

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §291.3, Definitions of Terms; §291.21, Form and Filing of Tariffs; §291.26; Suspension of Rates; §291.32, Rate Design; §291.74, Maintenance and Location of Records; §291.81, Customer Relations; §291.83, Refusal of Service; §291.85, Response to Requests for Service by a Retail Public Utility Within Its Certificated Area; §291.86, Service Connections; §291.87, Billing; §291.88, Discontinuance of Service; §291.89, Meters; §291.93, Adequacy of Water Utility Service; ; §291.102, Criteria for Considering and Granting Certificates or Amendments; §291.106, Notice for Applications for Certificates of Convenience and Necessity; §291.112, Transfer of Certificate of Convenience and Necessity; §291.128, Petition or Appeal Concerning Wholesale Rate; §291.131, Executive Director's Determination of Probable Grounds; §291.132, Evidentiary Hearing on Public Interest; and §291.134, Commission Action to Protect Public Interest, Set Rates. The commission proposes these revisions to conform with the drought contingency rules in 30 TAC Chapter 288, Subchapters B and C that were effective on February 21, 1999 and adopted pursuant to requirements in Senate Bill (SB) 1, 75th Legislature, 1997; to implement SB 1421, 76th Legislature, 1999; to clarify, simplify, and cure problems that have arisen in the interpretation of the current rules as part of the commission's regulatory reform effort, and to incorporate comments received as part of the commission's quadrennial review of its rules.

#### **BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES**

SB 1 included new provisions pertaining to drought-related issues and water conservation plans which were incorporated in Chapter 288 of this title (relating to Water Conservation Plans, Guidelines and Requirements). There are several amendments being proposed that conform terminology in this chapter

with terminology adopted in Chapter 288, such as substituting “drought contingency plan” for “water rationing plan” and “water use restrictions” in place of “water rationing.” Amendments are proposed to implement SB 1421. Senate Bill 1421 amended the definition of “affected county” in §13.002 of the Water Code. Senate Bill 1421 also amended §13.241 of the Water Code to require the commission by rule to develop a standardized method for determining which of two or more retail public utilities or water supply or sewer service corporations that apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area is more capable financially, managerially, and technically of providing continuous and adequate service. Several amendments are proposed in response to public comments received during the quadrennial review of this chapter. The balance of the amendments are proposed in response to input from commission staff as part of the agency’s regulatory reform initiative. In addition to the specific changes discussed below, there are several minor changes proposed for clarification or consistency in terminology.

#### SECTION BY SECTION DISCUSSION

The following proposed amendments implement SB 1421, 76th Legislature, 1999.

Section 291.3(2) is proposed to be amended to change the definition of an “affected county” to simply be “a county any part of which is within 50 miles of an international border” to conform terminology with SB 1421.

Section 291.102(g) is proposed to be added, in accordance with SB 1421, to set general criteria for

determining which of two or more retail public utilities in an affected county is more capable financially, managerially and technically of providing continuous and adequate service. An assessment for making the determination would be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute.

The following proposed amendments conform this chapter to the drought contingency rules in Chapter 288 of this title, that became effective on February 21, 1999.

Section 291.3(48) is proposed to be amended to change the definition of “water rationing” to “water use restrictions.”

Section 291.21 (c)(7) is proposed to be amended to require that the tariff contain an approved drought contingency plan, instead of a water rationing plan, to match requirements established in §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers).

Section 291.32(b)(2)(A) is proposed to be amended to clarify that conservation rates can be used to conserve water supplies or for other reasons specified in an approved drought contingency plan. The term “drought contingency plan” replaces the term “water rationing plan.”

Section 291.93(a)(2) is proposed to be amended to substitute “drought contingency plan” for “water rationing plan”; substitute “water use restrictions,” “restrictions” or “plan” in place of “water rationing” or “rationing”; to clearly authorize the use of restrictions in accordance with the approved

drought contingency plan required by §288.20 of this title and to replace specific time frames in the rules for reporting and require reports in accordance with the approved drought contingency plan.

The following amendments are proposed in response to comments received during the commission's quadrennial review of its rules.

Section 291.74 currently specifies that a utility's records shall be available for examination by the commission or its authorized representatives at all reasonable hours. The section is proposed to be amended, to allow access to a utility's records between 8:00 a.m. and 5:00 p.m. Monday through Friday, except holidays, unless the utility provides a written request for alternate hours 72 hours in advance of any scheduled inspection.

Section 291.83(a)(3) is proposed to be amended to require that a utility provide service to a customer who is indebted to another utility as the result of a disputed bill if the customer makes a deposit, demonstrates having registered the dispute with the utility, and has made a payment equal to the customer's average monthly usage at current rates.

Section 291.85(a)(1) is proposed to be amended to add a provision that will allow a utility to require that an applicant for service provide written documentation that it has the legal right to occupy the premises. Documentation may include a lease, contract for deed, or a warranty deed. A purchase contract is not sufficient unless the applicant provides documentation that the sale has been closed.

Paragraph (3) is proposed to be amended to increase the number of days for reconnecting service at a

previous location from one to three working days. Paragraph (4) is proposed to be amended to increase the number of days for connecting service where a tap is required from five to ten working days.

