of this process.

Exception 1: No public water systems within 0.5 mile

If there are existing PWSs within one-half mile of your service area, go to Exception 2 below.

If no PWSs exist within one-half mile of your service area, and you do not need a new CCN (see the box above and to the left), you may proceed to submit your plans, specifications, and, if required, business plan for a stand-alone system.

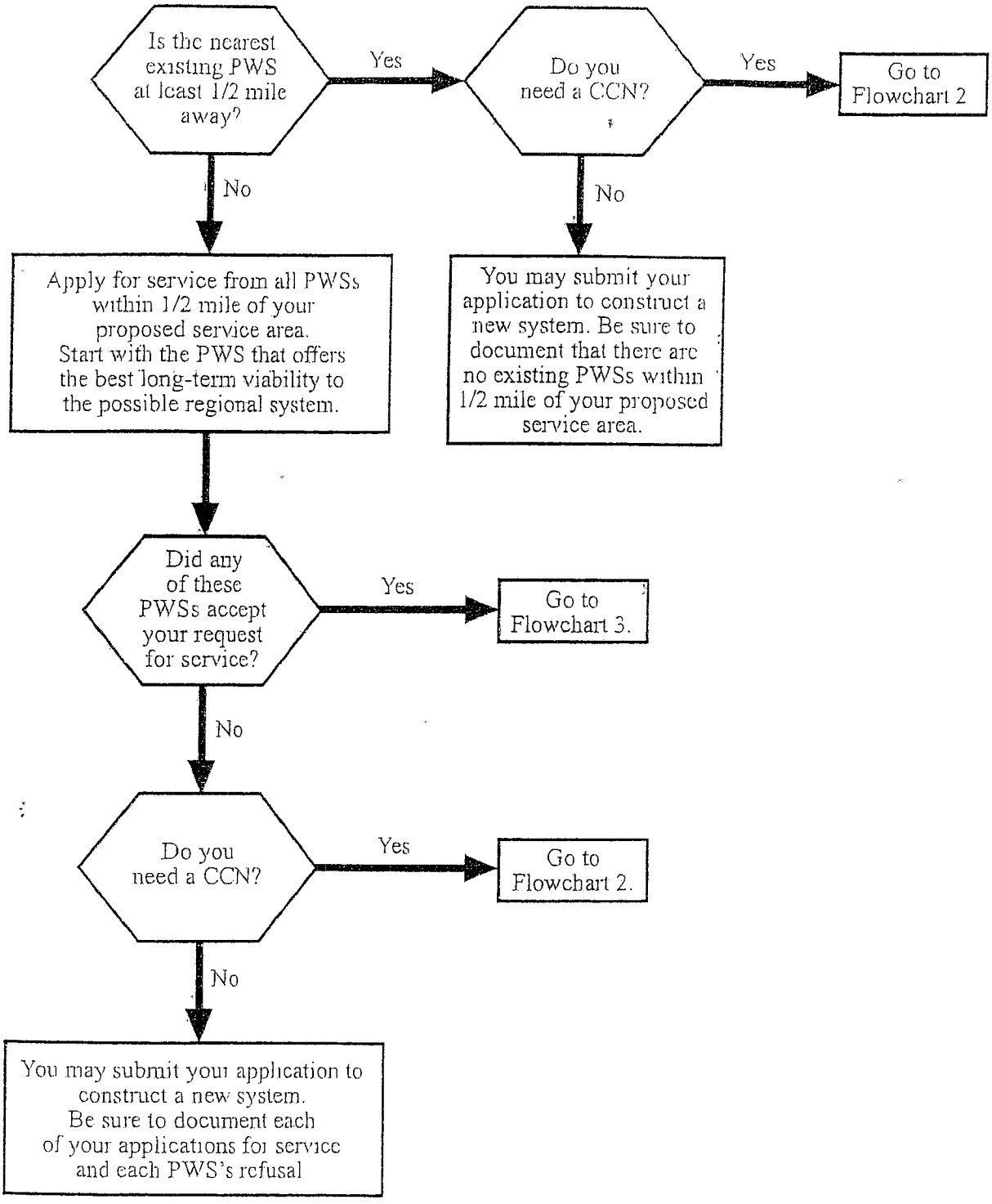
Note: If more than one existing system is within 0.5 mile of your proposed service area, we recommend that you consider establishing regional service with the existing system that will provide the best long-term viability.

