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APPLICATION OF TEXAS WATER UTILITIES, L.P. AND CS WATER CORPORATION FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN BOSQUE COUNTY	§ § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

TEXAS WATER UTILITIES, L.P.'S REQUEST FOR GOOD CAUSE EXCEPTION AND BRIEF IN RESPONSE TO ORDER NO. 19

Texas Water Utilities, L.P. (TWU) renews its request for a good cause exception to 16 Texas Administrative Code (TAC) § 24.11(e)(5)(A), and in the alternative, files this brief responding to the questions posed by the administrative law judge (ALJ) in Order No. 19 issued on October 6, 2023. TWU is authorized to represent that the Staff (Staff) of the Public Utility Commission of Texas (Commission) supports TWU's request for good cause exception in Section II, to the extent necessary, and agrees with TWU's analysis of 16 TAC § 24.11(e)(5) presented in Section IV of the brief.

I. EXECUTIVE SUMMARY

The requirements under 16 TAC § 24.11(e)(5) are not applicable in this proceeding unless and until the Commission finds that TWU cannot demonstrate adequate financial capability for providing continuous and adequate service to the requested area and its certificated service area and orders TWU to provide financial assurance pursuant to the discretion granted in Texas Water Code (TWC) § 13.301(c). In the event such a finding is made, and financial assurance is required, TWU asserts that 16 TAC § 24.11(e)(5) remains inapplicable because TWU is not proposing a *substantial* addition to its current CCN area *requiring* capital improvements in excess of $100,000. Should the Commission disagree, TWU requests a good cause exception to 16 TAC § 24.11(e)(5)(A). A summary of TWU's responses to each question posed by the ALJ is provided as Attachment A.

II. REQUEST FOR GOOD CAUSE EXCEPTION TO 16 TAC § 24.11(E)

To avoid further delays in the processing of this application, TWU renews its request for a good cause exception to 16 TAC § 24.11(e)(5)(A), pursuant to 16 TAC § 22.5(b). Regardless of whether 16 TAC § 24.11 applies in this proceeding (Question No. 1 posed by the ALJ) or how the individual elements of 16 TAC § 24.11(e)(5) (Question Nos. 2-6 posed by the ALJ) are

interpreted, TWU has presented evidence sufficient to satisfy 16 TAC § 24.11(e)(5)(A) if a good cause exception to the express requirement to provide "loan approval documents" is granted. TWU's initial and supplemental responses to Staff's second request for information provided evidence of the line of credit that is available to TWU through its parent company, Southwest Water Company.[1] Relying on this evidence, Commission Staff recommended that TWU has satisfied the requirements of 16 TAC § 24.11(e)(5)(A).[2]

A line of credit is a defined amount of money made available by a financial institution that can be accessed as needed and repaid immediately or over a period of time. In other words, a line of credit is a loan that provides the borrower with flexibility relative to a more traditional loan for a lump sum that is to be paid back by a date certain. There is nothing in the plain language of 16 TAC § 24.11(e)(5) to indicate that evidence of a line of credit, including the amount of credit currently available, does not constitute "loan approval documents indicating funds are available . . ." Arguably, TWU has already submitted loan documentation in accordance with 16 TAC § 24.11(e)(5)(A). In the alternative, TWU requests that the ALJ find that the evidence provided is sufficient to justify granting a good cause exception to the express requirements of 16 TAC § 24.11(e)(5)(A).

TWU also respectfully renews its request for a good cause exception in light of the fact that the application in this proceeding was filed over a year ago on September 30, 2022, and the 120-day statutory deadline for the Commission to provide notice regarding whether it will hold a public hearing on the proposed transaction has passed without a determination as to whether a hearing is necessary.[3] Further, a combination of personal circumstances of the transferor in this proceeding, including their increasing age, led to the decision sell and transfer the system, and those circumstances remain unchanged. TWU and CS Water Corporation request that the ALJ take these additional factors into consideration when deciding whether to grant a good cause exception.

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[1] Texas Water Utilities, L.P.'s Response to Commission Staff's Second Request for Information at Staff 2-5 (Jan. 4, 2023); Texas Water Utilities, L.P.'s Supplemental Response to Commission Staff's Second Request for Information, Question No. Staff 2-5 at Confidential Supplemental Attachments 2-5(1) and 2-5(2) (Jan. 20, 2023).

[2] Commission Staff's Recommendation on Approval of the Sale and on the CCN Amendment, Memorandum of Fred Bednarski at 2 (Jan. 31, 2023).

