

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** December 12, 2018

**DATE OF REQUEST:** November 20, 2018

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Kris Hogan, (512) 239-6812

**CAPTION: Docket No. 2017-0065-RUL.** Consideration of the adoption of amended and the repeal of sections in 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

The rulemaking would implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013, Regular Session, and HB 294 and SB 1842, 85th Texas Legislature, 2017, Regular Session, to amend sections to reflect changes to Texas Water Code, Chapters 5 and 11 - 13. This rulemaking would amend and repeal obsolete Texas Commission on Environmental Quality's rules relating to the economic regulation of water and sewer utilities as directed by the legislature; and amend Section 291.76 to facilitate the ability to convert the Regulatory Assessment Fee to an on-line reporting application. The proposal was published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4634). (Brian Dickey, Dinniah Tadema) (Rule Project No. 2013-057-291-OW)

L'Oreal W. Stepney, P.E.  

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Deputy Director

Cari-Michel La Caille  

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Division Director

Kristina M. Hogan  

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Agenda Coordinator

Copy to CCC Secretary? NO YES X

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 20, 2018

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

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

**Docket No.:** 2017-0065-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 35, Emergency and Temporary Orders and Permits; Temporary  
Suspension or Amendment of Permit Conditions  
Chapter 37, Financial Assurance  
Chapter 50, Action on Applications and Other Authorizations  
Chapter 55, Requests for Reconsideration and Contested Case Hearings;  
Public Comment  
Chapter 80, Contested Case Hearings  
Chapter 281, Applications Processing  
Chapter 290, Public Drinking Water  
Chapter 291, Utility Regulations  
Chapter 293, Water Districts  
HB 1600 and SB 567: PUC Transfer (83rd Leg.); HB 294 and SB 1842 (85th  
Leg.); and Staff-Initiated Regulatory Assessment Fee Revisions  
Rule Project No. 2013-057-291-OW

**Background and reason(s) for the rulemaking:**

The adopted rulemaking would implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013; and HB 294 and SB 1842, 85th Texas Legislature, 2017. HB 1600 by Representative Byron Cook and SB 567 by Senators Kirk Watson and Robert Nichols, related to the transfer of the utilities and rates program to the Public Utility Commission of Texas (PUC). HB 294, by Representative Armando Walle, added criteria to Texas Water Code (TWC), §13.412(a) that allows the Texas Commission on Environmental Quality (TCEQ, agency, or commission) to request that the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or Texas Health and Safety Code (THSC), Chapter 341. SB 1842 amended THSC, §341.035(d) to include a Class A utility as defined by TWC, §13.258 among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a certificate of convenience and necessity (CCN) under TWC, §13.258 for the area in which the construction of the public drinking water supply will operate.

The adopted rulemaking would amend and repeal obsolete TCEQ rules relating to the economic regulation of water and sewer utilities as directed by the legislature.

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**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

The adopted rulemaking would amend and repeal sections in 30 TAC Chapters 35, 37, 50, 55, 80, 281, 290, 291, and 293 to reflect changes to TWC, Chapters 5 and 11 - 13. Additionally, the adopted rulemaking would amend §291.76 (Regulatory Assessment) to facilitate the ability to convert the Regulatory Assessment Fee (RAF) to an on-line reporting application.

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

The adopted rulemaking would implement HB 1600 and SB 567 (83rd Texas Legislature, 2013) and HB 294 and SB 1842 (85th Texas Legislature, 2017). No federal statute or rule directly applies.

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

TCEQ staff recommended amending §291.76 to convert the RAF from a self-report, self-pay fee to a billed fee. This would allow for an efficient, on-line reporting, invoicing, and payment structure within the confines of the commission's existing SUNSS, Basis2, and ePay applications. This fee conversion would also allow for the collection of delinquent fees, late fees, and penalty fees as directed by 30 TAC Chapter 12, Payment of Fees.