Exception 2: Your request for service has been denied

Have you formally applied for service from these systems?

You must apply for service from the existing systems by submitting a formal "request for service" application and by paying any associated fees.

Flowchart 1.
Is forming a regional PWS feasible?



If there is more than one existing system, we recommend that you consider establishing regional service with the existing system that will provide the best long-term viability.

You must document that you have made every reasonable attempt to request service from all the nearby systems and the appropriate department of each system. If you do not receive a response within a reasonable amount of time, you are responsible for following up.

Was your request for service approved?

If your request was approved, you must work with that system to form a regional system unless you can demonstrate that regionalization is not feasible through Exception 3 below.

If your request was not approved and you do not need a new CCN (see box, page 11, upper left), you may submit your plans, specifications, and, if required, business plan for a stand-alone system. However, you must provide us a copy of the application requesting service and all correspondence from all the existing systems when you submit these materials.

Exception 3: Costs, affordability, and capabilities

Can you successfully demonstrate that an exception should be granted based on costs, affordability, and the capabilities of the existing system?

To analyze the feasibility of regionalization, you must consider the interplay of these interrelated factors:

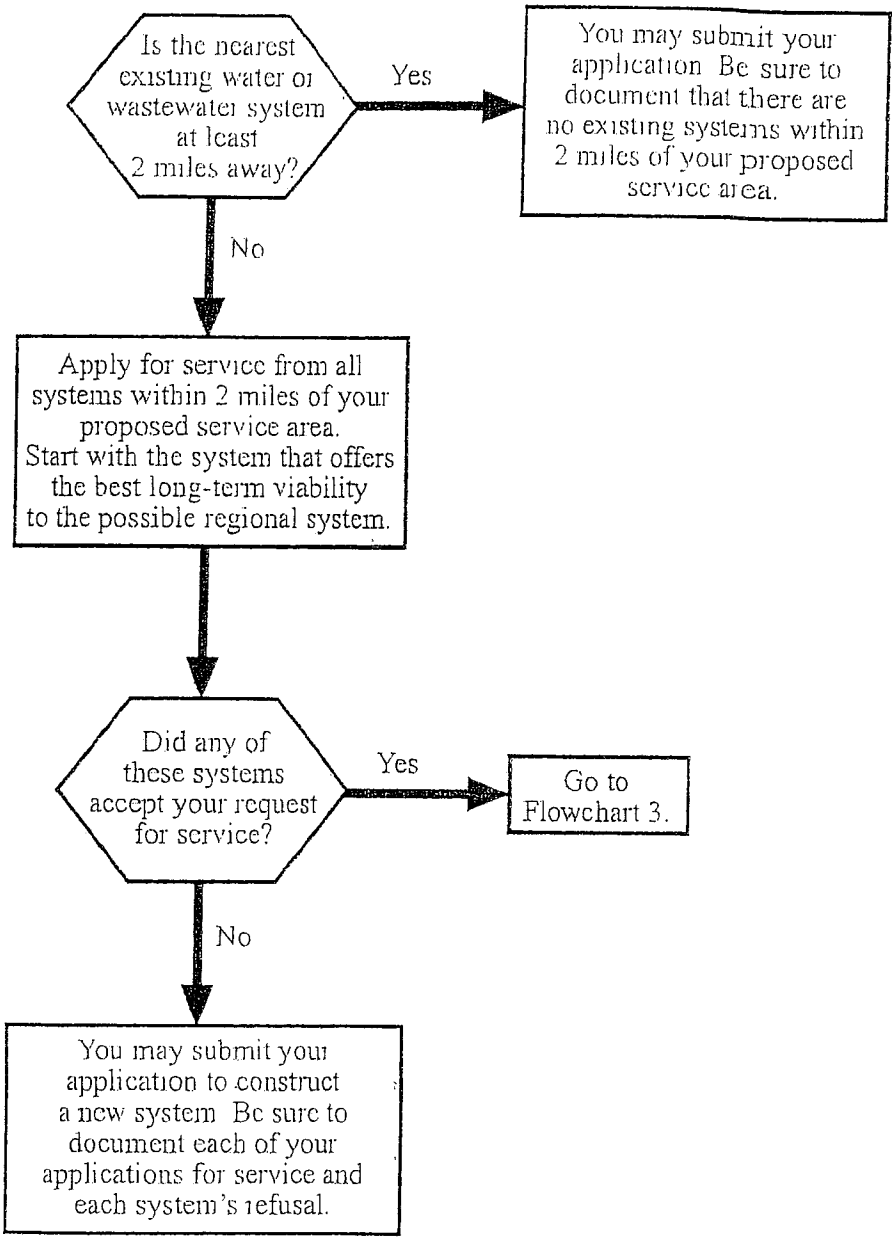
- ratio of the costs of regionalization compared to the projected value of the development at buildout;
- affordability of the rates; and
- financial, managerial, and technical capabilities of the existing system.