[3] Supplemental notice was provided on June 16, 2023, and has been deemed sufficient. TWU's Response to Order No. 14 at Affidavit of Biran D. Bahr (Jun. 21, 2023); Order No. 17 Finding Supplemental Notice, Supplemental Materials Sufficient and Soliciting Motion to Admit Evidence (Aug. 31, 2023). The 120th day after June 16, 2023 was October 14, 2023.

III. APPLICABILITY OF 16 TAC § 24.11

1. Does 16 TAC § 24.11 apply to Texas Water if Texas Water is not required to provide financial assurance under 16 TAC § 24.11(b)?

No, by its own terms 16 TAC § 24.11 states that it is applicable to "new and existing owners or operators of retail public utilities *that are required to provide financial assurance* under this chapter."[4] Under 16 TAC § 24.239(e), the transferee "must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227(a)..."[5] The Commission may hold a hearing on the application if the transferee cannot demonstrate adequate financial, managerial, and technical capability to provide continuous and adequate service or the financial ability to provide any necessary capital investment.[6] If the transferee cannot demonstrate adequate financial capability, the Commission *may* require the transferee to provide financial assurance to ensure continuous and adequate service in an amount set by the Commission and in a form that meets the requirements of 16 TAC § 24.11.[7]

It is important to note that the language in 16 TAC § 24.239(f) differs from the language in 16 TAC § 24.227(f), which permits the Commission to require an applicant seeking to obtain a new certificate of convenience and necessity (CCN) or a CCN amendment to provide a bond or other form of financial assurance but does not require a determination regarding financial capability.[8] The Commission has recently opined that 16 TAC § 24.239 addresses only a sale, acquisition, lease, or rental of a water or sewer system and does not address the amendment of the transferee's CCN.[9] Approaching the review of this application in this manner requires the application of both 16 TAC § 24.227(f) and 16 TAC § 24.239(f) in this proceeding. However, it is not possible to apply 16 TAC § 24.227(f) without rendering 16 TAC § 24.239(f) meaningless because the former is broad to the point of subsuming the latter entirely.

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[4] 16 TAC § 24.11(b) (emphasis added).

[5] *See also*, TWC § 13.301(b).

[6] TWC § 13.301(c)(2) and (4); 16 TAC § 24.239(h)(2) and (4).

[7] 16 TAC § 24.239(f); *see also*, TWC § 13.301(c).

[8] The difference in these rules tracks the difference in the CCN and STM statutes. *Compare*, TWC § 13.246(d), *with*, TWC § 13.301(c).

[9] *Application of Texas Water Utilities, L.P. and Creek Water Utility LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Marion County*, Docket No. 53920, Order on Interim Appeal at 3 (Jul. 31, 2023).

A more specific statutory provision should prevail over a general provision unless the general provision was enacted after the specific provision and the manifest intent is that the general provision prevail.[10] The current versions of TWC §§ 13.246(d) and 13.301(c) were both initially adopted as part of Senate Bill 1 passed during the 75th Regular Legislative Session.[11] Because they were added at the same time, it is presumed that the Legislature was aware of the difference in the first sentence of these provisions and intended the more narrow application of TWC § 13.301(c). Accordingly, it not appropriate to apply TWC § 13.246(d) or 16 TAC § 24.227(f) in an STM proceeding.

It is also not clear why the Legislature would have required the transferee to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service *to the requested area*[12] if the intent was for TWC § 13.301 (and any corresponding rule) to apply only to the sale or transfer of a water system and not to the transfer of the CCN area where the customers served by the system are located. Even if a utility owns a system, the utility is not permitted to serve the area where the system is located unless it also has a CCN for that area. Moreover, it is the CCN and associated regulatory monopoly that comes with the obligation to render continuous and adequate service[13]—not the facilities. To give meaning to TWC § 13.301(c), an application for an STM that involves only the transfer of certificated area should be treated as a specific type of CCN amendment that is effected through the sale or transfer of a water or sewer system and governed only by TWC § 13.301, 16 TAC § 24.239, and the Commission's standard form STM application.

