

**20<sup>th</sup> ANNUAL  
CHANGING FACE OF WATER LAW**  
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San Antonio

**PUBLIC UTILITY COMMISSION UPDATE**

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# Introduction

- 2013 -- HB 1600 & SB567 Authorize Transfer of water and sewer utility functions from TCEQ to PUC.
- September 1, 2014 – Transfer effective.
- PUC now has responsibility over:
  - Issuing and enforcing certificates of convenience and necessity (CCNs) allocating water and sewer service area.
  - Regulating rates and services of investor-owned utilities (IOUs) in areas outside of municipalities.
  - Appellate jurisdiction over municipal utilities, districts, water supply corporations, and IOU rates set by municipalities.
  - Wholesale rates.

# CCN Applications

- ***Application of the City of Lavon***, PUC Docket 46993 – PUC Commissioners reverse ALJ and deny Lavon’s request outside of corporate boundaries because Lavon had no specific requests for service or service plans.
  - If outside municipal or district boundaries show specific request(s) for service.

## Decertification – SER §13.254(a-5)

- Owner of tract 25 acres or more may exit a CCN if located in one of 33 counties and not currently receiving service.
- If meet PUC rule requirements (16 TAC 24.245(I)) – decertification granted in 60 days.
- Tract can be made up of separate parcels and does not have to be located entirely inside CCN.
- Since 2011 approximately 215 SER petitions filed, 147 granted, and 60 denied.

# Decertification – SER §13.254(a-5)

- **1<sup>st</sup> Contentious Issue – Receiving Service.**
  - Landowners – active meter. Utilities – inside CCN area.
  - *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App. – Austin 2014, pet. denied). Fact based inquiry to see if utility has facilities or lines committed to serving the particular tract.
  - If no active meter - difficult factual showing for incumbent utility.
  - PUC has allowed landowners to amend petition to remove active meters.

# Decertification – SER §13.254(a-5)

- **2<sup>nd</sup> Contentious Issue – Compensation**

- TWC 13.254(d) – no other retail public utility may provide service to a decertified area without providing compensation for any property rendered useless or valueless. Done before service, not as part of decertification.
- Prior to PUC clarification (2016) – Battle of the appraisers.
- Under PUC Rule – 1<sup>st</sup> step is to identify specific property rendered useless or valueless. Must be real property or tangible personal property, not money spent on services. Useless and valueless has ordinary or plain meaning.
- Since 2017, no property found to be rendered useless or valueless. All compensation since then determined by agreement of parties.

- **Look for Bills during current Legislative Session**

## §1926(b)–Federal Debt Protection

- “The service provided or made available . . . shall not be curtailed or limited by inclusion of the area within the boundaries of any . . . public body, or by the granting of any private franchise for similar service within such area during the term of such loan.”
- ***North Alamo Water Supply Corp. v. City of San Juan***, 90 F.3d 910 (5<sup>th</sup> Cir. 1996). Existence of CCN = service made available.
- ***Creedmoor-Maha Water Supply Corp. v. Texas Com’n on Env. Qual.***, 307 S.W.3d 505, 522 (Tex. App. – Austin 2010, no pet.). Followed other circuits. Must presently have the “physical capacity and readiness to provide” service.

# §1926(b)–Federal Debt Protection

- Recent Federal Court cases:
  - ***Green Valley SUD v. PUC***, (W.D. Tex. (Sparks))
    - Agreed with *North Alamo*: CCN = makes services available.
    - TWC §13.254(a-6) not facially unconstitutional.
    - PUC may decertify for cause. (Not decided in *North Alamo*).
    - On appeal to 5<sup>th</sup> Circuit.
  - ***Crystal Clear SUD v. PUC***, (WD. Tex. (Yeakel))
    - TWC §13.254(a-6) should be declared preempted and void. Magistrate's report. Waiting on order.
  - ***City of Cibolo v. Green Valley SUD***, 866 F.3d 339, 343 (5th Cir. 2017).
    - Water/Sewer: Service made available includes not just service funded by federal debt, but any service made available by the indebted utility.
    - Petition for writ to SCOTUS denied January 7, 2019.