TWC, §5.701(n)(5) tasks the commission with collection of the RAF and establishing associated payment and collections procedures. The amendment to §291.76(d), (e), (h), (i), and (k) would allow the collections and penalties process to fit into the existing commission invoicing and collection structure, based on Chapter 12. The existing rule does not align with the functionality of existing commission resources including Basis2, the SUNSS portal, and ePay applications.

**§291.76(d)**

The amendment to §291.76(d) would provide clarification regarding the term "amount payable" to ensure regulated utilities understand the amount of RAF (i.e., "regulatory assessment amount payable") payable to the commission versus the bill amounts payable to the utility from their customers for water and sewer invoices. This has been a common area of confusion for the regulated community. The RAF rule does not apply to ancillary fees (e.g., late fees, tap fees, reclaimed water, etc.). The current language may result in improper calculation, reporting, and remittance of fees.

**§291.76(e)**

The amendment to §291.76(e) would clarify that amounts actually received within the calendar year are subject to the RAF. The current language refers to "payment period" which has caused some confusion for the regulated community. This confusion has led utilities to look for payments issued for service during the calendar year, billed in arrears, and has delayed reporting or led to incorrect reporting.

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**§291.76(h)**

The amendment to §291.76(h) would move the clause "retail water and sewer" before the words "charges" and "assessment collection" to specify that "retail water and sewer" apply to both "charges" and the "assessment collection."

**§291.76(i)**

The amendment to §291.76(i) would specify the due date for reporting, data item(s) to be reported, and means by which to report. Section 291.76(i)(1) - (3) would provide documented invoicing protocols and ensure that reporting remains a requirement, separate from invoicing. This amendment would convert the RAF from a self-report, self-pay, paper process to an electronic reporting, invoiced process within the confines of existing commission applications and Chapter 12.

**§291.76(k)**

The amendment to §291.76(k) would specify the payment resources available through the commission and general penalty, interest, and collections information.

**Statutory authority:**

The rulemaking would be adopted under TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

**Effect on the:**

**A.) Regulated community:**

**HB 1600 and SB 567**

Beginning September 1, 2014, the regulated community began working with the PUC involving the economic regulation of water and sewer utilities. Water and wastewater utilities that are required to remit RAFs continue to remit RAFs to the TCEQ.

**HB 294**

Beginning September 1, 2017, a receiver, or temporary manager, can be appointed to a water and/or wastewater utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or THSC, Chapter 341.

**SB 1842**

Beginning September 1, 2017, a Class A utility, as defined by TWC, §13.002, is no longer required to submit a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply will operate.

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**Staff recommended amendments**

The utilities to which the RAF is applicable would transition their reporting from a paper coupon with manual fee calculation and remittance to an on-line portal which auto calculates and offers ePay or invoice options. The automatic calculation of the applicable fee would eliminate incorrect fee remittance due to human mathematical error.

**B.) Public:**

**HB 1600 and SB 567**

There are no anticipated effects on the public as the economic regulation of water and sewer utilities was transferred to the PUC on September 1, 2014.

**HB 294**

The public may be impacted by an increase in the water and or sewer service rates to fund any required system upgrades, temporary manager fees, or receiver fees; however, those costs are unknown.

**SB 1842**

There are no anticipated effects on the public as a result of Class A utilities no longer being required to submit a business plan for a public drinking water supply system with the TCEQ.

**Staff recommended amendments**

The public receiving services from utilities should see no impact. The fee the public is charged remains unchanged.

**C.) Agency programs:**

The staff recommended amendments to §291.76 would convert the RAF from a self-report, self-pay fee to an electronic self-report, billed fee within the commission's existing business processes and resources. This would improve efficiency of fee administration through utilization of existing commission technological resources and leveraging them to accomplish additional reporting and remittance.

The automatic calculation of the applicable fee would eliminate fee remittance errors. The improved accuracy of fees calculation would improve customer service and interactions with the regulated community, reduce the resources diverted to refunding of overpayment or demand of underpayment, and allow for a strong audit trail of transaction records.

