

APPEALING A RATE CHANGE DECISION

MADE BY A BOARD OF DIRECTORS, A CITY COUNCIL, OR COUNTY COMMISSIONERS

If your water or sewer utility¹ changes its rates and you wish to contest the decision, the Texas Commission on Environmental Quality (TCEQ) cannot review the retail rates charged by some types of utilities **unless you file an appeal in the form of a petition.** [Texas Water Code, Section 13.043(b)] Parties to a rate proceeding before the governing body of a municipality may have different appeal rights under Texas Water Code, Section 13.043(a).

The petition must be signed by 10 percent of the affected ratepayers (customers) eligible to appeal. (If there are more than 100,000 eligible ratepayers, the petition is valid if at least 10,000 affected ratepayers sign it.)

You must send the petition to the TCEQ within a specific period of time, as discussed later in this publication.

Who Can Appeal a Rate Change Decision?

You and your fellow ratepayers may file an appeal if you are served by one of the types of utilities listed below. Also shown is who has original authority to approve or “set” the rates.

Type of Utility	Who Sets the Rates?
Water Supply Corporation (WSC)	Board of Directors of the WSC
Water District or River Authority	Board of Directors of the District or Authority
Private- or Investor-Owned Utility Operating Inside a City	City Council
City-Owned Utility Serving Customers Outside the City ²	City Council
County within 50 Miles of the U.S.-Mexico Border	County Commissioners

¹The term “utility,” as used in this publication, corresponds with “retail public utility” as defined by the Texas Water Code, §13.002(19).

²Only ratepayers living outside the city are eligible to appeal. The TCEQ does not have jurisdiction to review the rates charged by a city to in-city, retail customers.

Who Can Sign the Petition?

Each person receiving a separate bill is considered a “ratepayer.” However, you can only be considered a single ratepayer regardless of the number of bills you receive. A petition can be signed by either you as the ratepayer, or by your spouse.

What Should the Petition Say?

Each signature page of the petition should include the following:

1. A statement that the petition is an appeal of the decision that set the new rates. In the case of an investor-owned utility operating within a city, the petition should state that it appeals the decision that the city made on a rate change requested by the utility.

2. A short description of the rate change, noting both the old and the new rates.
3. The effective date of the rate change and the date the ratepayers were notified of the rate change.
4. A statement about why you and your fellow ratepayers are requesting that the TCEQ review the decision setting the rates.
5. The name and address of an individual or organization who is willing to act as the ratepayers’ representative.
6. The mailing address and phone number of the utility. In the case of an investor-owned utility operating within a city, the petition should also include the name, mailing address, and phone number of the city.

Each ratepayer signing the petition should write legibly and provide the following information:

1. Name.
2. Telephone number.
3. Street or rural address where the utility service is received (a post office box number is not sufficient).
4. Mailing address (if it differs from the address where service is received).

A sample petition appears on the back of this information sheet. This sample should only be used as a guideline. **The wording underlined on the sample should be revised as needed for your petition.** All of the information noted above should be included in your petition.

How is the Petition Filed?

Send a copy of the petition to the utility, and send the original and four copies to the TCEQ at:

Water Supply Division, MC-153
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
512-239-4691

No filing fee is required. For most utilities, you must submit the petition within 90 days after the effective date of the rate change.

However, if the petition is appealing the rates approved by a city or county for a utility under its jurisdiction inside the corporate limits of the municipality or a utility owned by an affected county, the petition should be submitted within 90 days of the date on which the city or county made its final decision regarding those rates. A copy of the petition should be sent to the city or county and to the utility at the same time it is filed with the TCEQ. As noted above, the original and four copies of the petition should be sent to the TCEQ.

What Happens Next?

The TCEQ has 10 working days to review the petition to see if it is complete. If additional information is required, the ratepayers' representative will be contacted. The petition is then either accepted for filing or, if it is incomplete, returned. The ratepayers' representative will be notified if the petition was accepted.

If the petition is accepted for filing, a TCEQ engineer, accountant, and attorney are assigned and the petition is forwarded to the State Office of Administrative Hearings so that a contested case hearing can be scheduled.

As a first step in the contested case hearing process, known as the preliminary hearing, an administrative law judge will name parties to the case and give the parties an opportunity to reach a settlement on the appeal.

If the parties cannot agree to a settlement, the administrative law judge will set a procedural schedule. At the very least, this schedule will include an opportunity for parties to obtain information from each other through a procedure called discovery, and the date or dates for the next phase, called the evidentiary hearing.³

If you are a party to the contested case hearing, you are required to respond to requests for information during the discovery period. During the evidentiary hearing, you may call your own witnesses and cross-examine other parties' witnesses, but you do not have to do so.

When the hearing process is completed, the administrative law judge prepares a "Proposal for Decision" to submit to the three TCEQ commissioners. The commissioners make the final decision on the ratepayers' appeal.

Note that the rates you are appealing can be put into effect even though you have filed an appeal or the appeal is pending. If the commissioners set lower rates, refunds may be ordered.

³The evidentiary hearing is a legal proceeding subject to the Texas Rules of Civil Procedure, the Texas Rules of Evidence, and the TCEQ Procedural Rules.

Sample Petition

(The wording underlined should be revised as needed for your petition.)

Petition to Appeal Rates Established by the Board of Directors

XYZ Water Supply Corporation
1234 Main Street
Anytown, Texas 99999

The undersigned ratepayers of XYZ Water Supply Corporation hereby appeal the decision of the board of directors of the Corporation affecting the rates charged to them by XYZ Water Supply Corporation. The rate change was effective on September 1, 2000, and affected the rates charged for water utility service, tap fees, late charges, and reconnect fees. On September 5, 2000, the ratepayers were notified by the service provider of this rate increase. The undersigned request that the Texas Commission on Environmental Quality review the decision to determine if the rates established are just and reasonable. The old rates charged by the service provider are \$20.00 minimum bill plus \$1.25 for each additional 1,000 gallons, and the new rates are \$25.00 minimum bill plus \$2.00 for each addition 1,000 gallons. The undersigned designate the XYZ Property Owners Association as their representative on this matter. Correspondence to the ratepayers' representative may be directed to Ms. Jane Doe, President, XYZ Property Owners Association, 1235 Main Street, Anytown, Texas 99999; 512-555-4321.

Name (Please Print and Signature)	Service Address (AND Mailing Address if Different from Service Address)	Phone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Who Can Answer Any Other Questions I Have?

For additional information, please contact:

Water Supply Division, MC-153
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
512-239-4691



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