Section 291.86 (a)(2)(B) is proposed to be amended to allow a utility to require a customer owned cut-off valve for new service at an existing tap.

Section 291.87(g) is proposed to be amended to allow a utility to backbill a customer for undercharges for up to twelve months instead of six months as currently allowed.

Section 291.87(k)(1) is proposed to be amended to require that a customer with a disputed bill provide written notice and make a payment equal to the customer's average monthly usage at current rates prior to the date of proposed discontinuance in order for a customer to avoid discontinuance of service.

Section 291.88(g) is proposed to be amended to allow a utility until the end of the next working day to disconnect service after receiving a written request from the customer.

Section 291.88(h) is proposed to be amended to require that a utility restore service within 36 hours, instead of 24 hours, after the service has been disconnected as a result of past due charges or other circumstances and the circumstances have been corrected.

Section 291.89(a)(4) is proposed to be amended to add condominiums and manufactured housing communities to those facilities that could be considered a single commercial facility for the one meter

requirement.

Section 291.89(h) is proposed to be amended to expand the definition of meter tampering to include removal or alteration of utility-owned equipment or locks, connection or reconnection of service without utility authorization, or connection into the service line of adjacent customers or of the utility.

The following amendments are proposed as part of the commission's regulatory reform effort to clarify, simplify, and cure problems that have arisen due to the current text of the rules.

Section 291.3 is proposed to be amended to define the terms "certificate," "certificate of convenience and necessity," and "certificate of public convenience and necessity." The inclusion of these definitions will cause the renumbering of existing definitions.

Section 291.26(a) is proposed to be amended to allow the executive director to suspend a rate change, if the utility has included in the cost of service for the noticed rates, rate case expenses other than those necessary to complete and file the application.

Section 291.102(a) is proposed to be amended to clarify that copies of written responses to water or sewer service requests only need to be submitted from those systems to which written requests for service were made. Subsection (a)(3) is proposed to be redesignated as subsection (b).

Section 291.106(b) is proposed to be amended to clarify that the distance for notice of an application for issuance of a new certificate of public convenience and necessity is measured from the corporate boundaries or the boundaries of the service areas in question.

Section 291.112(c)(3) is proposed to be amended to clarify that the distance for notice of proposed sale, acquisition, lease, rental, merger, or consolidation and transfer of a certificate of convenience and necessity is measured from the corporate boundaries or the boundaries of the service areas in question.

Section 291.112(c)(5) is proposed to be deleted because it requires that applications be processed in accordance with Chapter 263 of this title, which has been repealed.

Section 291.112(e) is proposed to be added to limit the term of the executive director's approval for a sale to one year. At the end of the year, if the sale has not been made the approval is void and a new application must be filed.

The following amendments are proposed in response to consumer complaints pertaining to a utility's interpretation of the current rules requiring the use of backflow prevention devices.

Section 291.21(c)(5) is proposed to be amended to require that a utility's tariff contain copies of the customer service inspection forms required to be completed under §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) if the forms deviate from the form specified in §290.47(d) of this title (relating to Customer Service Inspection Certification).

Section 291.81(a) is proposed to be amended by adding a new paragraph (2) which will require that the utility give notice to each service applicant or customer who is required to have a customer service inspection performed. The notification must be in writing, include the right to obtain a second opinion, and include the right for the customer to use the least expensive acceptable backflow prevention assembly as defined in §290.44(h) of this title (relating to Water Distribution). The customer must receive a copy of the completed inspection form and information related to thermal expansion problems which may be created if a backflow prevention assembly is installed. The existing paragraph (2) will be renumbered as (3) and each succeeding paragraph in the subsection will be renumbered in sequence.

Section 291.83(c) is proposed to be amended by adding a new paragraph (6), that will require a utility to provide service where the service applicant or customer chooses to use a type of backflow prevention assembly approved under §290.44(h) of this title (relating to Water Distribution) even if the assembly is not the one preferred by the utility. The existing paragraph (6) will be renumbered as (7).

Section 291.85(a)(2) is proposed to be amended to require a utility to make available to a service applicant an application for service, information about customer service inspections, and to accept from the applicant the completed application along with a completed customer service inspection form.

Section 291.93(a)(5) is proposed to be amended to include cross-connection control as a means of protecting public health and requires the utility to receive prior approval for a cross-connection control program which exceeds the minimum requirements of §290.44(h) of this title (relating to Water Distribution). The amendment provides that a utility may be required to fund any expenses above the

costs associated with the minimum requirements without customer reimbursement.

The following amendments are proposed to clarify when a public interest hearing versus a cost of service hearing is appropriate.

Section 291.128 is proposed to be amended to make this section applicable to petitions for the review of rates charged for the resale of water regardless of whether there is a contract or not.

Section 291.131 is proposed to be amended to change the section title from “Executive Director's Determination of Probable Grounds” to “Executive Director's Review of Petition or Appeal.” The section is further proposed to be amended by adding subsections (b), (c), and (d) that will allow the executive director to forward petitions to review a rate that is charged pursuant to a written contract to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing on public interest, or where there is no contract to SOAH for an evidentiary hearing on the rate. The proposal will also provide that if the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge (ALJ) will abate the hearing until the dispute is resolved by a court of proper jurisdiction.