The electronic reporting function would be more efficient concerning data entry, fee calculation and remittance, invoicing, and financial administration processes. The inclusion of the fee in the commission's existing invoice process would ensure payment coupons are compatible with TCEQ's Financial Administration Division's physical equipment and include the accounts in the existing fees, penalties, and collections procedures.

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**Stakeholder meetings:**

There were no stakeholder meetings held; however, a rule public hearing was offered during the comment period.

**Public comment:**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission received comments from Bickerstaff Heath Delgado Acosta LLP (Bickerstaff) regarding Chapter 291. Specifically, Bickerstaff:

- recommended that the last sentence of §291.130(d) be deleted or revised, because it was unclear what the commission considers to be "within the commission's jurisdiction" or outside of the commission's jurisdiction as it relates to a petition filed under TWC, §11.041;
- commented that TWC, §11.041(b) requires the commission to hold a hearing, and on completion of that hearing, "render a written decision" regarding the complaint. Bickerstaff commented that all of the items listed in TWC, §11.041 are within the commission's jurisdiction to decide, and the commission is obligated to consider and render a decision on each of the elements, even if the executive director does not provide testimony or evidence on each element;
- commented that what is outside the commission's authority or jurisdiction is the ability to set a rate for the water should the commission determine the petitioner is entitled to the water, is willing to pay a just and reasonable rate, the water supplier has available water not contracted to others, and the water supplier either refused or failed to supply the water, or the price or rental demanded by the water supplier is not reasonable and just or is discriminatory. The PUC has the jurisdiction to fix a reasonable rate or price for the water as provided by TWC, §12.013, and although PUC may participate under TWC, §11.041, it does not limit TCEQ's jurisdiction over the four elements listed in TWC, §11.041;and
- recommended that alternatively, the last sentence of §291.130(d) should be clarified to state that the executive director will not provide evidence or testimony to fix the rate for the water, which is reserved for the PUC.

**Significant changes from proposal:**

No significant changes were made from proposal, however, in response to the comment from Bickerstaff, language was added to §291.130(d) to clarify which elements in TWC, §11.041(a) the commission has jurisdiction over.

**Potential controversial concerns and legislative interest:**

There are no controversial issues associated with the implementation of HB 1600 and SB 567. The adopted rulemaking would implement HB 1600 and SB 567 by amending and repealing obsolete TCEQ rules relating to the economic regulation of water and sewer utilities.

There are no anticipated controversial concerns with HB 294, SB 1842, or the staff recommended rule amendments. Representatives Lyle Larson, Eddie Lucio III, and Armando Walle have all shown interest in HB 294.

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

No.

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

If this rulemaking is not adopted, Chapters 35, 37, 50, 55, 80, 281, 290, 291, and 293 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** July 13, 2018

**Anticipated *Texas Register* adoption publication date:** December 28, 2018

**Anticipated effective date:** January 3, 2019

**Six-month *Texas Register* filing deadline:** January 14, 2019

**Agency contacts:**

Brian Dickey, Rule Project Manager, Water Supply Division, (512) 239-0963

Dinniah Tadema, Staff Attorney, (512) 239-0617

Kris Hogan, Texas Register Rule/Agenda Coordinator, (512) 239-6812

**Attachments:**

HB 1600 (83rd Texas Legislature, 2013)

SB 567 (83rd Texas Legislature, 2013)

HB 294 (85th Texas Legislature, 2017)

SB 1842 (85th Texas Legislature, 2017)

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Martha Landwehr  
Office of General Counsel  
Brian Dickey  
Kris Hogan

AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, to the rates for water service, and to the functions of the Office of Public Utility Counsel; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE PUBLIC UTILITY COMMISSION OF TEXAS

SECTION 1.01. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2023 [~~2013~~].

SECTION 1.02. Section 12.053, Utilities Code, is amended to read as follows:

Sec. 12.053. MEMBERSHIP QUALIFICATIONS. (a) To be eligible for appointment, a commissioner must ~~[be]~~:

- (1) be a qualified voter;
- (2) be a citizen of the United States; ~~[and]~~
- (3) be a competent and experienced administrator;



1           (4) be well informed and qualified in the field of  
2 public utilities and utility regulation; and

3           (5) have at least five years of experience in the  
4 administration of business or government or as a practicing  
5 attorney or certified public accountant [~~a representative of the~~  
6 ~~general public~~].