These factors are used as a screening process. You qualify for this exception even if you meet only one of these factors.

If you qualify for this exception, you may submit your plans, specifications, and, if required, business plan for a stand-alone system. However, you must also give us the supporting documentation. Before you submit these materials, see the box at the upper left of page 11 to find out whether you also need a CCN.

For a more detailed explanation of how to analyze these factors, see "Appendix A: Analyzing Costs, Affordability, and Capabilities of the Existing System" on page 17.

Flowchart 2.
Is forming a regional system feasible when you need a CCN?



New Water and Wastewater CCNs

If you are applying for a new CCN, you must evaluate the feasibility of regionalization before you submit your CCN application and accompanying documents to us.

Our regionalization policy for these new CCNs is just like our policy for new PWSs except for these two points:

- You must expand your search for nearby water or wastewater systems to 2 miles from the boundary of your proposed service area.
- You do not have to consider the exceptions in order. In other words, you do not have to apply for service from a nearby system if you can demonstrate that costs, affordability, and the capabilities of that system would make regionalization infeasible anyway.

Flowchart 2 on the facing page gives an overview of this process.

Exception 1: No systems within 2 miles

Is an existing PWS or wastewater treatment system within 2 miles of your proposed CCN boundary?

If the nearest system is within 2 miles of your proposed boundary, see whether *either* Exception 2 below or Exception 3 on page 16 applies to you.

If the nearest system is more than 2 miles away, you may submit your CCN application and related materials to us. You are not *required* to consider regionalization. However, we *recommend* that you consider the feasibility of establishing regional service with another system, even if you must look more than 2 miles away.

Note: If more than one existing system is within 2 miles of your proposed boundary, we recommend that you consider establishing regional service with the existing system that will provide the best long-term viability.

Exception 2: Your request for service has been denied

Have you requested service from all of these systems?

If you have requested service, see "Was your request approved?" below.

If you have not requested service from a nearby system, then you must either request service from that system or demonstrate that regionalization is not feasible through Exception 3 on page 16.

Was your request approved?

If the nearby system approved your request for service, see Exception 3 below

If the nearby system rejected your request for service, you may proceed to submit your plans, specifications, business plan, and CCN application. However, you must provide us a copy of the application requesting service and all correspondence from the existing system when you submit these materials

Exception 3: Costs, affordability, and capabilities

Can you successfully demonstrate that an exception should be granted based on costs, affordability, and the capabilities of the existing system?