Section 291.132 is proposed to be amended to remove the 120-day requirement for an ALJ to prepare a proposal for decision.

Section 291.134 is proposed to be amended to require the seller to provide a cost of service study and

other information necessary to support the appealed rates within 90 days after the appeal is forwarded to SOAH. The proposal limits discovery prior to the evidentiary hearing on the rate to matters relevant to the evidentiary hearing on the rate. The proposal would also require the ALJ to include a recommendation on the rate in the proposal for decision.

#### FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments would conform language with the drought contingency rules in Chapter 288, Subchapters B and C that implement certain provisions of SB 1, 75th Legislature, 1997 (an Act relating to the development and management of the water resources of the state; providing penalties) and SB 1421, 76th Legislature, 1999 (an Act relating to the regulation of the subdivision or development of land in certain economically distressed areas, including colonias, and certain other areas; providing penalties). The proposed amendments also include changes which clarify, simplify, and cure problems that have arisen in the interpretation of current rules as part of the commission's regulatory reform effort and address comments received during the quadrennial review of Chapter 291.

The proposed amendments would implement the provision of SB 1421, 76th Legislature, 1999,

establishing a method for determining which of two or more retail public utilities or water supply or sewer service corporations that apply for a certificate of public convenience and necessity to provide utility service to certain uncertified economically distressed areas is more capable of providing service.

Finally, the proposed amendments include several changes to records and reports, and customer service and protection rules for water utilities as a result of the review and evaluation of comments received during the quadrennial review of Chapter 291 and as part of the commission's regulatory reform effort to clarify, simplify, and cure problems that have arisen due to the current text of the rules. These changes include specifying the hours and days a utility's records shall be available for examination by the commission. The proposed amendments would change certain procedures for billing and restoring service. The proposed amendments also would require utilities to provide written notice to a service applicant or customer of a required customer service inspection. This notice must include an applicant's and customer's right to get a second customer service inspection performed by a qualified inspector at their own expense and, if required, allow the customer the right to use the least expensive backflow prevention assembly acceptable. Finally the proposed amendments would allow utilities to require a customer owned cut-off valve for new service at a location with an existing tap.

#### **PUBLIC BENEFIT**

Mr. Grymkoski has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be improved protection to both the regulated industry and its customers. Some rules are designed to enhance utility operations and prevent the possibility of utility abuse related to customer

service.

No significant adverse economic costs to any person or business are anticipated as a result of implementing the proposed rules. The implementation of the proposed changes to records and reports, and customer service and protection rules for water utilities are not anticipated to significantly adversely affect the operations of a utility or its customers.

However, applicants for service where service was previously provided may incur increased expenses for installing cut-off valves if there is not one already installed. The estimated cost of having a tap installed by a professional is \$100.

#### SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

No significant adverse economic costs to any small business and/or micro business are anticipated as a result of implementing the proposed rules. The proposed changes to the records and reports, and customer service and protection rules for water utilities are not anticipated to significantly adversely affect the operations of a utility or its customers which may include small and micro-businesses.

However, applicants for service where service was previously provided may incur increased expenses for installing cut-off valves if there is not one already installed. The estimated cost of having a tap installed by a professional is \$100.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rule amendments do not change the basic requirements in the current rules. The rules incorporate new legislative requirements, address comments received during the commission's quadrennial review of its rules, and clarify, simplify, and cure problems that have arisen in the interpretation of the current language. The changes will not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Further, this proposed rulemaking does not meet the applicability criteria of a "major environmental rule" because the proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the proposed changes are not proposed solely under the general rulemaking authority of the commission but also under Texas Water Code, §§11.272, 11.036, 11.041, 12.013, 13.043(f), 13.136, 13.137, and 13.187(a).

The commission seeks public comment on the Draft Regulatory Impact Analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rule amendments pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to implement applicable requirements of SB 1421, 76th Legislature, 1999, relating to utility regulations, to conform language with the drought contingency rules in Chapter 288, to respond to public comments received during the quadrennial review of Chapter 291 and to revise the rules as part of the agency's regulatory reform initiative. The proposed rule amendments substantially advance the stated purpose by incorporating the applicable requirements of SB 1421, the drought contingency rules, and the recommendations made through public comments and by commission staff. Promulgation and enforcement of these amendments will not burden private real property because the actions that are required by the amendments relate primarily to the relationships between water utility operators and their customers, concerning establishment of rates, procedures for providing services, and billing for the services. The rules will provide protection to both the utility operators and their customers. Therefore, this proposal will not constitute a takings under Chapter 2007 of the Texas Government Code.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will the rules affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-043-291-WS. Comments must be received by 5:00 p.m., July 31, 2000. For further information, please contact Hector Mendieta, Policy and Regulations Division, telephone number (512) 239-6694.

#### STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; under TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; under TWC, §13.250, which requires a retail public utility that possesses a certificate of convenience and necessity to provide continuous and adequate service within its certified area; under TWC, §13.241, which establishes requirements for granting certificates of convenience and necessity, and requirements for developing a standardized method for determining the financial, managerial, and technical capacity of a retail public utility; under TWC, §13.246, which establishes requirements pertaining to applications for certificates of public convenience and necessity; under TWC, §13.136, which requires utilities to file tariffs of rates, rules and regulations and annual financial reports; under TWC, §13.187(a), which requires the commission to regulate utility rate changes; under TWC, §11.1272, which requires the commission to adopt rules requiring public water suppliers to adopt drought contingency plans; under TWC, §13.137, which requires every utility to have an office where it keeps all its books, accounts, records, and memoranda required by the commission to be kept in this

state; under TWC, §§11.036, 11.041, and 12.013, pertaining to the commission's jurisdiction to consider the rate charged in a contract for the resale cost of water; and under TWC, §13.043(f), pertaining to the commission's appellate jurisdiction to consider the water or sewer service rate charged by one retail public utility to another.

The proposed amendment implements TWC, Chapters 11, 12, and 13.

**SUBCHAPTER A : GENERAL PROVISIONS**

**§291.3**

**§291.3. Definitions of Terms.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Affected county** - A county [:]

[(A) that has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which statistics are available; and]

[(B)] any part of which is within 50 miles of an international border.

(3)-(8) (No change.)

(9) Certificate - The definition of certificate is that definition given to certificate of

convenience and necessity in this subchapter.

(10) Certificate of Convenience and Necessity - A permit issued by the commission which 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.

(11) Certificate of Public Convenience and Necessity - The definition of certificate of public convenience and necessity is that definition given to certificate of convenience and necessity in this subchapter.

(12) [(9)] **Class of service or customer class** - A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.

(13) [(10)] **Code** - The Texas Water Code.

(14) [(11)] **Corporation** - Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

(15) [(12)] **Customer** - Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(16) [(13)] **Customer service line or pipe** - The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

(17) [(14)] **Facilities** - All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(18) [(15)] **Incident of tenancy** - Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(19) [(16)] **License** - The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(20) [(17)] **Licensing** - The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission pursuant to its authority under the Texas Water Code.

(21) [(18)] **Main** - A pipe operated by a utility service provider which is used for transmission or distribution of water or to collect or transport sewage.

(22) [(19)] **Mandatory water use reduction** - The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures which seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(23) [(20)] **Member** - A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(24) [(21)] **Membership fee** - A fee assessed each water supply or sewer service corporation service applicant which entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed pursuant to said bylaws. For purposes of Texas Water Code, §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly

base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

(25) [(22)] **Municipality** - A city, existing, created, or organized under the general, home rule, or special laws of this state.

(26) [(23)] **Municipally-owned utility** - Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(27) [(24)] **Person** - Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

(28) [(25)] **Physician** - Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

(29) [(26)] **Point of use or point of ultimate use** - The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

(30) [(27)] **Potable water** - Water that is used for or intended to be used for human

consumption or household use.

(31) [(28)] **Premises** - A tract of land or real estate including buildings and other appurtenances thereon.

(32) [(29)] **Public utility** - The definition of public utility is that definition given to water and sewer utility in this subchapter.

(33) [(30)] **Purchased sewage treatment** - Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(34) [(31)] **Purchased water** - Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(35) [(32)] **Rate** - Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in the Texas Water Code, §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(36) [(33)] **Ratepayer** - Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the

number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(37) [(34)] **Reconnect fee** - A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §291.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

(38) [(35)] **Retail public utility** - 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.

(39) [(36)] **Retail water or sewer utility service** - Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(40) [(37)] **Safe drinking water revolving fund** - The fund established by the Texas Water Development Board to provide financial assistance in accordance with the Federal program established pursuant to the provisions of the Safe Drinking Water Act and as defined in Water Code, §15.602.

(41) [(38)] **Service** - Any act performed, anything furnished or supplied, and any facilities used by a retail public utility in the performance of its duties under the Texas Water Code 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.

(42) [(39)] **Service line or pipe** - A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(43) [(40)] **Sewage** - Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(44) [(41)] **Standby fee** - A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(45) [(42)] **Tap fee** - A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if

noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(46) [(43)] **Tariff** - The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

(47) [(44)] **Temporary water rate provision** - A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(48) [(45)] **Test year** - The most recent 12-month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.

(49) [(46)] **Utility** - The definition of utility is that definition given to water and sewer utility in this subchapter.

(50) [(47)] **Water and sewer utility** - Any person, corporation, cooperative corporation, affected county, or any combination of those 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 production, 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 disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(51) [(48)] **Water use restrictions [rationing]** - Restrictions implemented to reduce the amount of water which may be consumed by customers of the system due to emergency conditions or drought.

(52) [(49)] **Water supply or sewer service corporation** - Any nonprofit, corporation organized and operating under the Texas Water Code, Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.

(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.

(C) A majority of the directors and officers of the corporation must be members of the corporation.

(D) The corporation's by-laws include language indicating that the factors specified in subparagraphs (A)-(C) of this paragraph are in effect.

(53) [(50)] **Wholesale water or sewer service** - Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

**SUBCHAPTER B : RATES, RATE MAKING AND RATE/TARIFF CHANGES**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; TWC, §13.136, which requires utilities to file tariffs of rates, rules and regulations and annual financial reports; TWC, §13.187(a), which requires the commission to regulate utility rate changes; and TWC, §11.1272, which requires the commission to adopt rules requiring public water suppliers to adopt drought contingency plans.