7           (b) A person is not eligible for appointment as a  
8 commissioner if the person:

9           (1) at any time during the two years preceding  
10 appointment:

11           (A) personally served as an officer, director,  
12 owner, employee, partner, or legal representative of a public  
13 utility regulated by the commission or of an[~~r~~] affiliate[~~r~~] or  
14 direct competitor of a public utility regulated by the commission;  
15 or

16           (B) owned or controlled, directly or indirectly,  
17 more than a 10 percent interest [~~stocks or bonds of any class with a~~  
18 ~~value of \$10,000 or more~~] in a public utility regulated by the  
19 commission or in an[~~r~~] affiliate[~~r~~] or direct competitor of a  
20 public utility regulated by the commission; or

21           (2) is not qualified to serve under Section 12.151,  
22 12.152, or 12.153.

23           SECTION 1.03. Section 12.152(a), Utilities Code, is amended  
24 to read as follows:

25           (a) A person is not eligible for appointment as a  
26 commissioner or executive director of the commission if:

27           (1) the person serves on the board of directors of a

1 company that supplies fuel, utility-related services, or  
2 utility-related products to regulated or unregulated electric or  
3 telecommunications utilities; or

4 (2) the person or the person's spouse:

5 (A) is employed by or participates in the  
6 management of a business entity or other organization that is  
7 regulated by or receives funds from the commission;

8 (B) directly or indirectly owns or controls more  
9 than a 10 percent interest [~~or a pecuniary interest with a value~~  
10 ~~exceeding \$10,000~~] in:

11 (i) a business entity or other organization  
12 that is regulated by or receives funds from the commission; or

13 (ii) a utility competitor, utility  
14 supplier, or other entity affected by a commission decision in a  
15 manner other than by the setting of rates for that class of  
16 customer;

17 (C) uses or receives a substantial amount of  
18 tangible goods, services, or funds from the commission, other than  
19 compensation or reimbursement authorized by law for commission  
20 membership, attendance, or expenses; or

21 (D) notwithstanding Paragraph (B), has an  
22 interest in a mutual fund or retirement fund in which more than 10  
23 percent of the fund's holdings at the time of appointment is in a  
24 single utility, utility competitor, or utility supplier in this  
25 state and the person does not disclose this information to the  
26 governor, senate, commission, or other entity, as appropriate.

27 SECTION 1.04. Section 12.154(a), Utilities Code, is amended

1 to read as follows:

2 (a) During the period of service with the commission, a  
3 commissioner or commission employee may not:

4 (1) have a pecuniary interest, including an interest  
5 as an officer, director, partner, owner, employee, attorney, or  
6 consultant, in:

7 (A) a public utility or affiliate; or

8 (B) a person a significant portion of whose  
9 business consists of furnishing goods or services to public  
10 utilities or affiliates; or

11 ~~(2) [directly or indirectly own or control securities~~  
12 ~~in a public utility, affiliate, or direct competitor of a public~~  
13 ~~utility; or~~

14 ~~(3)~~ accept a gift, gratuity, or entertainment from:

15 (A) a public utility, affiliate, or direct  
16 competitor of a public utility;

17 (B) a person a significant portion of whose  
18 business consists of furnishing goods or services to public  
19 utilities, affiliates, or direct competitors of public utilities;  
20 or

21 (C) an agent, representative, attorney,  
22 employee, officer, owner, director, or partner of a person  
23 described by Paragraph (A) or (B).

24 SECTION 1.05. Section 12.155, Utilities Code, is amended by  
25 adding Subsection (d) to read as follows:

26 (d) A commissioner may not be employed by an independent  
27 organization certified under Section 39.151. The prohibition under

1 this subsection applies until the second anniversary of the date  
2 the commissioner ceases to serve as a commissioner.

