

**SUBCHAPTER A: GENERAL PROVISIONS**  
**§§291.1 - 291.9, 291.11, 291.12, 291.14, 291.15**  
**Effective August 30, 2012**

**§291.1. Purpose and Scope of this Chapter.**

This chapter is intended to establish a comprehensive regulatory system under Texas Water Code Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

Adopted January 13, 1999

Effective February 4, 1999

**§291.2. Severability Clause.**

The adoption of this chapter will in no way preclude the commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, this chapter will not relieve in any way a retail public utility or customer from any of its duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. The commission may make exceptions to this chapter for good cause.

Adopted September 1990

Effective October 9, 1990

**§291.3. Definitions of Terms.**

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

(1) Acquisition adjustment--

(A) The difference between:

(i) the lesser of the purchase price paid by an acquiring utility or the current depreciated replacement cost of the plant, property, and equipment comparable in size, quantity, and quality to that being acquired, excluding customer contributed property; and

(ii) the original cost of the plant, property, and equipment being acquired, excluding customer contributed property, less accumulated depreciation.

(B) A positive acquisition adjustment results when subparagraph (A)(i) of this paragraph is greater than subparagraph (A)(ii) of this paragraph.

(C) A negative acquisition adjustment results when subparagraph (A)(ii) of this paragraph is greater than subparagraph (A)(i) of this paragraph.

(2) Affected county--A county to which Local Government Code, Chapter 232, Subchapter B, applies.

(3) Affected person--Any landowner within an area for which an application for a new or amended certificate of public convenience and necessity is filed; any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(4) Affiliated interest or affiliate--

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(5) Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Workers' Compensation Commission, and institutions for higher education) which makes rules or determines contested cases.

(6) Allocations--For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

(7) Base rate--The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service, excluding stand-by fees, which does not vary due to changes in utility service consumption patterns.

(8) Billing period--The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

(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) 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) Code--The Texas Water Code.

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

(16) 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) 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) 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) Landowner--An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(20) License--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(21) 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 in accordance with its authority under the Texas Water Code.

(22) Main--A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(23) 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 that 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.

(24) 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.

(25) Membership fee--A fee assessed each water supply or sewer service corporation service applicant that 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 under 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.

(26) Municipality--A city, existing, created, or organized under the general, home rule, or special laws of this state.

(27) 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.

(28) Nonfunctioning system--A retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §291.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §291.143 of this title (relating to Operation of a Utility by a Temporary Manager).

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

(30) 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.

(31) 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.

(32) Potable water--Water that is used for or intended to be used for human consumption or household use.

(33) Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(34) Public utility--The definition of public utility is that definition given to water and sewer utility in this subchapter.

(35) Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

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

(37) 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 Texas Water Code, §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(38) 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.

(39) 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.

(40) 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.

(41) 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.

(42) 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 under the provisions of the Safe Drinking Water Act and as defined in Texas Water Code, §15.602.

(43) Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under 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.

(44) 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.

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

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

(47) 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.

(48) **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.

(49) **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.

(50) **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.

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

(52) **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.

(53) **Water use restrictions**--Restrictions implemented to reduce the amount of water that may be consumed by customers of the system due to emergency conditions or drought.

(54) Water supply or sewer service corporation--Any nonprofit corporation organized and operating under 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.

(55) 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.

Adopted January 28, 2009

Effective February 19, 2009

#### **§291.4. Cooperative Corporation Rebates.**

Nothing in this chapter prevents a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Adopted September 16, 1990

Effective October 9, 1990

#### **§291.5. Submission of Documents.**

All documents to be considered by the executive director under this chapter shall be submitted to the Utilities and Districts Section, Water Supply Division, Mail Code 153, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Unless otherwise provided in this chapter, an original and four copies shall be submitted.