The proposed amendments implement TWC, Chapters 11 and 13.

**§291.21. Form and Filing of Tariffs.**

(a)-(b) (No change.)

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, shall contain sections setting forth:

(1)-(4) (No change.)

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms required to be completed under §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Water Systems) if the form used deviates from that specified in §290.47(d) of this title (relating to Appendices);

(6) (No change.)

(7) an approved drought contingency [water rationing] plan as required by §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers); and

(8) (No change.)

(d)-(1) (No change.)

#### **§291.26. Suspension of Rates.**

(a) The executive director or the commission may suspend the rate change if the utility has failed [Failure] to properly complete the rate application, has included in the cost of service for the noticed rates rate case expenses other than those necessary to complete and file the application, or has failed to comply with the notice requirements and proof of notice requirements [may result in suspension of the rate change by the commission or the executive director]. The utility shall not

renotify its customers of a new proposed effective date until the utility receives written notification from the executive director that all deficiencies have been corrected.

(b) (No change.)

**§291.32. Rate Design.**

(a) (No change.)

(b) Conservation.

(1) (No change.)

(2) After receiving final authorization from the regulatory authority through a rate change proceeding, a utility may implement a water conservation surcharge using an inclining block rate or other conservation rate structure. A utility may not implement such a rate structure to avoid providing facilities necessary to meet the commission's minimum standards for public drinking water systems. A water conservation rate structure may generate revenues over and above the utility's usual cost of service:

(A) to reduce water usage or promote conservation either on a continuing basis or in specified restricted use periods identified in the utility's approved drought contingency plan required by §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers) included in its tariff in order to:

(i) (No change.)

(ii) conserve water supplies, maintain acceptable pressure or storage, or other reasons identified in its approved drought contingency plan [during drought periods, or other water rationing conditions authorized by an approved water rationing plan];

(B) (No change.)

(3) (No change.)

(c)-(d) (No change.)

## **SUBCHAPTER D : RECORDS AND REPORTS**

### **§291.74**

#### **STATUTORY AUTHORITY**

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state, under TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction, and under TWC, §13.137, which requires every utility to have an office where it keeps all its books, accounts, records, and memoranda required by the commission to be kept in this state.

The proposed amendment implements TWC, Chapter 13.

#### **§291.74. Maintenance and Location of Records.**

Unless otherwise permitted by the commission, all records required by these sections or necessary for the administration thereof shall be kept within the State of Texas at a central location or at the main business office located in the immediate area served. These records shall be available for examination by the commission or its authorized representative between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, except holidays [at all reasonable hours]. The executive director may consider alternate hours of inspection if the utility provides a written request 72 hours in advance of any scheduled inspection.

**SUBCHAPTER E : CUSTOMER SERVICE AND PROTECTION**

**§§291.81, 291.83, 291.85, 291.86, 291.87, 291.88, 291.89**

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state, under TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction, and under TWC, §13.250, which requires a retail public utility that possesses a certificate of convenience and necessity to provide continuous and adequate service within its certified area.

The proposed amendments implement TWC, Chapter 13.

**§291.81. Customer Relations.**

(a) Information to customers.

(1) (No change.)

(2) The utility shall notify each service applicant or customer who is required to have a customer service inspection performed. This notification must be in writing and include the applicant's or customer's right to get a second customer service inspection performed by a qualified inspector at

their expense and their right to use the least expensive backflow prevention assembly acceptable under §290.44(h) of this title (relating to Water Distribution) if such is required. The utility will ensure that the customer or service applicant receives a copy of the completed and signed customer service inspection form and information related to thermal expansion problems which may be created if a backflow prevention assembly or device is installed.

(3) [(2)] Upon request, the utility shall provide the customer or service applicant with a free copy of the applicable rate schedule from its approved tariff. A complete copy of the utility's approved tariff shall be available at its local office for review by a customer or service applicant upon request.

(4) [(3)] Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) shall be labeled to indicate the size, design capacity, and any pertinent information which will accurately describe the utility's facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and will be available for commission inspection during normal working hours.

(5) [(4)] Each utility shall maintain a current copy of the commission's substantive rules, Chapter 291 of this title (relating to Utility Regulations [Water Rates]) at each office location and make them available for customer inspection during normal working hours.

(6) [(5)] Each water utility shall maintain a current copy of §§290.38 - 290.47 of this title (relating to Rules and Regulations for Public Water Systems), at each office location and make them available for customer inspection during normal working hours.

(b)-(d) (No change.)

**§291.83. Refusal of Service.**

(a) Grounds for refusal to serve. A utility may decline to serve a service applicant for the following reasons:

(1)-(2) (No change.)

(3) the service applicant is indebted to any utility for the same type of service as that requested. However, in the event the indebtedness of the service applicant is in dispute, the service applicant shall be served upon complying with the deposit requirements in §291.84 of this title (relating to the Service Applicant and Customer Deposit) and upon a demonstration that the service applicant has complied with all of the provisions of §291.87(k) of this title (relating to Disputed Bills);

(4)-(6) (No change.)

(b) (No change.)

(c) Insufficient grounds for refusal to serve. The following shall not constitute sufficient cause for refusal of service to a present customer or service applicant:

(1)-(4) (No change.)