3 SECTION 1.06. Chapter 15, Utilities Code, is amended by  
4 adding Subchapter D to read as follows:

5 SUBCHAPTER D. CEASE AND DESIST ORDERS

6 Sec. 15.101. APPLICATION OF SUBCHAPTER. This subchapter  
7 applies only to a person to whom Subtitle B applies.

8 Sec. 15.102. RULES. The commission shall adopt rules to  
9 implement this subchapter.

10 Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission  
11 may proceed solely under this subchapter or under this subchapter  
12 in conjunction with other applicable law.

13 Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) The  
14 commission on its own motion may issue a cease and desist order:

15 (1) after providing notice and an opportunity for a  
16 hearing if practicable or without notice or opportunity for a  
17 hearing; and

18 (2) if the commission determines that the conduct of a  
19 person:

20 (A) poses a threat to continuous and adequate  
21 electric service;

22 (B) is hazardous;

23 (C) creates an immediate danger to the public  
24 safety; or

25 (D) is causing or can be reasonably expected to  
26 cause an immediate injury to a customer of electric services and  
27 that the injury is incapable of being repaired or rectified by

1 monetary compensation.

2 (b) The commission by order or rule may delegate to the  
3 executive director the authority to issue cease and desist orders  
4 under this subchapter.

5 Sec. 15.105. NOTICE. (a) Notice of a proposed order must  
6 be given not later than the 10th day before the date set for a  
7 hearing if the commission requires notice and hearing before  
8 issuing the order.

9 (b) On issuance of an order under Section 15.104 with or  
10 without a hearing, the commission shall serve on the person  
11 affected by the order an order that:

- 12 (1) contains a statement of the charges; and  
13 (2) requires the person immediately to cease and  
14 desist from the acts, methods, or practices stated in the order.

15 (c) The commission shall serve the order by registered or  
16 certified mail, return receipt requested, to the person's last  
17 known address.

18 Sec. 15.106. HEARING. (a) Chapter 2001, Government Code,  
19 does not apply to the issuance of a cease and desist order under  
20 this subchapter without a hearing. A hearing conducted before or  
21 after issuance of an order under this subchapter is a contested case  
22 under Chapter 2001, Government Code.

23 (b) If the commission issues an order under this subchapter  
24 without a hearing, the person affected by the order may request a  
25 hearing to affirm, modify, or set aside the order. A request must  
26 be submitted not later than the 30th day after the date the person  
27 receives the order. The commission shall set the hearing for a date

1 that is:

2 (1) not later than the 10th day after the date the  
3 commission receives a request for a hearing; or

4 (2) agreed to by the person and the commission.

5 (c) At or following the hearing, the commission shall wholly  
6 or partly affirm, modify, or set aside the order. If the person  
7 affected by an order does not request a hearing in the manner  
8 provided by Subsection (b) and the commission does not hold a  
9 hearing on the order, the order is affirmed without further action  
10 by the commission.

11 (d) The commission may hold a hearing under this subchapter  
12 or may authorize the State Office of Administrative Hearings to  
13 hold the hearing.

14 Sec. 15.107. EFFECT OF ORDER PENDING HEARING. Pending a  
15 hearing under this subchapter, an order continues in effect unless  
16 the order is stayed by the commission.

17 SECTION 1.07. Section 39.107, Utilities Code, is amended by  
18 adding Subsection (k) to read as follows:

19 (k) The commission by rule shall prohibit an electric  
20 utility or transmission and distribution utility from selling,  
21 sharing, or disclosing information generated, provided, or  
22 otherwise collected from an advanced metering system or meter  
23 information network, including information used to calculate  
24 charges for service, historical load data, and any other customer  
25 information. The commission shall allow an electric utility or  
26 transmission and distribution utility to share information with an  
27 affiliated corporation, or other third-party entity, if the

1 information is to be used only for the purpose of providing electric  
2 utility service to the customer or other customer-approved  
3 services.