Applying the CCN statutes and rules in an STM proceeding also ignores TWC § 13.301(e), which enumerates the reasons the Commission may hold a public hearing to determine if a proposed STM is in the public interest. Paragraph (5) of TWC § 13.301(e) expressly directs the Commission to consider the criteria found in TWC § 13.246(c). This is the only statutory provision addressing a request to obtain or amend a CCN that is referenced in all of TWC § 13.301. The Legislature could have chosen to incorporate other aspects of TWC § 13.246 or related statutes such as TWC § 13.244, but, it did not. In addition, paragraphs (2)

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[10] *Estate of Allen*, 658 S.W.3d 772, 782 (Tex. App. El Paso—December 2, 2022, no pet. h.); *see also, W. Sale Lewis, Savings and Loan Commissioner v. Jacksonville Building and Loan Assn.*, 504 S.W.2d 307, 310 (Tex. 1976) (holding that administrative rules are construed like statutes).

[11] Act of June 2, 1997, 75th Leg., R.S., ch. 1010 § 6.08 1997 Tex. General Laws 3610, 3665 and 3668.

[12] *See* TWC § 13.301(c).

[13] TWC § 13.250(a).

and (4) of TWC § 13.301(e) directly address the financial circumstances sufficient to require a hearing on a proposed transaction. Therefore, the Legislature has spoken clearly as to the criteria to be used to evaluate an application under TWC § 13.301 and 16 TAC § 24.239(f) and (h) clearly embody those criteria.

To date, the Commission has neither made a finding that TWU cannot demonstrate adequate financial capability in this case nor has the Commission ordered TWU to provide financial assurance. Consequently, 16 TAC § 24.11 is not applicable to TWU.

IV. INTERPRETING 16 TAC § 24.11(E)(5)

Answering the questions posed by the ALJ regarding the interpretation of certain individual elements of 16 TAC § 24.11(e)(5) requires addressing a global policy question: What are the circumstances that necessitate the production of loan approval documents before the Commission can approve a transaction proposed under TWC § 13.301? Approaching the interpretation of 16 TAC § 24.114(e)(5) in this manner is appropriate because it links the actions that will be required of the transferee to the circumstances under which the actions should be required.[14] Applying this approach, the cumulative answer to the interpretation questions posed is that 16 TAC § 24.11(e) applies to a transaction proposed under TWC § 13.301 in two specific sets of circumstances:

Scenario 1:

- The transferee already holds a CCN;
- The Commission has determined that the transferee cannot demonstrate adequate financial, managerial, and technical capability and has ordered the transferee to provide financial assurance;
- The proposed transaction involves a substantial addition to the transferee`s existing CCN that requires capital improvements in excess of $100,000;
- The addition to the transferee`s existing CCN is substantial taking into consideration the characteristics of the existing CCN such as acreage included and number of existing customers; and
- The capital improvements are required in order for the transferee to provide service that meets minimum requirements established by the Texas Commission on Environmental Quality (TCEQ).

[14] 16 TAC § 24.11(e)(5)(A).

Scenario 2:

- The transferee does not hold a CCN and will obtain one via the transfer of the transferor's CCN;
- The Commission has determined that the transferee cannot demonstrate adequate financial, managerial, and technical capability and has ordered the transferee to provide financial assurance; and
- The proposed transaction involves a new CCN area because the transferee does not have an existing CCN.

Even if the Commission had directed TWU to provide financial assurance, 16 TAC § 24.11(e)(5) is not applicable in this proceeding because TWU is not proposing a *substantial* addition to its current CCN area *requiring* capital improvements in excess of $100,000. The area to be acquired through this transaction consists of 726 acres and 178 customers. This cannot be construed as a substantial addition to TWU's service area under CCN number 12983, which covers over 80,000 acres and 33,537 customers. The acreage to be added is less than 1% of TWU's service area and the number of connections is roughly half of a percent of TWU's existing connection count. In addition, there are no capital improvements to the system to be transferred that are required or necessary to meet the TCEQ's minimum requirements for a public water system. The estimated capital expenditures provided with TWU's application are for anticipated improvements and are based on preliminary estimates. TWU could forego these improvements and still be able to provide continuous and adequate service in the near-term post acquisition.

2. **What constitutes a "new CCN area" under 16 TAC § 24.11(e)(5)? For example,**
   a. **Is a "new CCN area" only an area that has not been previously certificated to any CCN holder?**
   b. **Is a "new CCN area" an area that is currently certificated to a CCN holder but is being transferred to another CCN holder such that the area is new to the transferee?**
5. **Does the phrase "capital improvements in excess of $100,000" only modify "substantial addition to its current CCN area" or does it also modify "a new CCN area?"**
6. **Do the phrases "substantial addition and capital improvement in excess of $100,000 impose separate requirements or are they interrelated? For example, is an addition only substantial if it requires capital improvements in excess of $100,000? Or can an addition be substantial while not requiring capital improvements in excess of $100,000, or vice versa?**