(5) failure to pay for the restoration of a tap removed by the utility at its option or removed as the result of tampering or delinquency in payment by a previous customer; [or]

(6) the service applicant or customer chooses to use a type of backflow prevention assembly approved under §290.44(h) of this title (relating to Water Distribution) even if the assembly is not the one preferred by the utility; or

(7) [(6)] failure to comply with regulations or rules for anything other than the type of utility service specifically requested including failure to comply with septic tank regulations or sewer hook-up requirements.

**§291.85. Response to Requests for Service by a Retail Public Utility Within Its Certificated Area.**

(a) Except as provided for in subsection (e) of this section, every retail public utility shall serve each qualified service applicant within its certificated area as soon as is practical after receiving a

completed application. A qualified service applicant is an applicant who has met all of the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service including the delivery to the retail public utility of any customer service [connection] inspection certificates required by §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) [law].

(1) Where a new service tap is required, the retail public utility may require that the property owner make the request for the tap to be installed. The utility may require a service applicant to provide written documentation to establish the applicant's legal right to occupy or use the premises at which service is being requested. Documentation may be in the form of a lease, contract for deed, or a warranty deed. A purchase contract is not sufficient unless the applicant provides documentation that the sale has been closed.

(2) Upon request for service by a service applicant, the retail public utility shall make available an application for service and information about customer service inspections and accept a completed written application for service and a completed customer service inspection form signed by any inspector recognized under §290.46(j)(1) of this title.

(3) Except for good cause, at a location where service has previously been provided the utility must reconnect service within three [one] working days [days] after the applicant has submitted a completed application for service and met any other requirements in the utility's approved tariff.

(4) A request for service that requires a tap but does not require line extensions, construction, or new facilities shall be filled within ten [five] working days after a completed service application has been accepted.

(5) (No change.)

(b)-(e) (No change.)

**§291.86. Service Connections.**

(a) Water Service Connections.

(1) (No change.)

(2) Installation and Service Connection.

(A) (No change.)

(B) The service applicant shall be responsible for furnishing and laying the necessary service line from the meter to the place of consumption and shall keep the service line in good repair. For new taps or for new service at a location with an existing tap, service applicants may be required to install a customer owned cut-off valve on the customer's side of the meter or connection.

Customers who have damaged the utility's cut-off valve or curb stop through unauthorized use or tampering may be required to install a customer owned cut-off valve on the customer's side of the meter or connection within a reasonable time frame of not less than 30 days if currently connected or prior to restoration of service if the customer has been lawfully disconnected under these rules. The customer's responsibility shall begin at the discharge side of the meter or utility's cut-off valve if there are no meters. If the utility's meter or cut-off valve is not on the customer's property, the customer's responsibility will begin at the property line.

(3)-(4) (No change.)

(b)-(e) (No change.)

**§291.87. Billing.**

(a) Authorized rates. Bills shall be calculated according to the rates approved by the regulatory authority [an affected county or the commission] and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b)-(f) (No change.)

(g) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount which was underbilled. The backbilling shall not exceed 12 [six] months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.89 of this title (relating to Meters). If the underbilling is \$25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(h)-(j) (No change.)

(k) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility and a payment equal to the customer's average monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by these sections.

(2)-(3) (No change.)

(l)-(q) (No change.)

**§291.88. Discontinuance of Service.**

(a)-(f) (No change.)

(g) Disconnection upon customer request. A utility shall disconnect service no later than the end of the next working day [within 24 hours] after receiving a written request from the customer.

(h) Service restoration.

(1) Utility personnel must be available during normal business hours to accept payment on the day service is disconnected and the day after service is disconnected, unless the disconnection is at the customer's request or due to the existence of a dangerous condition related to the type of service provided. Once the past due service charges and applicable reconnect fees are paid or other circumstances which resulted in disconnection are corrected, the utility must restore service within 36 [24] hours.

(2) (No change.)

**§291.89. Meters.**

(a) Meter requirements.

(1)-(3) (No change.)

(4) One meter is required for each residential, commercial, or industrial service connection. An apartment building, condominium, manufactured housing community, or mobile home park may be considered by the utility to be a single commercial facility for the purpose of these sections. The executive director may grant an exception to the individual meter requirement if the plumbing of an existing multiple use or multiple occupant building would prohibit the installation of individual meters at a reasonable cost or would result in unreasonable disruption of the customary use of the property.

(b)-(g) (No change.)

(h) Meter tampering. For purposes of these sections, meter tampering, bypass, or diversion shall be defined as tampering with a water or sewer utility company's meter or equipment causing damage or unnecessary expense to the utility, bypassing the same, or other instances of diversion, such as physically disorienting the meter, objects attached to the meter to divert service or to bypass, insertion of objects into the meter, [and] other electrical and mechanical means of tampering with, bypassing, or diverting utility service removal or alteration of utility-owned equipment or locks,

connection or reconnection of service without utility authorization, or connection into the service line of adjacent customers or of the utility. The burden of proof of meter tampering, bypass, or diversion is on the utility. Photographic evidence must be accompanied by a sworn affidavit by the utility when any action regarding meter tampering as provided for in these sections is initiated. A court finding of meter tampering may be used instead of photographic or other evidence, if applicable.