As with a new PWS, to analyze the feasibility of regionalization, you must consider the interplay of these interrelated factors:

- ratio of the costs of regionalization compared to the projected value of the development at buildout;
- affordability of the rates; and
- financial, managerial, and technical capabilities of the existing system.

These factors are used as a screening process. You qualify for this exception even if you meet only one of these factors.

If you qualify for this exception, you may submit your plans, specifications, and, if required, business plan for a stand-alone system. However, you must also give us the supporting documentation.

For a more detailed explanation of how to analyze these factors, see "Appendix A: Analyzing Costs, Affordability, and Capabilities of the Existing System" on page 17.

If You Qualify for None of These Exceptions

If you do not qualify for any one of these exceptions, you should seriously consider regionalization.

However, if you decide to pursue your CCN application, you will have an opportunity to try to demonstrate to the staff that your CCN application should be approved. If your application is protested and an evidentiary hearing is held, you will have an opportunity to demonstrate to the administrative law judge (and ultimately the TCEQ commissioners) that your CCN application should be approved.

Appendix A

Analyzing Costs, Affordability, and Capabilities of the Existing System

Use this information along with Flowchart 3 on page 18 to determine whether an exception should be granted based on costs, affordability of rates, or the capabilities of the existing system.

This appendix discusses whether an exception based on the following interrelated factors should be granted:

Factor 1: Ratio of the costs of regionalization compared to the projected value of the development at buildout

Factor 2: Affordability of rates

Factor 3: Financial, managerial, and technical capabilities of the existing system

These factors are used as a screening process. You qualify for this exception even if you meet only one of these factors.

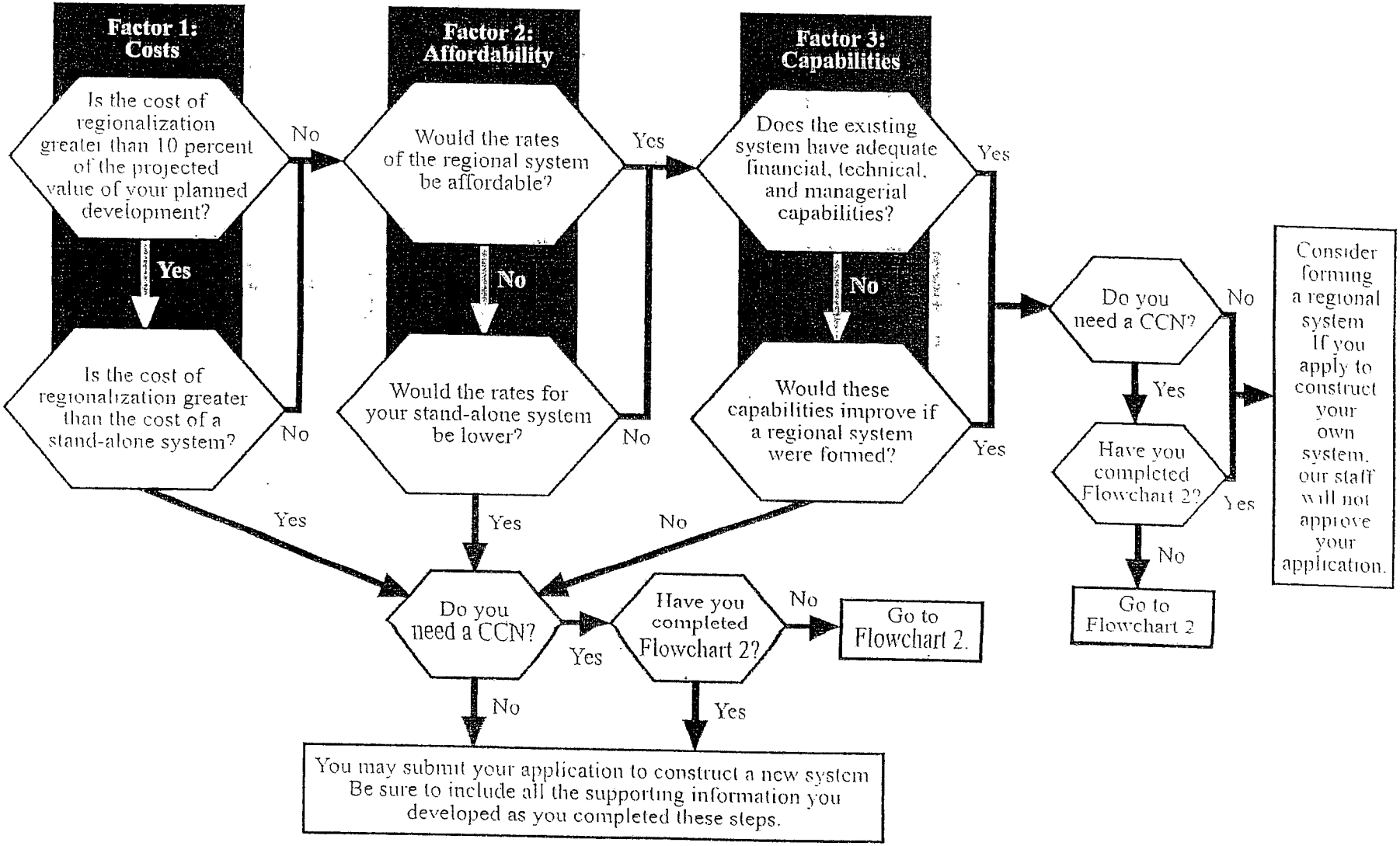
In the following discussion, we do not intend to limit the factors that you may want to raise to support an exception. If you bring to our attention factors not mentioned in this appendix, we will also consider those factors, as appropriate.

