

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the repeal of §291.7 and also adopts an amendment to §291.22.

Section 291.22 and the repeal of §291.7 are adopted *without changes* to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1178) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Section 291.7 sets forth the filing fees required for a rate change application; an application for a certificate of public convenience and necessity (CCN); and an application for sale, assignment, or lease of a CCN, or notice of intent to sell, assign, lease, or rent a water or sewer system. This rule was promulgated based on Texas Water Code (TWC), Chapter 13, Subchapter L. House Bill (HB) 2694 was passed during the 82nd Legislature, 2011. HB 2694, §6.04 repealed TWC, Chapter 13, Subchapter L, thus eliminating the commission's ability to collect application fees for rate change requests; applications for CCNs; applications for sale, transfer or merger requests; and notices of intent to sell, assign, lease, or rent a water or sewer system. Therefore, the commission adopts the repeal of §291.7 and will not require any filing fees for a rate change application; an application for a CCN; an application for sale, assignment, or lease of a CCN; or a notice of intent to sell, assign, lease, or rent a water or sewer system.

Section 291.22 allows a governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside their respective boundaries to mail or hand deliver individual written notice to each affected ratepayer eligible to appeal a rate change within 30 days after the date of the final decision. HB 2694, §9.01 amended TWC, §13.043(i) by increasing this time frame from 30 to 60 days and by allowing the written notice to be e-mailed if the municipality or political subdivision has access to a ratepayer's e-mail address. The commission therefore adopts an amendment to §291.22 to increase the time frame for delivery of notice of a final rate decision by a municipality or political subdivision, and allow the notice to be e-mailed if the municipality or political subdivision has access to a ratepayer's e-mail address in order to achieve consistency with HB 2694, §6.04.

Section 291.22 also requires a utility to mail or hand deliver the statement of intent to change rates to the appropriate officer of each affected municipality. HB 2694, §9.02 amended TWC, §13.187(b), by allowing a utility to e-mail the statement of intent to change rates. Therefore, the commission adopts an amendment to §291.22 by allowing the statement of intent to change rates to be e-mailed in order to achieve consistency with HB 2694, §9.02. The commission also adopts an amendment to §291.22 to allow e-mail as an acceptable delivery method for the noticing of utility rate change applications in order to maintain internal consistency in commission rules regarding rate change notification.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts revisions to 30 TAC Chapter 293, Water Districts, and 30 TAC Chapter 297, Water Rights, Substantive.

Section by Section Discussion

§291.7, Filing Fees

The commission adopts the repeal of §291.7 and will not require any filing fees for a rate change application; an application for a CCN; an application for sale, assignment, or lease of a CCN; or a notice of intent to sell, assign, lease, or rent a water or sewer system. The commission adopts the repeal of this section because HB 2694, 82nd Legislature, 2011, repealed TWC, Chapter 13, Subchapter L, which was the statutory basis for the rule. The repeal of the rule ensures consistency with the statutory change.

§291.22, Notice of Intent to Change Rates

The commission adopts an amendment to §291.22(a) by allowing a utility to provide notice of a proposed rate change to all affected utility customers by e-mail, in addition to delivery by mail or hand delivery. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission adopts an amendment to §291.22(b) by allowing the governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision to e-mail individual written

notice of a final decision on a rate change to each affected ratepayer eligible to appeal it, if the municipality or political subdivision has access to a ratepayer's e-mail address.

The commission also adopts an amendment to this subsection by changing the number of days from 30 to 60 that the municipality or political subdivision has to provide such notice. The amendment ensures consistency with HB 2694, §9.01. The commission adopts an amendment to §291.22(c) by allowing a utility to deliver notice of a proposed rate change by e-mail, in addition to mailing notices separately or with customer billings. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission adopts an amendment to §291.22(d) by allowing a utility to deliver a statement of intent to change rates by e-mail to the appropriate officer of each affected municipality, in addition to the options of mailing or delivering a copy of the statement of intent. The amendment ensures consistency with HB 2694, §9.02. The commission adopts an amendment to §291.22(e) by clarifying that the proof of notice in the form of an affidavit allows delivery by e-mail in addition to mail or personal delivery to customers and affected municipalities. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission adopts this amendment to implement TWC, §13.043(i) and §13.187(b), as amended by HB 2694, 82nd Legislature, 2011.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis

requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225. "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.

