

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: January 20, 2012

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: L'Oreal W. Stepney P.E., Deputy Director
Office of Water

Docket No.: 2011-1223-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 291, Utility Regulations;
Chapter 293, Water Districts; and
Chapter 297, Water Rights, Substantive
HB 2694 (Sections 4.23, 5.01, 6.04 and Art. 9), HB 3002, SB 1361:
Aquaculture Definition, Water Fee Repealer, Water District Financial
Reporting, and Water Rate Notice
Rule Project No. 2011-039-293-OW

Background and reason(s) for the rulemaking:

In 2011, the 82nd Legislature passed House Bill (HB) 2694, HB 3002, and Senate Bill (SB) 1361.

HB 3002, SB 1361, and HB 2694, §4.23, increase certain exemption thresholds for water districts filing financial reports in lieu of financial audits.

HB 2694, §5.01 adds aquaculture to the definition of agriculture in Texas Water Code (TWC), §11.002(12).

HB 2694, §6.04 repeals TWC, Chapter 13, Subchapter L, Commission Financing, eliminating fees currently collected and deposited to the Water Resource Management Account (WRMA), specifically the fees for rate change applications, certificate of public convenience and necessity (CCN) applications, and CCN sale, transfer, or merger (STM) requests.

HB 2694, §9.01 amends TWC, §13.043(i) to give municipalities and political subdivisions such as districts 60 days, rather than 30 days, to provide individual written notice to ratepayers eligible to appeal a ratemaking decision who reside outside of municipal or district boundaries. This section also allows a municipality or a district to provide notice electronically to the ratepayers if they have access to a ratepayer's e-mail address.

HB 2694, §9.02 amends TWC, §13.187(b) to add that the statement of intent to change rates can be sent by e-mail to affected municipalities and other affected persons.

Re: Docket No. 2011-1223-RUL

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

HB 3002, SB 1361, and HB 2694, §4.23, require a rule change to §293.94 to reflect the increase to certain exemption thresholds from \$100,000 to \$250,000 for water districts filing financial reports in lieu of full audits.

HB 2694, §5.01 adds "Aquaculture," to the definition of "Agriculture" in §297.1, and removes aquaculture from the definition of "Industrial Use," also in §297.1.

HB 2694, §6.04 provides for the repeal of §291.7, eliminating CCN and rate change application filing fees.

HB 2694, §9.01 and §9.02 provides for the amendment to §291.22 to add e-mail as an acceptable method of: allowing a utility to provide notice of a proposed rate change to all affected utility customers; allowing the governing body of a municipality or a political subdivision that provides retail water or sewer service to customers residing outside the boundaries of the municipality or political subdivision to provide individual written notice to each affected ratepayer eligible to appeal a rate change; allowing a utility to deliver notice of a proposed rate change; and allowing a utility to deliver a statement of intent to change rates to the appropriate officer of each affected municipality. HB 2694, §9.01 and §9.02 also add e-mail as an acceptable delivery method in the proof of notice affidavit required as part of a rate change application.

B.) Scope required by federal regulations or state statutes:

The proposed rulemaking is required as a result of HB 2694, §§4.23, 5.01, 6.04, 9.01 and 9.02; HB 3002; and SB 1361.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

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

Effect on the:

A.) Regulated community:

This rulemaking is not expected to have a significant effect on the regulated community.

Re: Docket No. 2011-1223-RUL

B.) Public:

This rulemaking is not expected to have significant effect on the public.

C.) Agency programs:

The repeal of §291.7 is expected to decrease agency revenue in Account 153 - WRMA - by \$30,000 per year. However, the repeal of application fees currently collected from investor-owned utilities for rate change applications, applications for CCNs, and applications for CCN STM approval is not expected to have a significant fiscal impact on the agency.

Stakeholder meetings:

There are no proposed stakeholder meetings associated with this rulemaking.

Potential controversial concerns and legislative interest:

There are no controversial concerns with this rulemaking. HB 2694 was the Texas Commission on Environmental Quality's Sunset bill.

Will this rulemaking affect any current policies or require development of new policies?

Although this rulemaking affects certain aspects of the Office of Water's Water Availability and Water Supply Divisions, this rulemaking would not have a significant effect on current policies or require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the rulemaking does not go forward, the commission's rules will be inconsistent with statute. There are no alternatives to this rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date:	February 8, 2012
Anticipated <i>Texas Register</i> publication date:	February 24, 2012
Public hearing date (if any):	March 20, 2012
Public comment period:	February 24, 2012 through March 26, 2012
Anticipated adoption date:	August 8, 2012

Agency contacts:

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Attachments

HB 2694, §§ 4.23, 5.01, 6.04, and Art. 9
HB 3002
SB 1361

Commissioners
Page 4
January 20, 2012

Re: Docket No. 2011-1223-RUL

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