4 SECTION 1.08. Section 39.151, Utilities Code, is amended by  
5 amending Subsections (d-1) and (e) and adding Subsections (d-2),  
6 (d-3), (d-4), and (e-1) to read as follows:

7 (d-1) The commission shall require an independent  
8 organization certified by the commission under this section to  
9 submit to the commission the organization's entire proposed annual  
10 budget. The commission shall review the proposed budgets either  
11 annually or biennially and may approve, disapprove, or modify any  
12 item included in a proposed budget. The commission by rule shall  
13 establish the type of information or documents needed to  
14 effectively evaluate the proposed budget and reasonable dates for  
15 the submission of that information or those documents. The  
16 commission shall establish a procedure to provide public notice of  
17 and public participation in the budget review process.

18 (d-2) Except as otherwise agreed to by the commission and an  
19 independent organization certified by the commission under this  
20 section, the organization must submit to the commission for review  
21 and approval proposals for obtaining debt financing or for  
22 refinancing existing debt. The commission may approve, disapprove,  
23 or modify a proposal.

24 (d-3) An independent organization certified by the  
25 commission under this section shall develop proposed performance  
26 measures to track the organization's operations. The independent  
27 organization must submit the proposed performance measures to the

1 commission for review and approval. The commission shall review  
2 the organization's performance as part of the budget review process  
3 under Subsection (d-1). The commission shall prepare a report at  
4 the time the commission approves the organization's budget  
5 detailing the organization's performance and submit the report to  
6 the lieutenant governor, the speaker of the house of  
7 representatives, and each house and senate standing committee that  
8 has jurisdiction over electric utility issues.

9 (d-4) The commission may:

10 (1) require an independent organization to provide  
11 reports and information relating to the independent organization's  
12 performance of the functions prescribed by this section and  
13 relating to the organization's revenues, expenses, and other  
14 financial matters;

15 (2) prescribe a system of accounts for an independent  
16 organization;

17 (3) conduct audits of an independent organization's  
18 performance of the functions prescribed by this section or relating  
19 to its revenues, expenses, and other financial matters and may  
20 require an independent organization to conduct such an audit;

21 (4) inspect an independent organization's facilities,  
22 records, and accounts during reasonable hours and after reasonable  
23 notice to the independent organization;

24 (5) assess administrative penalties against an  
25 independent organization that violates this title or a rule or  
26 order adopted by the commission and, at the request of the  
27 commission, the attorney general may apply for a court order to



1 require an independent organization to comply with commission rules  
2 and orders in the manner provided by Chapter 15; and

3 (6) resolve disputes between an affected person and an  
4 independent organization and adopt procedures for the efficient  
5 resolution of such disputes.

6 (e) After approving the budget of an independent  
7 organization under Subsection (d-1), the ~~[The]~~ commission shall  
8 ~~[may]~~ authorize the ~~[an independent]~~ organization ~~[that is~~  
9 ~~certified under this section]~~ to charge ~~[a reasonable and~~  
10 ~~competitively neutral rate]~~ to wholesale buyers and sellers a  
11 system administration fee, within a range determined by the  
12 commission, that is reasonable and competitively neutral to fund  
13 ~~[to cover]~~ the independent organization's approved budget ~~[costs]~~.  
14 The commission shall investigate the organization's cost  
15 efficiencies, salaries and benefits, and use of debt financing and  
16 may require the organization to provide any information needed to  
17 effectively evaluate ~~[the organization's budget and]~~ the  
18 reasonableness and neutrality of the fee ~~[a rate or proposed rate]~~  
19 or to evaluate the effectiveness or efficiency of the organization.  
20 The commission shall work with the organization to establish the  
21 detail of information, both current and historical, and the time  
22 frames the commission needs to effectively evaluate the fee. The  
23 commission shall require the organization to closely match actual  
24 revenues generated by the fee and other sources of revenue with  
25 revenue necessary to fund the budget, taking into account the  
26 effect of a fee change on market participants and consumers, to  
27 ensure that the budget year does not end with surplus or

1 insufficient funds. The commission shall require the organization  
2 to submit to the commission, on a schedule determined by the  
3 commission, reports that compare actual expenditures with budgeted  
4 expenditures [a rate or a rate request].

