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June 13, 2022

Mr. Robert Tamble
City Administrator
City of Smithville, TX

Re: CCN

Dear Mr. Tamble:

As the City Attorney, I have been asked to respond to the following question: Does the City have to provide wastewater service to property lying outside its city limits?

The short answer is yes. The City has a Certificate of Convenience and Necessity (the "CCN") styled CCN #20377, granted from the Public Utility Commission of Texas (the "PUC"). Section 13.250(a) of the Texas Water Code imposes a commitment on every CCN holder to provide service to every customer in its CCN boundary. Additionally, PUC regulations found at 16 TAC 24.247(a) requires all CCN holders to provide "continuous and adequate service to every customer...within its certificated area."

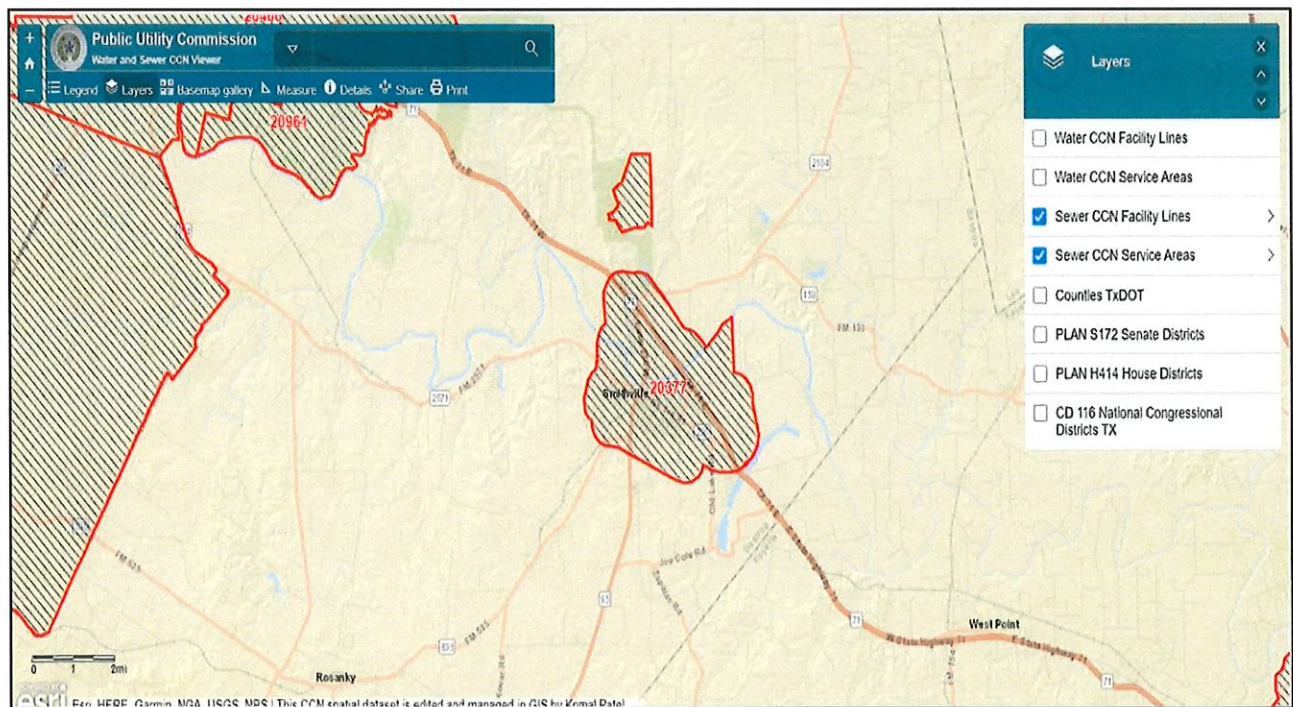
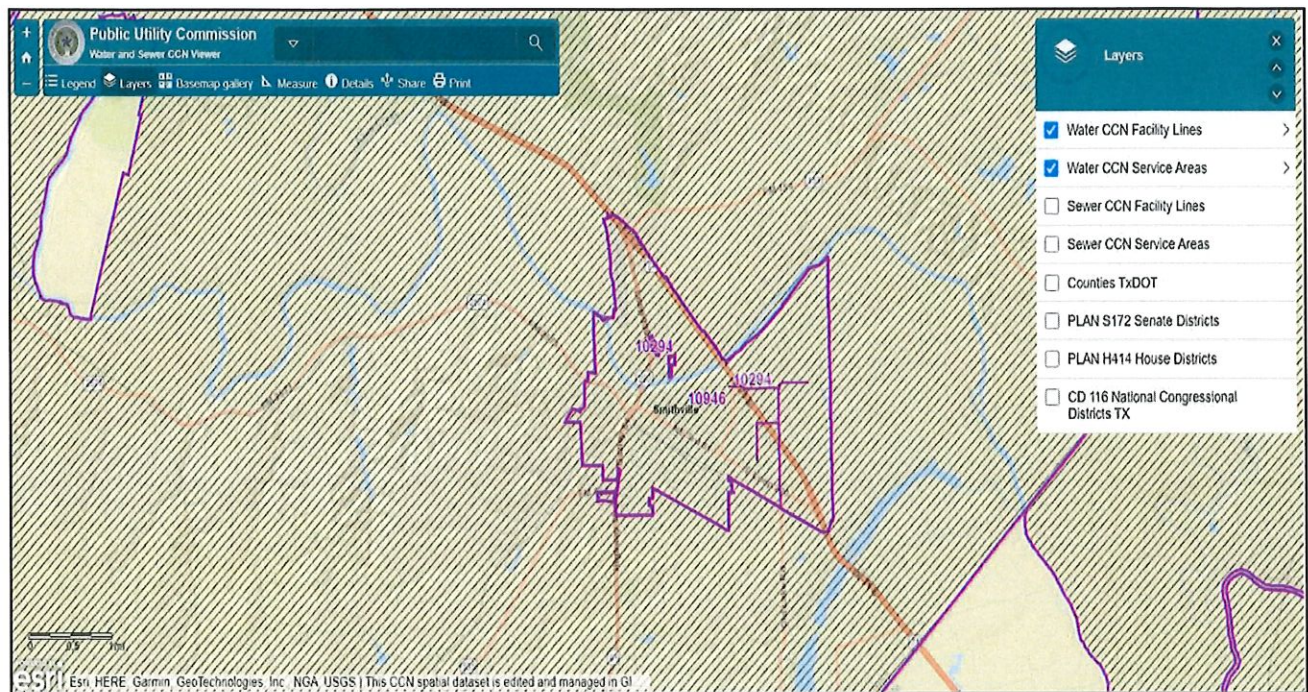
The above regulations are applicable even if the subject property lies outside the city limits, so long as the property lies within the City's CCN. Section 13.250(a) of the Texas Water Code and 16 TAC 24.247(a) are attached herein.