Question Nos. 2, 5, and 6, as posed by the ALJ, must be considered together and in conjunction with the fact that 16 TAC § 24.11(e)(5)(A) establishes a specific requirement for STMs. Starting with Question No. 5, 16 TAC § 24.11(e)(5) applies to two distinct situations: (1) an application proposing service to a new CCN area; or (2) an application proposing a substantial addition to the transferee's current CCN area requiring capital improvements in excess of $100,000. This interpretation complies with the canon of construction requiring the application of relative or qualifying words and phrases to the immediately preceding word or phrase where no contrary intention appears.[15]

Moving on to Question No. 6, the addition to the transferee's existing CCN area must be substantial and require capital improvements in excess of $100,000. If an addition is substantial, but only requires capital improvements of $20,000, then 16 TAC § 24.11(e)(5) does not apply. Conversely, if the capital improvements in excess of $100,000 are required but the addition to the existing CCN area is not substantial, 16 TAC § 24.11(e)(5) is also inapplicable. If the rule is not read in this manner, then there is no reason to include the phrase "substantial addition." The rule could simply apply to an addition to the transferee's existing CCN requiring capital improvements in excess of $100,000. Accordingly, the rule should be read in a manner that does not render "substantial addition" superfluous.[16]

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[15] *In the Interest of C.J.N.–S. and J.C.N.–S.*, 540 S.W.3d 589, 592 (Tex. 2018).

[16] *C.J.N. S. and J.C.N. S.*, 540 S.W.3d at 591 (holding that "...courts presume the Legislature intended for all the words in a statute to have meaning and for none of them to be useless."); Tex. Gov't Code § 311.021(2).

Finally, in regard to Question No. 2, "new CCN area" should not be interpreted to cover an area that is currently certificated to the transferor but will be transferred as a result of the STM. In construing a statute, courts may consider laws on the same or similar subjects and the consequences of a particular construction.[17] There is only one rule on financial assurance, and therefore, it must be considered in light of both TWC § 13.246(d) and § 13.301(c). The majority of the applications filed under TWC § 13.246 only are for uncertificated area, which makes it reasonable to interpret "new CCN area" to apply to uncertificated area. Further, interpreting this phrase to include area that is already certificated would make subsection (e)(5) applicable to every STM, which contravenes its conditional nature. If the intent was for the rule to apply to every STM, it would have been simpler to include a standalone provision that read something like: "If the application is for a sale, transfer, or merger, the applicant mut submit loan approval documents…"

Interpreting "new CCN area" to mean CCN area that is new to the transferee would also prevent the ability to differentiate between (1) a transferee who does not hold a CCN and will obtain one for the first time as a result of the acquisition of a water or sewer system and the transfer of the corresponding CCN; and (2) a transferee who already holds a certificate that will be amended with the transferor's service area. It is reasonable for the Commission to be able to require loan documentation under subparagraph (A) any time the transferee is obtaining a CCN via an STM because the transferee is new to the water industry and not known to the Commission. It is also reasonable for the Commission to be able to require loan documentation under subparagraph (A) from an existing CCN holder who is known to the Commission in a more narrow set of circumstances, i.e., when the addition to the existing CCN is substantial and requires a certain level of capital improvements.

Finally, reading "new CCN area" in this manner maintains consistency with subparagraph (B) of 16 TAC § 24.11(e)(5). Under subparagraph (B), the required financial assurance is for the installation of the plant and equipment needed to serve projected customers or the installation of a new water system or the substantial addition to an existing system to serve a new CCN area or a new subdivision.[18] This provision indicates that proposing service to a new CCN area is similar to proposing service to a new subdivision in that it requires a whole new

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[17] Tex. Gov't Code § 311.023(4)–(5).

[18] 16 TAC § 24.11(e)(5)(B).

water system or a substantial addition. "New CCN area" that is acquired through an STM for existing service area and customers only does not meet these criteria and is not similar.

TWU acknowledges that the language of 16 TAC § 24.11(e)(5) could be construed as unclear. For example, it is not apparent how plant and equipment necessary to serve projected customers differs from differs from a new water system or a substantial addition to an existing water system for a proposed new CCN area or new subdivision. However, the combined effect of the interpretations described above construes the rule as currently written as to give effect to the entirety of its provisions.