Factor 1: Compare Costs to Your Development's Projected Value

The ratio of the costs of regionalization compared to the projected value of the development refers to the comparison of the costs of regionalization to obtain service from an existing system versus the estimated value of the project at full buildout.

The cost of regionalization includes the up-front costs associated with obtaining service from an existing system and the incremental construction costs associated with any delays in construction.

Flowchart 3.
Should we grant an exception?



The projected value of the development includes the estimated value of all lots, homes, commercial and industrial improvements, developed reserves, and undeveloped land at buildout, assuming the installation of a stand-alone system.

To propose an exception based on the high costs of regionalization, you must meet both of these criteria:

Criterion 1: The costs of regionalization are greater than 10 percent of the projected value of the development.

Criterion 2: The costs of regionalization are greater than the cost of a stand-alone system.

Determining Costs of Regionalization

Up-Front Costs Associated with Obtaining Service

When an existing water or sewer utility extends new service, this utility service provider can charge connection fees to the person requesting the service, regardless of whether the person is a residential customer or a developer who needs multiple services for a proposed new subdivision.

Examples of these connection fees include:

tap fees—the costs of tapping the main line and installing the tap, service line, meter, and meter box to provide utility service to the customer's property line.

deposit—a bond-type arrangement that can be applied to unpaid charges. This sometimes takes the form of a membership fee that a new customer may be required to pay the utility service provider.

system development charges (also commonly referred to as *impact fees, system capacity charges, system buy-in charges,* and *system investment fee front-end charges*)—any fee that is charged by the utility service provider to provide funds to finance capital improvements necessary to serve a new customer. System development charges are designed to generate contributions from customers for financing major system construction. The theory is that these charges allow growth to pay for itself. The magnitude of the charges may range from several hundred to many thousands of dollars. There are two primary methods used to determine the amount of these charges: the system buy-in method and the incremental-cost pricing method.

system buy-in method—the fee is related to the equity embedded in existing or new systems required to serve new customers and is based on the premise that new customers are entitled to water at the same prices charged to existing customers.

incremental-cost pricing method—the fee is related to the change in total cost resulting from a change in capacity of existing or future systems required to serve the new customer (including related operating costs) and is based on calculating the addition to total cost resulting from the incremental cost of capacity (= increase in capacity divided by increase in output, for a specific time period).

extension fees—the costs of the line extensions or capacity in existing lines that will be used to transport utility service to the new customer. The costs of extension fees may include any related engineering fees and the cost of financing the extension as applicable.

