



**CCN Decertification / SB 573 /
EAA v. Day Case
Utilities Panel
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Population Growth = Real Estate Development

- Increased pressure and emphasis on:
 - natural resources
 - infrastructure, and
 - utility services.

Action by Texas Legislature on Water Utility Service Issues

- Water utility service issues have been brought to the attention of Texas Legislature.
- The number of bills filed related to water utility service issues grows every session and interim committees are charged with studying such issues every legislative interim.
- Texas Legislature is becoming more urban and suburban-oriented.

Certificate of Convenience and Necessity (CCN)

- CCN is a permit issued by the TCEQ that authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area.
- Source – 30 Tex. Admin. Code Section 291.3(10)

Who is required to have a CCN?

- Investor Owned Utilities (IOUs)
- Water Supply Corporations
 - Section 13.242 of the Texas Water Code
- Cities and governmental entities, such as water districts, not required but do obtain CCNs.

Why have issues with CCNs received more attention in recent years?

- Less stringent CCN mapping requirements in past.
- High density real estate development occurring in areas that have historically been rural.

House Bill 2876 - 2005

- Greater Houston Builders Association filed petition for rulemaking with TCEQ in 2004.
- Texas Legislature enacted HB 2876 in 2005.
- HB 2876 created a new CCN decertification process for landowners – Section 13.254(a-1) of the Texas Water Code.
- TCEQ conducted a rulemaking process to implement HB 2876 in late 2005.

Senate Bill 573 - 2011

- Multiple bills filed in 2007 and 2009 on CCN and water utility service issues but the bills that were in enacted did not create significant change to law.
- Senate Bill 573 filed in 2011 by State Senator Robert Nichols and sponsored by State Representative Brandon Creighton.

SB 573 - 2011

- Original filed version of SB 573 applied statewide.
- Through legislative process, SB 573 was revised and amended to apply to 33 counties – basically Dallas, Fort Worth, Houston, San Antonio, Austin, and Tyler.

SB 573 - 2011

- Effective date for SB 573 was September 1, 2011.
- TCEQ rulemaking to implement SB 573 to occur in Fall of 2012.

7 U.S.C. § 1926(b) / USDA-RD Loans

- Non-profit water supply corporations (WSCs) can obtain loans from the United States Department of Agriculture – Rural Development office to finance infrastructure projects.
- As part of USDA-RD's loan process, the WSCs must provide their utility systems, infrastructure, and, most importantly in this context, their CCN service areas as collateral for loans.

7 U.S.C. § 1926(b)

- Possible implications – WSC could file suit in federal court to challenge CCN service area decertification.

Aqua WSC / ACC CCN Decertification

- Austin Community College (ACC) filed CCN decertification on Sept. 1, 2011.
- Aqua WSC filed responses in late September.
- ACC filed response on September 30.
- Aqua WSC filed a lawsuit on October 7 in federal court in Austin on 1926(b) grounds.
- TCEQ granted ACC's CCN decertification on Oct. 22.
- Aqua WSC and ACC participate in mediation in January and February 2012 and settled dispute in mid-February.

Section 13.254(a-1) Fast Track CCN Decertification Process

- Landowner 50 or more acres
- Requested Service from CCN holder – 90 days
- If CCN holder's response is not acceptable, then file petition at TCEQ
- Need service commitment from alternative utility
- SB 573 additions
 - Cost comparison between CCN holder and alt. utility
 - Fire protection
 - FMT capability of alternative utility

Super Fast Track CCN Decertification Process – Section 13.254(a-5)

- Requirements:
 - Property subject to CCN decert. petition must be within 33 counties (Dallas, FW, Houston, San Antonio, Austin, adjacent counties and Tyler)
 - 25 or more contiguous acres
 - Not receiving water or wastewater service

Super Fast Track CCN Decertification Process – Section 13.254(a-5)

- CCN Decertification Process
 - Petition/Letter filed with TCEQ
 - Map
 - TCEQ required to grant within 60 days

How Super Fast Track CCN Decert. Process has worked at TCEQ

- SB 573 became effective September 1, 2011
- 24 Petitions were filed as of late January 2012
 - 11 granted
 - 5 dismissed
 - 2 returned to petitioner or were withdrawn
 - 6 in process

Compensation Issues

- Compensation required before service under CCN decertification processes (a-1 and a-5).
- Valuation factors:
 - Contractual obligations
 - Debt associated with territory
 - Value of planning, design, and construction in preparation to serve
 - Other relevant factors

Compensation – Section 13.254(e)

- Timing - determination of the monetary amount of compensation is determined at the time another retail public utility seeks to provide service in a previously decertified area and before service is actually provided.
- TCEQ Deadline – TCEQ shall determine compensation no later than 90 days after the date a retail public utility notifies the TCEQ of its intent to provide service.

TCEQ Rulemaking

- Proposed rules by Fall of 2012.
- Issues:
 - Compensation
 - “receiving service”

Edwards Aquifer Authority v. Day

- Texas Supreme Court issued opinion – Feb. 24, 2012
- Groundwater owned in place - reaffirmed SB 332 enacted in 2011 session of Tex. Legislature
- Subject to GCD regulation
- Takings claim remanded to district court for decision
- Litigation will likely determine when a GCD regulatory taking results in a taking requiring compensation.

Questions?

- Any questions?
- Thank you.