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APPLICATION OF TEXAS WATER UTILITIES, LP AND CREEK WATER UTILITY LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MARION COUNTY §  
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PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
OF TEXAS

**ORDER ON INTERIM APPEAL**

This Order addresses Texas Water Utilities LLC’s appeal of Interim Order No. 21 challenging the requirement that all landowners holding at least 25 acres be given notice in an application for a sale, transfer, or merger (STM) that does not involve the addition of uncertificated acreage to the applicant’s certificate of convenience and necessity (CCN). For the reasons discussed in this Order, the Commission concludes that STM applications under Texas Water Code (TWC) § 13.301 that involve *any* amendment of an applicant’s CCN trigger all the notice requirements of a CCN amendment under TWC § 13.246.

**I. Background**

On August 8, 2022, Texas Water Utilities and Creek Water Utility filed their application for the transfer of facilities and certificate rights. The applicants seek approval to transfer all of Creek Water’s facilities to Texas Water Utilities, to cancel Creek Water’s CCN number 11028, and to amend Texas Water Utilities’ CCN number 12983 to include the area previously included in Creek Water’s CCN number 11028. Commission Staff provided an initial recommendation for notice of the application, which corresponded with the notice requirements found in 16 TAC § 24.239 and TWC § 13.301. Texas Water Utilities complied with Commission Staff’s recommended notice and the Commission administrative law judge (ALJ) found notice to be sufficient on December 29, 2022.

On May 18, 2023, the Commission ALJ filed Order No. 20 directing Texas Water Utilities to provide an affidavit that notice was provided to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area of the CCN being transferred and evidence showing which tracts are at least 25 acres and the owners of those tracts. The Commission ALJ

based this requirement on a Commissioner memorandum<sup>1</sup> filed on May 10, 2023, which required the above mentioned notice in an STM application that included the addition of uncertificated area to the applicant's CCN. Texas Water Utilities filed a motion for reconsideration of the landowner notice requirement because its STM application does *not* request addition of uncertificated acreage to its CCN. On June 6, 2023, the Commission ALJ filed Order No. 21, denying Texas Water Utilities' motion for reconsideration. On June 15, 2023, Texas Water Utilities filed the appeal addressed in this Order.

## II. Relevant Statutes and Rules

The notice requirements for STM applications are governed by TWC § 13.301(a)(2) and 16 TAC § 24.239(e). Under TWC § 13.301(a)(2), the applicant must “give public notice of the action.” Under 16 TAC § 24.239(e), the applicant must give notice to “affected customers and to other affected parties as required by the commission” and “must mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.” Neither TWC § 13.301 nor 16 TAC § 24.239 address amendments to CCNs.

The notice requirements for a CCN application or amendment are contained in TWC § 13.246 and 16 TAC § 24.235, both specifically require notice to owners of tracts of land that are at least 25 acres and are wholly or partially included in the requested area. Additionally, under TWC § 13.246 and 16 TAC § 24.277, owners of tracts of land that are at least 25 acres and that are wholly or partially located within the requested area may elect to exclude some or all of their property from the requested area. The statute and Commission rule requiring notice to landowners of 25 acres or more include exceptions for certain types of proceedings, but no exception is made for STMs.<sup>2</sup>

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<sup>1</sup> *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County*, Docket No. 51646, Commissioner Jackson Memorandum (May 10, 2023).

<sup>2</sup> TWC § 13.246(a-1) and 16 TAC § 24.235(b)(2).

### III. Analysis

Cancelling an existing CCN and adding its acreage to the applicant's CCN is a CCN amendment because it amends the service area of the applicant. This event triggers all the notice requirements of a CCN amendment. Under TWC § 13.246(a-1) and 16 TAC § 24.235(b)(2), CCN amendment applicants must provide notice to landowners of at least 25 acres that are wholly or partially included in the requested area. Under TWC § 13.246(h) and 16 TAC § 24.227(i), those landowners may then elect to exclude some or all of their property from the requested area. These requirements apply to any CCN amendment, including the one at issue in this proceeding.


An STM under TWC § 13.301 and 16 TAC § 24.239 addresses *only* a sale, acquisition, lease, or rental of a water or sewer *system*. An STM is not a specific type of CCN amendment. The statutes and Commission rules governing STMs do not address changes to the applicants' CCNs. The sale of a water or sewer system often involves the transfer of a certificated area, but this does not mean the statutes and Commission rules governing CCN amendments may be bypassed.

Applications for CCN amendments and STMs are separate and distinct requests for relief, governed by separate statutes and rules. While STM proceedings also involving a CCN amendment may be filed in a single application, statutory notice requirements for both STM and CCN amendments apply to such an application because STM notice requirements do not address the CCN amendment notice requirements. Concurrent STMs and CCN amendments are allowed for efficiency, but the rules and statutes governing an STM application do not supplant the rules governing a CCN amendment in such a scenario. Amendments to a CCN are not confined to the addition of uncertificated area to the applicant's CCN. A CCN is amended whenever a certificate holder's service area is changed. In this proceeding, Creek Water's CCN will be cancelled and Texas Water Utilities' CCN will be amended to include the acreage previously certificated to Creek Water, thereby amending Texas Water Utilities' service area.

Although this application does not add additional uncertificated acreage to Texas Water Utilities' CCN, the notice requirement of TWC § 13.246 and 16 TAC § 24.235 apply to this combined STM and CCN amendment application. Therefore, the Commission affirms the ALJ's Order No. 20 and denies Texas Water Utilities' appeal.

Signed at Austin, Texas the 31<sup>st</sup> day of July 2023.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
KATHLEEN JACKSON, INTERIM CHAIR

  
WILL MCADAMS, COMMISSIONER

  
LORICOBOS, COMMISSIONER

  
JIMMY GLOTFELTY, COMMISSIONER