Table 2 provides information concerning the different types of utility service providers in the state and the jurisdiction we have over their connection fees in case a dispute or question arises with another utility service provider.

Table 2. Does the TCEQ Have Jurisdiction over Your Connection Fees?

Type of Utility	Tap Fee?	Deposit?	System Development Charge?	Extension Fee?
Investor-owned utility	yes	yes	yes	yes
Water supply corporation	no	no	in some cases[1]	in some cases[1]
Water district	no	no	no[2]	no
City or county	no	no	no	no

[1] Developers or new customers can appeal the costs for a new connection from a nonprofit water supply corporation

[2] The TCEQ sets impact fees for water districts only if the impact fee is more than three times the district's tap fee

We set cost-based connection fees for utilities over which we have the related jurisdiction. System development charges and extension fees have the most impact on new development. In the past, many service providers have taken on debt to fund infrastructure for growth; however, in the last twenty years or so there has been a large increase in the number of water and sewer service providers that charge system development charges and extension fees to cover new infrastructure needs. Water and sewer service providers now tend to require developers to pay for the infrastructure instead of taking on additional debt that would increase customer rates or taxes.

These connection fees are start-up costs that should be covered in the lot sales. You may find that these fees are greater than the short-term cost to install a small system that would serve only the new proposed subdivision. However, you should also consider the long-term costs and obligations associated with operating the system when you make your decision.

Depending on the service provider's extension policy, you may be able to recover some, if not all, of these costs through the following methods. You must factor any money you can recover through these methods into your cost calculations.

- **Line extension refund contract**—allows reimbursement to the developer of the full cost of the main extension from user charge revenues generated from customers which are served from the main extension (time limited).

- **Contribution of the cost** of the size of the main required to serve the developer's subdivision, with the service provider paying the costs for any up-sizing of the main extension which may be required to serve anticipated future customer growth in the area beyond that in the developer's current needs.

- **Up-sizing costs refunded to the developer** by establishing a "benefit area." As additional customers or subdivisions in this benefit area connect to the main extension, the original developer can be reimbursed for the prorated share of the up-sizing costs attributable to the additional connections.

Time Frame for Receiving Service

A neighboring service provider may be willing to provide service to your development, but may not be able to do so immediately. You may consider the economic impact of such a delay in providing service.

For example, the existing service provider may have to increase system capacity to be able to meet the demands of your new system, may need to obtain necessary financing, or may already have a prioritized schedule for construction or providing service to other applicants.

Delays in obtaining service may result in delays in certain phases of your construction, depending on the projected construction schedule. To the extent that there are delays in construction, there is likely to be an increase in the overall cost of your project. If such a delay affects your development, you must demonstrate how the delays in construction will result in

additional project costs These costs would then be compared to the estimated projected value of the project at full buildout.

Impact on Sales

As the cost of regionalization increases, it is necessary to look at the impact on the development in an area These costs may be passed on to existing customers and property owners through increases in lot prices, water and wastewater rates, ad valorem taxes, or all three.

Determining Projected Value of Development

The projected value of the development includes the estimated value at buildout of all lots, homes, commercial and industrial improvements, developed reserves, and undeveloped land, assuming the installation of a stand-alone system.

Use present-day unit values to determine the current value of all existing property and the value that will be added by future improvements to the property. The development should include all property to be served by the proposed new system.

Factor 2: Consider Affordability of Rates

The issue of rate affordability considers the consumers' ability to pay. Even if your rates are reasonable according to your costs, your customers won't be able to support the cost of the water if those cost-based rates are unaffordable. To propose an exception to regionalization due to unaffordable rates from the existing provider, you must meet ***both*** Criterion 1 and Criterion 2 discussed below. However, our staff may review additional factors in determining rate affordability.