## **SUBCHAPTER F : QUALITY OF SERVICE**

### **§291.93**

#### **STATUTORY AUTHORITY**

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state, under TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction, and under TWC, §13.250, which requires a retail public utility that possesses a certificate of convenience and necessity to provide continuous and adequate service within its certified area.

The proposed amendment implements TWC, Chapter 13.

#### **§291.93. Adequacy of Water Utility Service.**

Sufficiency of service. Each retail public utility which provides water service shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

(1) (No change.)

(2) In cases of [extreme] drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, [or] to comply with a state agency or court order on conservation or other reasons identified in the utility's approved drought contingency plan required by §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers), [temporary] restrictions may be instituted to limit water usage in accordance with the utility's approved drought contingency plan. For utilities, these temporary restrictions must be in accordance with an approved drought contingency [water rationing] plan. Unless specifically authorized by the executive director, retail public utilities may not use water use restrictions [rationing] in lieu of providing facilities which meet the minimum capacity requirements of the commission's rules in Chapter 290 of this title (relating to Rules and Regulations for Public Water Systems), or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

(A) An approved drought contingency [water rationing] plan must be on file with the utility's approved tariff prior to implementing water use restrictions [rationing] unless authorized by the executive director.

(B) Temporary restrictions must be in accordance with the utility's approved drought contingency [water rationing] plan on file or specifically authorized by the executive director. The utility shall file a status report with the executive director in accordance with the requirements and

time frames in the drought contingency plan for as long as water use restrictions continue [every 30 days that rationing continues] or as required by the executive director. The executive director may suspend implementation of the restrictions at any time with written notice to the utility.

(C) The utility must provide written notice to each customer in accordance with the drought contingency plan prior to implementing the provisions of the [rationing] plan. Mailed notice is acceptable and water use restrictions [rationing] may be enforced by the utility if notice is mailed 72 hours prior to the start of water use restrictions [rationing]. If notice is hand delivered, the utility cannot enforce the provisions of the plan for 24 hours after notice is provided unless authorized by the executive director. Notice shall be provided to the commission prior to implementing the program and may be by telephone if written notice is provided by mail within five working [ten] days. Customer notice must contain:

(i) the date water use restrictions are [rationing is] to begin;

(ii) the expected duration of the water use restrictions [rationing program];

(iii) the restrictions or stage of the plan [rationing] being implemented and the specific restrictions which apply; and

(iv) the penalties for violations of the drought contingency plan  
[rationing program].

(3)-(4) (No change.)

(5) In order to protect the public health at all times, each [Each] retail public utility must promptly take all reasonable actions necessary [to protect the health of its customers at all times] which include implementing an effective cross-connection control program necessary to comply with §290.44(h) of this title (relating to Water Distribution). If a utility elects to develop and implement a program that exceeds the minimum requirements set forth in §290.44(h) of this title, it must secure the prior approval of the executive director and may be required to fund any expenses above the costs associated with meeting the minimum requirements without reimbursement. For example, a requirement that customers on systems without documented health hazards have backflow prevention assemblies tested on an annual basis would need to be funded by the utility without reimbursement.

(6) (No change.)

**SUBCHAPTER G : CERTIFICATES OF CONVENIENCE AND NECESSITY**

**§§291.102, 291.106, 291.112**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state, under TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction, under TWC, §13.241, which establishes requirements for granting certificates of convenience and necessity, and requirements for developing a standardized method for determining the financial, managerial, and technical capacity of a retail public utility, and under TWC, §13.246, which establishes requirements pertaining to applications for certificates of public convenience and necessity.

The proposed amendments implement TWC, Chapter 13.

**§291.102. Criteria for Considering and Granting Certificates or Amendments.**

(a) In determining whether to grant a new certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable

of providing drinking water that meets the requirements of Health and Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules, and the Texas Water Code.

(b) [(3)] Where a new certificate of convenience and necessity is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) [(A)] a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) [(B)] copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) [(C)] copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) [(D)] a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) [(E)] an analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance;

(6) [(F)] an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) [(b)] The commission may approve applications and grant or amend a certificate only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) [(c)] In considering whether to grant or amend a certificate, the commission shall also consider:

(1)-(8) (No change.)

(e) [(d)] The commission may require an applicant utility to provide financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) (e)] Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, “economically distressed area” has the meaning assigned in Texas Water Code, §15.001.

(g) For two or more retail public utilities that apply for a certificate of convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in Texas Water Code, §15.001, the executive director shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

(1) all criteria from subsections (a) - (f) of this section;

(2) source water adequacy;

(3) infrastructure adequacy;

(4) technical knowledge of the applicant;

(5) ownership accountability;

(6) staffing and organization;

(7) revenue sufficiency;

(8) credit worthiness;

(9) fiscal management and controls;

(10) compliance history; and

(11) planning reports or studies by the applicant to serve the proposed area;

**§291.106. Notice for Applications for Certificates of Convenience and Necessity.**

(a) (No change.)

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and/or mailing.

(1) For applications for issuance of a new certificate of public convenience and necessity, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within five miles of the requested service area boundaries, and any city with an extra-territorial jurisdiction which overlaps the proposed service area boundaries.

