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# CCNs

## LEGISLATION TACKLES INCONVENIENCES

By Charles E. Gilliland

All across the state an increasing number of Texas landowners who planned to develop their properties have encountered roadblocks in the form of Certificates of Convenience and Necessity (CCN). The CCN, issued by the Texas Commission on Environmental Quality (TCEQ), confers on its holder the exclusive right to supply specified utility services to an identified geographic area. That right can cover water or wastewater service for all land in the CCN territory.

The CCN also obligates its holder to provide continuous and adequate service for every consumer in the area. If the holder fails to provide service, a decertification process through TCEQ can revoke the CCN. If the utility has outstanding debt with an entity of the federal government, however, decertification cannot occur because federal law prohibits changes in the CCN boundaries.

### THE IDEAL

CCNs are designed to ensure that utility services are supplied efficiently. Rather than having areas where fragmented development efforts produce an array of inferior utility systems, the CCN process seeks to consolidate scattered developments under a single service provider.

Because of the substantial costs required to install infrastructure, the single provider could arguably be expected to provide better service at a lower cost through economies of scale that result from spreading fixed costs over a larger number of

customers. In addition, landowners would know which entity is required to supply utility service to their properties.

### THE REALITY

In practice, many CCNs were issued without the knowledge of affected landowners or without a demand for service. Some utilities obtained the certificates but lacked the resources needed to provide service. Further, the boundaries of CCNs sometimes were unclear from official documents.

Because the Texas Water Code did not require notification of affected landowners in the past, many landowners did not discover the CCNs until they prepared to develop their properties. Some found that dealing with a CCN holder to secure service complicated or even blocked the subdivision process.

In the worst case scenario, an owner who did not know the CCN existed would develop a subdivision and install a private water system to supply the new neighborhood. After building the system, the developer would discover the existence of a CCN for water service in that area. The CCN holder could be a city, water supply district, investor-owned utility or other special district. In that situation, the developer would be prohibited from operating the private utility and would have no choice but to transfer the water system to the CCN holder.

In other cases, owners assumed that a nearby city could supply their subdivisions only to discover that a rural water supply utility held a CCN covering their property. Frequently, such CCN holders are not financially prepared to serve a development's needs.

When the utility cannot provide service and an alternative source is available, developers can move to have the CCN holder decertified. Landowners have reported this process to be lengthy and fraught with uncertainty. Many find it necessary to negotiate an agreement with the CCN holder before they can transfer the subdivision to another utility system.

Negotiations typically involve paying CCN holders fees for infrastructure transferred plus damages to the CCN holder's plans for future service to the remaining CCN area. Some landowners find CCN holder demands so onerous that they abandon their development plans.

Nearly half of Texas cities have CCNs. An estimated 100 cities have obtained CCNs beyond their extraterritorial jurisdiction (ETJ), effectively projecting city controls into rural areas.

For example, the City of Alvord (population 1,000) presides over a large CCN territory despite having limited capacity to provide water and wastewater services. The city, which occupies approximately 600 acres, obtained a CCN covering 14,000 acres. Obviously, the CCN allows Alvord to exercise control over development well outside its legal boundaries.

In some areas, one entity holds a CCN for water service while another holds the CCN for wastewater service. Landowners may find themselves caught between entities feuding over conflicting policies.

The resurgence of development in Texas has prompted a growing number of rancorous confrontations between landowners and CCN holders. Landowners tend to be disgruntled when they learn their property was included in a CCN without their knowledge. The delays and difficulties inherent in the decertification process also prove a source of contention.

## TAMING THE PROCESS

These kinds of conflicts prompted a crusade for changes in the CCN process. Those efforts resulted in adoption of House Bill 2876 in the 79<sup>th</sup> Legislature. The bill became effective in September 2005. Rules designed to implement the bill were adopted by TCEQ in December 2005 and became effective in January 2006. Under the new law, landowners must be notified when a CCN is created or amended. CCN applicants must define proposed service areas and sources of funding, and landowners may become a part of the certification process. The bill also shortens and simplifies the decertification process to 180 days, and it limits cities' ability to extend CCNs beyond their ETJs.

These provisions apply to all CCN holders with the exception of cities with populations exceeding 500,000, where special rules apply. The text of the TCEQ rules is available at <http://www.tceq.state.tx.us/assets/public/legal/rules/rules/pdflib/291g.pdf>.

*CCN Creation and Amendment (Section 12.244[d]).* The new regulations recognize landowners as affected persons who must receive notice of applications to create or amend CCNs (Chapter 13 of the Texas Water Code is available at <http://www.capitol.state.tx.us/statutes/wa.toc.htm>). This change gives the landowners standing to intervene in the hearing process. Further, the code now requires CCN applicants to provide a specific description of the area along with requests for service in the area.

CCN applicants must submit a capital improvements plan with identified sources of funding and a current financial statement as well as a list of owners of tracts 50 acres or larger in the CCN area. Landowners now may opt out of the CCN before the 30<sup>th</sup> day after receiving notice of an application. The opt-out provision does not apply to proposed service areas

within cities of 500,000 or more population or within such cities' ETJs.

**E**xpedited Decertification (Section 13.254). Owners of 50 acres or more who do not receive service from the CCN holder may petition TCEQ for decertification and release from the CCN area. The petitioner must submit a written request for service to the CCN holder. The CCN holder has 90 days to respond to the landowner's written request for service and to address other required elements of the petition.

After that 90-day period, a petition satisfying all requirements is considered administratively complete. TCEQ must grant the petition within 90 days unless required elements were not satisfied.

When decertification is granted, TCEQ may also require an award of compensation to the CCN holder for the proportion of its facilities designed to serve the landowner's property. The code and rules specify how that compensation is calculated.

*ETJ Controversy (Section 13.2451).* Under the new law, a city can no longer extend its CCN outside the ETJ without the written consent of landowners in the affected area. Proposed TCEQ rules that would have voided virtually all of the CCNs outside of cities' ETJs met with spirited opposition from many city officials. Consequently, the amended adopted rule stipulates that any landowner outside the ETJ who regularly receives and pays for service from a municipality has con-

sent to the CCN unless that landowner specifically objects in writing. The rules are silent with respect to landowners not receiving services from the municipality.

## THE FUTURE

House Bill 2876 and TCEQ's implementing rules have done much to address the grievances of affected landowners.

The law and the rules seek to preserve the concept of regionalization of utility service

while allowing the flexibility of efficient land development in Texas. The rules and Chapter 13 of the water code are complex documents that govern a vital process. Because utilities and land developments are as variable as the Texas weather, CCNs likely will face further scrutiny as all parties strive to make them more effective in providing needed services to Texans.

For more information on CCNs, see "Rural Water: Plan Before You Plat," at [recenter.tamu.edu/pdf/1499.pdf](http://recenter.tamu.edu/pdf/1499.pdf). 📍

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## THE TAKEAWAY

Landowners and developers must deal with CCN holders to secure utility service. New regulations and legislation make the CCN process more friendly to landowners.





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