3. **What constitutes a "substantial addition" to a CCN area as contemplated by 16 TAC § 24.11(e)(5)? For example,**
   a. **Is a "substantial addition" any amount above a specific acreage or number of customers? If so, what are the threshold acreages or customer numbers?**
   b. **Is substantialness determined by comparing the size of the addition (in terms of acreage or customers) to the acquiring CCN holder's existing service area or number of customers? If so, what is the threshold ratio?**

Under the rules of statutory construction, a court will use the plain and ordinary meaning of a term that is not defined in statute.[19] A definition of "substantial" is not provided in 16 TAC § 24.11 or the general rule on definitions, 16 TAC § 24.3. The *Merriam-Webster Dictionary* defines substantial as "considerable in quantity" or "significantly great" and lists "consequential," "major," "significant," and "material" as synonyms.[20] The provision in question addresses a substantial addition to an existing CCN, i.e., whether the addition is consequential or material. Therefore, the determination regarding whether an addition is substantial must take into account the characteristics of the existing CCN, specifically, the total acreage and number of existing customers.

Reviewing substantialness in this manner allows for a flexible approach that preserves the Commission's ability to exercise discretion on a case-by-case basis. For example, a utility serving a densely populated area may have a CCN that is only 100 acres but includes 500 customers. If the transferee is a utility with an existing CCN that is 5,000 acres but includes only 250 customers, then the proposed transaction constitutes a substantial addition in terms of number of customers served but not acreage served. If the Commission decides that thresholds

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[19] *EBS Sols., Inc. v. Hegar*, 601 S.W.3d 744, 758 (Tex. 2020).

[20] Definition of Substantial, Merriam-Webster Dictionary at https://www.merriam-webster.com/dictionary/substantial (last visited Oct. 18, 2023).

should be established to assist with the substantialness determination, then those thresholds are more appropriately set via a rulemaking rather than a contested case.

4. **What constitutes "capital improvements" under 16 TAC § 24.11(e)(5)? For example,**

   a. Are repairs or replacements of existing equipment necessary to bring the system into compliance with federal and state regulations, including to address violations cited by the Texas Commission on Environmental Quality, "capital improvements?"

   b. Are "capital improvements" repairs necessary for the system to provide continuous and adequate service?

   c. Are "capital improvements" any anticipated repairs or improvements to the system?

   d. Does the term "capital improvements" apply solely to the installation of new systems?

The key to answering this question is found in the fact that 16 TAC § 24.11(e)(5) references a substantial addition to a CCN *requiring* capital improvements in excess of $100,000. This language is reinforced in subparagraph (A), which references improvements *necessary* to provide continuous and adequate service to the existing customers.[21] As explained earlier in response to Question No. 5, "capital improvements in excess of $100,000" only modifies "substantial addition to its current CCN area." A substantial addition to existing CCN area can include either uncertificated area that requires the installation of a new system or certificated area that includes an existing system that will be transferred under TWC § 13.301. Therefore, the term capital improvements can apply to repairs, replacements, or upgrades for an existing system or the installation of a new system. When read with subparagraph (A), the term applies narrowly to capital improvements to the existing system that will be acquired through an STM because the required loan documentation is limited to funds available for capital improvements necessary to serve existing customers.

Regardless of whether it is a substantial addition of uncertificated area with no facilities or a substantial addition of certificated area with existing facilities, the capital improvements referenced in 16 TAC § 24.11(e) must be required in that they are necessary to provide continuous and adequate service. A definition of continuous and adequate service is not provided in the TWC or Commission rules. Moreover, the capital improvements needed to provide continuous and adequate service in an area with no existing facilities are vastly different

[21] 16 TAC § 24.11(e)(5)(A).

than the capital improvements needed to provide continuous and adequate service to a certificated area with facilities. Once again, this distinction is reflected in subparagraph (A), which applies to improvements necessary to provide service to existing customers and subparagraph (B), which applies to the installation of plant to serve projected customers, installation of a new water system, or substantial addition to an existing water system.

Absent a definition, it is reasonable to look to other regulatory standards as a benchmark for what constitutes continuous and adequate service as it relates to the question of what capital improvements are necessary. One set of readily available benchmarks is the TCEQ rules applicable to public water systems.[22] These regulations address issues ranging from the proper design of a system and related facilities; to the capacity of a system as it compares to system demand; to minimum disinfectant residuals for the distribution system. The TCEQ rules should be well known to anyone seeking to own and operate a utility. If a utility cannot meet these requirements, then the utility is arguably not providing continuous and adequate service. As such, relying on these rules as the standard for what constitutes required capital improvements in excess of $100,000 and capital improvements necessary to provide continuous and adequate service to existing customers results in a rule that is both easy to understand and straightforward to apply.