(2) For applications for an amendment of a certificate of public convenience and necessity, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles of the requested service area boundaries, and any city with an extra-territorial jurisdiction which overlaps the proposed service area boundaries.

(3)-(5) (No change.)

(c)-(d) (No change.)

**§291.112. Transfer of Certificate of Convenience and Necessity.**

(a)-(b) (No change.)

(c) Notice of proposed sale, acquisition, lease, rental, merger, or consolidation and transfer of a certificate of convenience and necessity.

(1)-(2) (No change.)

(3) The applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles of the requested service area boundaries, and any city with an extraterritorial jurisdiction which overlaps the proposed service area boundaries.

(4) (No change.)

[(5) If a hearing is requested, the application will be processed in accordance with Chapter 263 of this title (relating to Final Approval By Executive Director, Evaluation of Request for Contested Case Hearing).]

(5) [(6)] The commission may approve a sale, acquisition, lease or rental, or merger or consolidation and/or transfer of a certificate of convenience and necessity if it determines that the transaction is in the public interest after considering:

(A)-(E) (No change.)

(d) (No change.)

(e) Expiration of executive director's approval for sale. The executive director's approval of a sale expires one year from the date of the executive director's written approval of the sale. If the sale has not been consummated within that period and unless the applicant has requested and received an extension from the executive director, the approval is void and the applicant must reapply for approval of the sale. The executive director will review the application as though it was being filed for the first time (de novo).

**SUBCHAPTER I : WHOLESALE WATER OR SEWER SERVICE**

**§291.128, 291.131, 291.132, 291.134**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; under TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; under TWC, §§11.036, 11.041, and 12.013, pertaining to the commission's jurisdiction to consider the rate charged in a contract for the resale cost of water; and under TWC, §13.043(f), pertaining to the commission's appellate jurisdiction to consider the water or sewer service rate charged by one retail public utility to another.

The proposed amendments implement TWC, Chapters 11, 12, and 13.

**§291.128. Petition or Appeal Concerning Wholesale Rate.**

This subchapter sets forth substantive guidelines and procedural requirements concerning:

(1) a petition to review rates charged [pursuant to a written contract] for the sale of water for resale filed pursuant to Texas Water Code, Chapter 11 or 12; or

(2) (No change.)

**§291.131. Executive Director's Review of Petition or Appeal [Determination of Probable Grounds].**

(a) When a petition or appeal is filed, including a petition subject to the Texas Water Code, §11.041, the executive director shall determine within ten days of the filing of the petition or appeal whether the petition contains all of the information required by this subchapter. For purposes of this section only, the executive director's review of probable grounds shall be limited to a determination whether the petitioner has met the requirements of §291.130 of this title (relating to Petition or Appeal). If the executive director determines that the petition or appeal does not meet the requirements of §291.130 of this title, the executive director shall inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies. If the executive director determines that the petition or appeal does meet the requirements of §291.130 of this title, the executive director shall forward the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing.

(b) For a petition or appeal to review a rate that is charged pursuant to a written contract, the executive director will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on public interest.

(c) For a petition or appeal to review a rate that is not charged pursuant to a written contract, the executive director will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate.

(d) If the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction.

**§291.132. Evidentiary Hearing on Public Interest.**

(a) If the executive director forwards a petition to the State Office of Administrative Hearings pursuant to §291.131(a) and (b) of this title (relating to Executive Director's Review of Petition or Appeal [Determination of Probable Grounds]), the State Office of Administrative Hearings shall conduct an evidentiary hearing on public interest to determine whether the protested rate adversely affects the public interest.

(b) (No change.)

(c) The administrative law judge shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law concerning whether the protested rate adversely affects the public interest, and shall submit this recommendation to the commission [no later than 120 days after the executive director forwards the petition to the State Office of Administrative Hearings pursuant to §291.131 of this title (relating to Executive Director's Determination of Probable Grounds)].

(d) (No change.)

**§291.134. Commission Action to Protect Public Interest, Set Rate[Rates].**

(a) (No change.)

(b) If the commission determines the protested rate adversely affects the public interest, the commission will remand the matter to the State Office of Administrative Hearings for further evidentiary proceedings on the rate. The remand order is not a final order subject to judicial review.

(c) No later than 90 days after the petition or appeal is forwarded to the State Office of Administrative Hearings for an evidentiary hearing on the rate pursuant to subsection (b) of this section or §291.131(a) and (c) of this title (relating to Executive Director's Review of Petition or Appeal), [remand] the seller shall file with the Office of Chief Clerk five copies of a cost of service study and other information which supports the protested rate.

(d) Prior to the evidentiary hearing on the rate, discovery shall be limited to matters relevant to the evidentiary hearing on the rate.

(e) [(d)] The administrative law judge shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law recommending a rate and shall submit this recommendation to the commission. The [After remand the parties shall not offer evidence or argument on whether the protested rate adversely affects the public interest. After further evidentiary

proceedings the] commission shall [cancel the protested rate, and] set a rate consistent with the ratemaking mandates of Texas Water Code, Chapters 11, 12, and 13. If the protested rate was charged pursuant to a written contract, the [The] commission must state in a final order [that grants a petition or appeal] the bases upon which the commission finds the protested rate adversely affects the public interest.