Sincerely,



Charles Crossfield

City of Smithville Public Utilities Commission (PUC) Water and Sewer CCN



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Texas Administrative Code

TITLE 16

ECONOMIC REGULATION

PART 2

PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24

SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER H

CERTIFICATES OF CONVENIENCE AND NECESSITY

RULE §24.247

Requirement to Provide Continuous and Adequate Service

(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;

(3) nonuse; or

(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

(b) After notice and hearing, the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in TWC §16.341, to:

(A) provide specified improvements in its service in a defined area if:

(i) service in that area is inadequate as set forth in §24.205 and §24.207 of this title (relating to Adequacy of Water Utility Service; and Adequacy of Sewer Service); or

(ii) is substantially inferior to service in a comparable area; and

(iii) it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules as specified in §24.11 of this title (relating to Financial Assurance), or as specified by the commission. The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service after TCEQ approves the interconnecting service pursuant to 30 TAC

Administrative Code References

Notice and mapping requirements for certificate of convenience and necessity applications, see 30 TAC § 291.106.

Transfer of certificate of convenience and necessity, see 30 TAC § 291.112.

§ 13.249. Repealed by Acts 1987, 70th Leg., ch. 539, § 32, eff. Sept. 1, 1987

Historical and Statutory Notes

Repealed § 13.249, providing for an order preliminary to the issuance of a certificate, was derived from Acts 1985, 69th Leg., ch. 795, § 3.005.

§ 13.250. Continuous and Adequate Service; Discontinuance, Reduction, or Impairment of Service

(a) Except as provided by this section or Section 13.2501 of this code, any retail public utility that possesses or is required to possess a certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the utility commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a utility commission-ordered arrangement between the two service providers;

(3) nonuse; or

(4) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the utility commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the utility commission prescribes.

(d) Except as provided by this subsection, a retail public utility that has not been granted a certificate of public convenience and necessity may not discontinue, reduce, or impair retail water or sewer service to any ratepayer without approval of the regulatory authority. Except as

(16) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this chapter and includes the denial of relief or the dismissal of a complaint.

(17) "Rate" means every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, charged, or collected whether directly or indirectly by any retail public utility for any service, product, or commodity described in Subdivision (23) of this section and any rules, regulations, practices, or contracts affecting that compensation, tariff, charge, fare, toll, rental, or classification.

(18) "Regulatory authority" means, in accordance with the context in which it is found, the commission, the utility commission, or the governing body of a municipality.

(19) "Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(20) "Retail water or sewer utility service" means potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(21) "Service" means any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(22) "Test year" means the most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

(22-a) "Utility commission" means the Public Utility Commission of Texas.

(23) "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage

SH-71 Future Development Wastewater (Average Daily Flow)

1 LUE = 250 Gallons Per Day (Assuming 2.5 people @ 100 GPD/Capita)

ID #	NAME\LAND USE	LUE	ADF (GPD)	NOTES
1	THE VILLAGE AT SMITHVILLE	0	0	FUTURE LUE'S FROM DEVELOPER UNKNOWN
2	SETON 120 BED NURSING HOME	60	13,500	0.5 LUE PER BED, COA LUE Criteria
3	HURTA - 50 HOMES	50	11,250	LUE'S FROM DEVELOPER
4	SMITHVILLE INDUSTRIAL PARK	200	45,000	DEDICATED LUE'S FROM DEVELOPER
5	SIMMONS RV PARK - 165 SPACES	46	10,350	50 Gallons Per Day Per Space, TCEQ Table III 285.91 (50/250 = 0.20 LUE/space)
6	ENCLAVE	120	27,000	
7	OTHER AREAS EAST OF RIVER ON SH-71	65	14,625	FUTURE USE - Grove, M5, Woodrose
	TOTAL		121,725	

Willow Plant Permitted Capacity

90 % Rule

75% Rule

Current Average Daily Flow as of 6/2022

Projected ADF (Current + 1-7)

300,000

270,000

225,000

148,000

269,725

49.33%

89.91%