5 (e-1) The review and approval of a proposed budget under  
6 Subsection (d-1) or a proceeding to authorize and set the range for  
7 the amount of a fee under Subsection (e) is not a contested case for  
8 purposes of Chapter 2001, Government Code.

9 SECTION 1.09. Section 39.1515(c), Utilities Code, is  
10 amended to read as follows:

11 (c) The independent organization shall use money from the  
12 fee [rate] authorized by Section 39.151(e) to pay for the market  
13 monitor's activities.

14 SECTION 1.10. Section 39.903(d), Utilities Code, is amended  
15 to read as follows:

16 (d) The commission shall annually review and approve system  
17 benefit fund accounts, projected revenue requirements, and  
18 proposed nonbypassable fees. ~~[The commission shall report to the~~  
19 ~~electric utility restructuring legislative oversight committee if~~  
20 ~~the system benefit fund fee is insufficient to fund the purposes set~~  
21 ~~forth in Subsection (e) to the extent required by this section.]~~

22 SECTION 1.11. Subchapter C, Chapter 52, Utilities Code, is  
23 amended by adding Section 52.1035 to read as follows:

24 Sec. 52.1035. RENEWAL OF CERTAIN CERTIFICATES. (a) The  
25 commission by rule shall require each holder of a certificate of  
26 operating authority and holder of a service provider certificate of  
27 operating authority to file with the commission on a one-time or

1 regular basis:

2 (1) the certificate holder's name;

3 (2) the certificate holder's address; and

4 (3) the most recent version of each annual report the  
5 commission requires the certificate holder to file under this  
6 subtitle.

7 (b) The rules must:

8 (1) require the commission to automatically allow a  
9 certificate holder an extension of a filing deadline for the number  
10 of days prescribed by the rule, as applicable; and

11 (2) state that the certificate of a holder will not be  
12 valid after the last day of the automatic extension period  
13 described by Subdivision (1) if the certificate holder does not  
14 file information required by the commission under this section by  
15 the end of the automatic extension period.

16 (c) A certificate holder whose certificate is no longer  
17 valid may obtain a new certificate only by complying with the  
18 requirements prescribed for obtaining an original certificate.

19 SECTION 1.12. Section 64.003, Utilities Code, is repealed.

20 SECTION 1.13. The Public Utility Commission of Texas shall  
21 adopt rules necessary to implement Section 39.107(k), Utilities  
22 Code, as added by this article, as soon as practicable after the  
23 effective date of this Act.

24 SECTION 1.14. The Public Utility Commission of Texas shall  
25 adopt rules to implement the filing process required by Section  
26 52.1035, Utilities Code, as added by this article, as soon as  
27 practicable. The rules must specify whether the commission will

1 require that a holder of a certificate of operating authority or  
2 holder of a service provider certificate of operating authority  
3 file the information required by Section 52.1035, Utilities Code,  
4 as added by this article, once or on a regular basis. Regardless of  
5 the frequency of filing required, each certificate holder shall  
6 file the information required by Section 52.1035, Utilities Code,  
7 as added by this article, not later than January 1, 2015. If the  
8 commission requires regular filings, the rules must specify the  
9 timing of the subsequent filings.

10 ARTICLE 2. WATER AND SEWER UTILITIES AND OTHER RELATED DUTIES OF  
11 THE PUBLIC UTILITY COMMISSION OF TEXAS; RATES FOR WATER SERVICE

12 SECTION 2.01. Section 5.013(a), Water Code, is amended to  
13 read as follows:

14 (a) The commission has general jurisdiction over:

15 (1) water and water rights including the issuance of  
16 water rights permits, water rights adjudication, cancellation of  
17 water rights, and enforcement of water rights;

18 (2) continuing supervision over districts created  
19 under Article III, Sections 52(b)(1) and (2), and Article XVI,  
20 Section 59, of the Texas Constitution;

