

TRWA/TWCA Water Law Seminar
January 11, 2017

CCN Updates Panel Alternative Provider/Municipal Perspective

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Process for Determining Compensation – 2 Steps

TWC §13.254(d)

A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the utility commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

- PUC determines what property is determined useless or valueless.
- Appraisers determine compensation for such property determined to have been rendered useless or valueless

Two Step History at PUC

Docket 44541 (City of Heath) (4/15) – Heath asserted that PUC (or SOAH) needed to determine whether any property rendered useless or valueless **first** to avoid compensation process if not needed and ensure that appraisers would know what to appraise. PUC legal did not support Heath’s process based on tight statutory deadlines.

Docket 45679 (Zipp Road) (Memo from Chairman Nelson 6/16)

- Determination of what property has been rendered useless or valueless needs to occur before the parties either agree on an appraiser or select their own appraisers.
- Commission must ensure that appraisers have limited their review to property which the Commission has determined was rendered useless or valueless by decertification and have properly applied the statutory standards and factors for valuation

Policy Reasons for Two-Step

- **Law** – 13.254(d) requires that the Commission, not an appraiser, determine what property is rendered useless or valueless.
- **Better Appraisals** – 12.254(g) requires compensation for “any property rendered useless or valueless.” Pre two-step appraisals varied by orders of magnitude (Monarch \$2.3 million vs. \$25,000).
 - Appraisers not appraising the same thing.
 - Help overcome information asymmetries.

Policy Reasons for Two-Step

- **Process Efficiency** – many 13.254(a-5) decertifications do not render any property useless or valueless. No need to hire appraisers if no property rendered useless or valueless.
- **Allow Commission to Review Appraisal** – Commission needs the ability to review appraisal done by Commission-appointed appraiser.
- **Proper Treatment of Compensation on Utility Books** – Property rendered useless or valueless must be removed from ratebase. Allow for determination of gain on disposition of property must be properly treated on utility's' books.

Possible Tweaks to Two-Step

- Provide guidance on scope of property to be considered.
- Process tweaks. Maintain one docket for decert and NOI to Serve. Require decertified utility to identify property rendered useless and valueless promptly after decert granted. Require NOI to Serve to agree with or dispute the utility's identification of property. SOAH hearing limited by filings.
- PUC should consider holding workshops to address full range of concerns/issues.

Municipal Concerns

Process

- Predictability of outcome – valuation and timing. Outcome should be predictable before NOI to Serve is filed or, preferably, before decert petition is filed.

Decertification

- Orderly development within city limits and ETJ.
- Implement area-wide/regional plans.
- Avoid creation of development “black holes.”
- Address constituent concerns.

Questions?

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