Adopted December 14, 2005

Effective January 5, 2006

**§291.6. Signatories to Applications.**

(a) All applications shall be signed by a corporate officer, partner, proprietor, their attorney-at-law, or the principal executive officer or ranking elected official of a governmental entity, or other person having representative capacity to transact business on behalf of the retail public utility. If the signer is not a corporate officer, partner, proprietor, their attorney-at-law, or principal executive officer or ranking elected official of a governmental entity, the application must contain written proof that such signature is duly authorized.

(b) Applications shall contain a certification stating that the person signing has personally examined and is familiar with the information submitted in the application and that the information is true, accurate, and complete.

Adopted December 6, 1995

Effective January 10, 1996

**§291.8. Administrative Completeness.**

(a) Notice of rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and sale, assignment of, or lease of a certificate; and applications for certificates of convenience and necessity shall be reviewed by the staff for administrative completeness within ten working days of receipt of the application. A notice or an application for rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and applications for certificates of convenience and necessity are not considered filed until received by the commission, accompanied by the filing fee, if any, required by statute or commission rules, and a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the executive director shall notify the applicant by mail of that determination. If the executive director determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected.

(b) In cases involving proposed rate changes, the effective date of the proposed change must be at least 60 days after:

(1) the date that an application and notice are received by the commission, provided the application and notice are determined to be administratively complete as filed;

(2) the date that the application and notice are determined to be administratively complete for previously rejected applications and notices; or

(3) the date that the notice is delivered to each ratepayer, whichever is later.

(c) In cases involving a proposed sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an application is received by the commission and public notice is provided, unless notice is waived for good cause shown.

Adopted September 6, 2006

Effective September 28, 2006

**§291.9. Agreements To Be in Writing.**

No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding before the commission shall be enforced, unless it shall have been reduced to writing and signed by the parties or representatives authorized by these sections to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

Adopted September 16, 1990

Effective October 9, 1990

**§291.11. Informal Proceedings.**

(a) Any hearing involving a retail public water or sewer utility as defined in §291.3 of this title (relating to Definitions of Terms) may be conducted as an informal proceeding when, in the judgment of the presiding officer, the conduct of a hearing under informal procedures will:

(1) result in savings of time or costs to all parties;

(2) lead to a negotiated or agreed settlement of facts or issues in controversy; and

(3) not prejudice the rights of any party.

(b) If during an informal proceeding, all parties reach a negotiated or agreed settlement which in the judgment of the presiding officer settles all facts or issues in controversy, the proceeding shall not be a contested case under the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and no proposal for decision nor detailed findings of fact and conclusions of law are required.

(c) If the parties do not reach a negotiated or agreed settlement of all facts and issues in controversy, the presiding officer may adjourn the informal proceeding and reconvene it as a contested case hearing under standard hearing procedures as otherwise provided for in this chapter.

Adopted September 16, 1990

Effective October 9, 1990

**§291.12. Burden of Proof.**

In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

Adopted September 16, 1990

Effective October 9, 1990

**§291.14. Emergency Orders.**

(a) The commission may issue emergency orders, with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; and/or

(3) to establish reasonable compensation for the temporary service required under subsection (a)(2) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(b) The commission or executive director may also issue orders under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions):

(1) to appoint a temporary manager under Texas Water Code, §5.507 and §13.4132; and/or

(2) to approve an emergency rate increase under Texas Water Code, §5.508 and §13.4133.

(c) If an order is issued under this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

Adopted November 18, 1998

Effective December 10, 1998

**§291.15. Notice of Wholesale Water Supply Contract.**

(a) A district or authority created under Texas Constitution, §52, Article III, or §59, Article XVI, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract.

(b) The submission must include:

- (1) the amount of water being supplied;
- (2) term of the contract;
- (3) consideration being given for the water;
- (4) purpose of use;
- (5) location of use;
- (6) source of supply;

(7) point of delivery;

(8) limitations on the reuse of water;

(9) a disclosure of any affiliated interest between the parties to the contract; and

(10) any other condition or agreement relating to the contract.

(c) The certified copy of the contract should be submitted to the Water Supply Division of the commission.

Adopted September 6, 2006

Effective September 28, 2006