## Service Area Agreements §13.248

- Being used more frequently by utilities to transfer service area, and in situations involving the need to transfer existing customers.
- Application (16 TAC 24.253) – maps, contract, # customers, and notice.
- ***Application of City of Justin and Aqua Texas, Inc.*** PUC Docket No. 48396.
- ***Application of Denton County Fresh Water Supply District No. 10,*** PUC Docket No. 48569.

## Single Certification - §13.255

- ***Application of the City of Heath to Amend a CCN and Decertify a Portion of Forney Lake Water Supply Corporation's Service Area in Rockwall County***, PUC Docket No. 44541 – Catch 22.
- 16 TAC 24.259. PUC Docket No. 46151. Make a determination of whether any property rendered useless or valueless first.
- ***Application of the City of Schertz to Amend a Sewer CCN Under Water Code Sections 13.255 and to Decertify a Portion of Green Valley Special Utility District's Certificate Rights in Bexar County***, PUC Docket No. 45956 – No property rendered useless or valueless.

# PUC Original Rate Jurisdiction

- ***Application of Double Diamond Utility Company, Inc., for a Water and Sewer Rate/Tariff Change***, PUC Docket 46245. Example of the variety of issues - proper accounting for developer contributed assets, allocated affiliate costs, and recovery of rate case expenses. Filed 8/1/16. No final order, yet.
- ***Application of Southwest Liquids, Inc., for Authority to Change Rates***, PUC Docket No. 47626. Illustrates common errors in applications.
- ***Application of Tall Pines Utility, Inc. for Authority to Change Rates***, PUC Docket No. 48790. Illustrates lack of understanding by small utilities.

# PUC Appellate Jurisdiction

- Scope – municipal utilities (OCL), districts, water supply and sewer service corporations.
- Current Process – ad hoc based on representations in petition and requests to utilities. **Goliad Case**, PUC Docket No. 47662. Watch *City of Celina*, Docket No. 49225.
- **SAWS Case**, PUC Docket No. 45786. 6,300 signatures. Weeks to confirm validity of signatures and denominator.
- Issues to resolve.
  - Validity of signatures
  - Denominator
  - Scope of appeal – scope of review over rates not appealed.

# PUC Appellate Jurisdiction

- ***Woodloch Case***

- PUC held that it had jurisdiction over ICL rates. Extraordinary ruling. Contrary to legislative history and precedent.
- PUC claimed jurisdiction based on language: “in an appeal . . . the commission shall ensure that every rate made, demanded, or received . . . shall be just and reasonable.”
- Potential to interject uncertainty in municipal financing – most official statements recite PUC has no jurisdiction over ICL rates.

- **Draft Rule**

- Validation process
- Scope
- Woodloch

# Appeal of Municipally-Set IOU Rates

- Municipalities, unless waived, have jurisdiction over rates, operations, and services of IOUs inside city limits.
- IOU may appeal decision of city to PUC.
- Typically, large IOU files at PUC and city; city denies; IOU appeals; rate cases consolidated.
- ***Application of Liberty Utilities (Woodmark Sewer) Corp., and Liberty Utilities (Tall Timbers Sewer) Corp., for a Rate/Tariff Change, PUC Docket No. 46256, SOAH Order No. 6 (July 5, 2017).***

# Review of Wholesale Rates

- ***Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing the Decision of the North Texas Municipal Water District, PUC Docket 46662.***
  - Rate set by contract. District costs allocated to members on basis of max-year consumption. Take or Pay.
  - Complaint – because of conservation, some member cities max rates set as long ago as 2001.
  - 2 Phase Review – public interest, cost of service.
  - Hearing on Phase 1 – October 2018.
  - Potential to introduce uncertainty into major water project financing. Brief of Amicus Curiae in Support of NTMWD, PUC Docket No. 46662 (Dec. 21, 2018).

# Questions

- Review PUC Dockets: <http://interchange.puc.state.tx.us>
- Watch the PUC in Action: <http://www.texasadmin.com/tx/puct/>