First, the adopted rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislation enacted in 2011 by the 82nd Legislature, specifically HB 2694, §§6.04, 9.01, and 9.02. HB 2694, §6.04 repealed TWC, Chapter 13, Subchapter L, which covered fees for rate changes and CCNs. The commission rule based upon TWC, Chapter 13, Subchapter L is therefore repealed. HB 2694, §9.01 provides an additional 30 days for a municipality or political subdivision to notify ratepayers of a rate increase, and allows such notice to be delivered by e-mail if the municipality or political subdivision has access to a ratepayer's e-mail address. The adopted rulemaking implements these changes. HB 2694, §9.02 allows a utility to notify ratepayers of its intent to change rates by e-mail. The adopted rule implements this change and also allows a utility to provide e-mail notice to ratepayers of a rate change application.

Second, the adopted rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rulemaking would not 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. It is not anticipated that the cost of complying with the adopted rulemaking will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments regarding the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007.

The commission adopted this rulemaking for the specific purpose of implementing legislation enacted by the 82nd Legislature in 2011. The adopted rulemaking repeals §291.7 and amends §291.22. The commission's analysis revealed that repealing §291.7

achieves consistency with the statutory changes made by HB 2694. The repeal impacts the commission financially, but does not impact private real property financially. The commission's analysis also revealed that amending §291.22 achieves consistency with TWC, §13.043(i) as amended in 2011 by HB 2694. The rulemaking requires that a municipality or political subdivision provide notice to ratepayers eligible to appeal a rate-making decision by those entities within 60 days, rather than 30 days. The adopted rulemaking allows the entity to provide electronic notice to ratepayers if the entity has access to a ratepayer's e-mail address. The notice requirement applies to governmental entities rather than to private citizens.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property will occur by the repeal and amendment of these rules as adopted, the commission determined that promulgation and enforcement of this adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there will be no reduction in real property

value as a result of the rulemaking. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments regarding the adopted rulemaking's consistency with the CMP.

Public Comment

The commission held a public hearing on March 20, 2012. The comment period closed on March 26, 2012. The commission did not receive any comments on this rulemaking.

SUBCHAPTER A: GENERAL PROVISIONS

§291.7

Statutory Authority

The repeal is adopted under Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §13.041(b), which establishes the commission's authority to adopt and enforce rules relating to Water Rates and Services.

The adopted repeal implements House Bill 2694, §6.04, 82nd Legislature, 2011.

§291.7. Filing Fees.

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

§291.22

Statutory Authority

The amendment is adopted under Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §13.041(b), which establishes the commission's authority to adopt and enforce rules relating to Water Rates and Services.

The adopted amendment implements House Bill 2694, §9.01 and §9.02, 82nd Legislature, 2011.

§291.22. Notice of Intent to Change Rates.

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail, e-mail, or hand delivery to all affected utility customers at least 60 days prior to

the proposed effective date. Notice must be provided on the notice form included in the commission's rate application package and must contain the following information:

(1) the utility name and address, current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the new rates may not apply to service received before the effective date of the new rates;

(2) information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, and the time frame for protests;

(3) a billing comparison showing the existing rate and the new computed water rate using 10,000 gallons of water and 30,000 gallons of water;

(4) a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services; and

(5) any other information that is required by the executive director in the rate change application form.

(b) Notice requirements. The governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail, e-mail, or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 60 days after the date of the final decision on a rate change. The governing body of a municipally owned utility or political subdivision may provide the notice electronically if the municipality or political subdivision has access to a ratepayer's e-mail address. The commissioners court of an affected county that provides water or sewer service shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal within 30 days after the date of the final decision on a rate change. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notice delivery requirements. Notices may be mailed separately, e-mailed, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed, e-mailed, or hand delivered to the customers at least 60 days prior to the effective date of the rate increase.

(d) Notice and statement of intent. The applicant utility shall mail, e-mail, or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed, e-mailed, or delivered to other affected persons or agencies.

(e) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date.

(f) Standby fees. A utility may request in a rate change application that standby fees be approved for property or lots for which the utility has previously entered into an agreement to serve or construction of water or sewer utility facilities has already begun or been completed if the developer owning the property at the time the rate change application is filed is given individual written notice by certified mail of the request and an opportunity to protest.

(g) Emergency rate increase in certain circumstances. After receiving a request, the commission or executive director may authorize an emergency rate increase under Texas Water Code, §5.508 and §13.4133 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for a utility:

(1) for which a person has been appointed under Texas Water Code, §13.4132; or

(2) for which a receiver has been appointed under Texas Water Code, §13.412; and

(3) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application must include the proposed tariff and other information requested by the executive director. The request may be made with a request to change one or more of the utility's other rates.