Criterion 1: Rates resulting from regionalization are not affordable

To determine whether rates are unaffordable, we must calculate a "household cost factor" as set forth in a TWDB rule [31 TAC §371.24(b)]. If regionalization results in rates with a household cost factor greater than 1 percent for water service or a combined household cost factor greater than 2 percent for water and sewer service, then the rates resulting from regionalization may not be affordable.

The consumption level used in the rate calculation is based on per capita indoor water use.

The household cost factor (for areas charged for water service only) and the combined household cost factor (for areas charged for both water and sewer services) are calculated as follows:

Household cost factor (if charging for water services *only*)

If you are charging for water services only, follow these five steps to calculate the household cost factor:

1. Calculate the average monthly household usage:

average number of persons per household × 2,325 gallons = average monthly household usage

2. Calculate a monthly bill based on this usage and your rate structure.

3. Multiply this monthly bill by 12 to get the average yearly water bill.

4. Multiply the adjusted median household income (AMHI) for your area for 2000 by the Texas consumer price index (CPI) for last year. Divide this value by the Texas CPI for 2000 to get a current value for the AMHI:

$$\frac{\text{(AMHI for 2000) x (last year's Texas CPI)}}{\text{Texas CPI for 2000}} = \text{current AMHI}$$

5. Add the average yearly water bill to the average cost of any taxes, surcharges, or other fees you plan to use to subsidize your system. Divide this value by the current AMHI to get the household cost factor:

$$\frac{\text{average yearly water bill + average other fees}}{\text{current AMHI}} = \text{household cost factor}$$

Combined household cost factor (if charging for *both* water and sewer service)

If you are charging for both water and sewer service, follow these steps to calculate the household cost factor:

1. Calculate the average yearly water bill and the AMHI as shown under "Household cost factor" above.

2. Calculate the average monthly household usage:

average number of persons per household × 1,279 gallons = average monthly household usage

3. Calculate a monthly bill based on this usage and your rate structure.

4 Multiply this monthly bill by 12 to get the average yearly sewer bill.

5 Add the average yearly water bill to the average yearly sewer bill and any taxes, surcharges, and other fees you plan to use to subsidize your system. Divide this total by the AMHI of the area to be served.

$$\frac{\text{avg yearly water bill} + \text{avg yearly sewer bill} + \text{other fees}}{\text{current AMHI}} = \text{household cost factor}$$

Criterion 2: Rates of a stand-alone system would be lower than the (unaffordable) rates of a regionalized system

Under this criterion, you must calculate the rates that will be necessary to fully recover the costs of the proposed new water or sewer system. If the rates of the proposed system are higher than the current rates of the existing provider, we will presume that the rates of the existing provider are affordable. Under these circumstances, we will not consider your case to be an exception to this policy (even if the household cost factor shows the rates of the existing provider are unaffordable).

To demonstrate that this exception exists, you must show that the rates of the proposed new system are affordable *and* that the rates of the regionalized system are not affordable (see Criterion 1 on page 22).

Factor 3: Consider Capabilities of Existing System

An analysis of financial, managerial, and technical capabilities refers to whether the existing system has the financial resources to fund improvements that provide the service over the long term, the managerial resources to support operations and plan for emergencies, and the technical expertise to provide consistent service in compliance with our rules.

Here we list factors to consider in determining financial, managerial, and technical capabilities of the existing system. We will also consider other factors as appropriate.

Features That Can Indicate Financial Capability

- Rates are reviewed on a regular basis.
- Rate structure is appropriate to customer base.
- Debt coverage ratio is adequate.
- System is current on debt payments.
- All fees to regulatory agencies and laboratories paid on a timely basis.
- System has appropriate insurance coverage.
- Annual audit is conducted (if system is a public entity or water supply corporation)
- System has operating reserve accounts or access to funds as needed

- System has adequate working capital ratio
- System has a high rate of collection of customer accounts.
- System has written policies for collection and termination of service.
- Collection policies are enforced.
- System has low number of disconnects due to failure to pay bill.