V. CONCLUSION

TWU respectfully requests the entry of an order finding that TWU has satisfied 16 TAC § 24.11(e)(5) or granting a good cause exception to the requirement that TWU submit "loan approval documents." In the alternative, TWU requests the entry of an order finding that 16 TAC § 24.11 does not apply in this proceeding because Commission has not found that TWU cannot demonstrate adequate financial capability or that 16 TAC § 24.11(e)(5) does not apply because TWU is not proposing a substantial addition to its CCN requiring capital improvements in excess of $100,000. Additionally, TWU requests any further relief to which it has shown itself entitled.

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[22] *See generally*, 30 TAC Chapter 290, Subchapter D.

Respectfully submitted,

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ATTORNEYS FOR TEXAS WATER UTILITIES, L.P.

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on November 3, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

Eleanor D'Ambrosio

Eleanor D'Ambrosio

ATTACHMENT A

1. **Does 16 TAC § 24.11 apply to Texas Water if Texas Water is not required to provide financial assurance under 16 TAC § 24.11(b)?**

   No. Both TWC § 13.301(c) and 16 TAC § 24.239(f) begin with qualifying language that requires a finding that TWU cannot demonstrate adequate financial capability before the Commission may order it to provide financial assurance. No such finding has been made in this proceeding; therefore, 16 TAC § 24.11 is not applicable.

2. **What constitutes a "new CCN area" under 16 TAC § 24.11(e)(5)? For example,**
   a. **Is a "new CCN area" only an area that has not been previously certificated to any CCN holder?**
   b. **Is a "new CCN area" an area that is currently certificated to a CCN holder but is being transferred to another CCN holder such that the area is new to the transferee?**

   The phrase "new CCN area" should not be interpreted to cover an area that is currently certificated to the transferor but will be transferred as a result of the STM.

3. **What constitutes a "substantial addition" to a CCN area as contemplated by 16 TAC § 24.11(e)(5)? For example,**
   a. **Is a "substantial addition" any amount above a specific acreage or number of customers? If so, what are the threshold acreages or customer numbers?**
   b. **Is substantialness determined by comparing the size of the addition (in terms of acreage or customers) to the acquiring CCN holder's existing service area or number of customers? If so, what is the threshold ratio?**

   Substantial is not defined in statute or rule, and the dictionary defines it as "considerable in quantity" or "significantly great." Applying this definition, the determination regarding whether an addition is substantial must take into account the specific characteristics of the transferee's existing CCN, including the total acreage and number of existing customers.

4. **What constitutes "capital improvements" under 16 TAC § 24.11(e)(5)? For example,**
   a. Are repairs or replacements of existing equipment necessary to bring the system into compliance with federal and state regulations, including to address violations cited by the Texas Commission on Environmental Quality, "capital improvements?"

   b. Are "capital improvements" repairs necessary for the system to provide continuous and adequate service?

   c. Are "capital improvements" any anticipated repairs or improvements to the system?

   d. Does the term "capital improvements" apply solely to the installation of new systems?

   Within 16 TAC § 24.11(e)(5) there are references to a substantial addition to a CCN *requiring* capital improvements in excess of $100,000 and to improvements *necessary* to

provide continuous and adequate service to the existing customers. A definition of continuous and adequate service is not provided in the TWC or Commission rules. If a utility cannot meet the applicable TCEQ rules and regulations, then it is not providing continuous and adequate service. Therefore, it is reasonable to interpret 16 ATC § 24.11(e)(5) to address capital improvements that are required to comply with TCEQ rules and regulations.

5. **Does the phrase "capital improvements in excess of $100,000" only modify "substantial addition to its current CCN area" or does it also modify "a new CCN area?"**

   Applying the last antecedent canon of construction, 16 TAC § 24.11(e)(5) applies to two distinct situations: (1) an application proposing service to a new CCN area; or (2) an application proposing a substantial addition to the transferee's current CCN area requiring capital improvements in excess of $100,000.

6. **Do the phrases "substantial addition and capital improvement in excess of $100,000 impose separate requirements or are they interrelated? For example, is an addition only substantial if it requires capital improvements in excess of $100,000? Or can an addition be substantial while not requiring capital improvements in excess of $100,000, or vice versa?**

   To avoid rendering "substantial addition" superfluous, the addition to the transferee's existing CCN area must be both substantial and require capital improvements in excess of $100,000.