Features That Can Indicate Managerial Capability

- System is aware of type of organization it is and has legal authority to operate.
- System has an operating budget.
- System has written operating policies.
- Customers have access to water system personnel at all times in case of emergency.
- Records are maintained and updated on a regular basis.
- Budget is used to determine rates.
- System has adequate water supply.
- System has written emergency plans.
- System has conveyable title to water-producing assets.
- Governing board is able to conduct meetings and make decisions (that is, a quorum is usually present, and there is a majority vote for most major operating decisions).
- Every connection is metered.
- Customers are billed on consistent billing cycles based on meter readings.
- System owners or board has current CCN (if required).
- System has an approved drought contingency plan.
- System has an employee handbook or policies.

Features That Can Indicate Technical Capability

- Licensed operator is on site or available to operate the system.
- All operators are licensed.
- Operators have the appropriate certifications for the size of the system.
- System staff can identify oldest piece of equipment and the most vulnerable part of the system.
- Process control and preventive maintenance are performed and documented.
- System calculates unaccounted-for water and does not have excessive amounts.
- System does not have a history of noncompliance with regulatory requirements.

Appendix B

Statutory and Regulatory Authority

This policy implements portions of Senate Bill 1 (1997) and is intended to assist our Utilities and Districts program staff and the regulated community with the implementation of the regionalization requirements in Title 30 Texas Administrative Code (30 TAC) Chapters 290 and 291. Regionalization was one of the key goals of Senate Bill 1 (1997) in order to optimize the use of existing financial, managerial, and technical resources. In addition, this policy is based on the following statutory provisions.

General Statutory Authority

The Texas Health and Safety Code, Chapter 341, Subchapter C, requires that public drinking water be free from deleterious matter and comply with the standards established by the TCEQ or the United States Environmental Protection Agency. The TCEQ may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

The Texas Water Code Chapter 13 establishes a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to ensure that rates, operations, and services are just and reasonable to the consumers and to the retail public utilities.

Specific Authority

Public Water Systems

Section 341.0315(a)–(d) of the Texas Health and Safety Code, relating to public drinking water supply system requirements, requires that:

(a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:
  (1) supply safe drinking water in adequate quantities,
  (2) are financially stable; and
  (3) are technically sound.

(b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems

(c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Section 341.031 and commission rules.

(d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

Texas Health and Safety Code § 341.035 requires that before constructing a new system a person submit plans and specifications and, with certain exceptions, a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The TCEQ may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

Title 30 TAC § 290.39 ensures that regionalization and area-wide options are fully considered; ensures the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations or changes; establishes minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices; and requires that minimum acceptable financial, managerial, technical and operating practices are specified to ensure that systems are properly operated to produce and distribute safe, potable water.

Water and Sewer CCNs

Texas Water Code § 13.241 requires that an applicant for a CCN demonstrate that it possesses the financial, managerial, and technical capability to provide continuous and adequate service and also requires that an applicant for a new CCN for a physically separate water or sewer system demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Texas Water Code § 13.246 specifies the factors to be considered by the commission concerning CCN notice and hearing and CCN issuance or refusal.

Texas Water Code § 13.253 requires that a CCN holder located in an affected county that has not been able to provide continuous and adequate service obtain service from another consenting utility service provider. Title 30 TAC §291.102(a) provides that the TCEQ must ensure that an applicant possesses financial, managerial, and technical capability to provide continuous and adequate service.

Title 30 TAC § 291.102(b) requires that 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.

Title 30 TAC § 291.102(c) requires that the TCEQ consider the following in considering whether to grant a CCN:

(1) the adequacy of service currently provided to the requested area;
(2) the need for additional service in the requested area;
(3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area,
(4) the ability of the applicant to provide adequate service,
(5) the feasibility of obtaining service from an adjacent retail public utility;
(6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
(7) environmental integrity; and
(8) the probable improvement in service or lowering of cost to consumers in that area.