21 (3) the state's water quality program including  
22 issuance of permits, enforcement of water quality rules, standards,  
23 orders, and permits, and water quality planning;

24 (4) the determination of the feasibility of certain  
25 federal projects;

26 (5) the adoption and enforcement of rules and  
27 performance of other acts relating to the safe construction,

1 maintenance, and removal of dams;

2 (6) conduct of the state's hazardous spill prevention  
3 and control program;

4 (7) the administration of the state's program relating  
5 to inactive hazardous substance, pollutant, and contaminant  
6 disposal facilities;

7 (8) the administration of a portion of the state's  
8 injection well program;

9 (9) the administration of the state's programs  
10 involving underground water and water wells and drilled and mined  
11 shafts;

12 (10) the state's responsibilities relating to regional  
13 waste disposal;

14 (11) the responsibilities assigned to the commission  
15 by Chapters 361, 363, 382, and 401, Health and Safety Code; and

16 (12) ~~[administration of the state's water rate program~~  
17 ~~under Chapter 13 of this code, and~~

18 [~~13~~] any other areas assigned to the commission by  
19 this code and other laws of this state.

20 SECTION 2.02. Section 5.311(a), Water Code, is amended to  
21 read as follows:

22 (a) The commission may delegate to an administrative law  
23 judge of the State Office of Administrative Hearings the  
24 responsibility to hear any matter before the commission [~~and to~~  
25 ~~issue interlocutory orders related to interim rates under Chapter~~  
26 ~~13~~].

27 SECTION 2.03. Section 5.507, Water Code, is amended to read

1 as follows:

2           Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT  
3 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.  
4 The ~~commission~~ or the Public Utility Commission of Texas may issue  
5 an emergency order appointing a willing person to temporarily  
6 manage and operate a utility under Section 13.4132. Notice of the  
7 action is adequate if the notice is mailed or hand delivered to the  
8 last known address of the utility's headquarters.

9           SECTION 2.04. Sections 5.508(a) and (c), Water Code, are  
10 amended to read as follows:

11           (a) Notwithstanding the requirements of Subchapter F,  
12 Chapter 13 [~~Section 13.187~~], the Public Utility Commission of Texas  
13 [~~commission~~] may authorize an emergency rate increase for a utility  
14 for which a person has been appointed under Section 5.507 or 13.4132  
15 [~~13.412~~] or for which a receiver has been appointed under Section  
16 13.412 [~~13.4132~~] if the increase is necessary to ensure the  
17 provision of continuous and adequate services to the utility's  
18 customers. The Public Utility Commission of Texas shall consult  
19 with the commission as needed to carry out this section.

20           (c) Notwithstanding Section 5.505, an order may be issued  
21 under this section for a term not to exceed 15 months. The Public  
22 Utility Commission of Texas [~~commission~~] shall schedule a hearing  
23 to establish a final rate within 15 months after the date on which  
24 an emergency rate increase takes effect. The additional revenues  
25 collected under an emergency rate increase are subject to refund if  
26 the utility commission finds that the rate increase was larger than  
27 necessary to ensure continuous and adequate service.

1 SECTION 2.05. Section 11.002, Water Code, is amended by  
2 adding Subdivision (21) to read as follows:

3 (21) "Utility commission" means the Public Utility  
4 Commission of Texas.

5 SECTION 2.06. Section 11.041(f), Water Code, is amended to  
6 read as follows:

7 (f) The commission shall hold a hearing on the complaint at  
8 the time and place stated in the order. It may hear evidence orally  
9 or by affidavit in support of or against the complaint, and it may  
10 hear arguments. The utility commission may participate in the  
11 hearing if necessary to present evidence on the price or rental  
12 demanded for the available water. On completion of the hearing, the  
13 commission shall render a written decision.

14 SECTION 2.07. Section 12.013, Water Code, is amended to  
15 read as follows:

16 Sec. 12.013. RATE-FIXING POWER. (a) The utility  
17 commission shall fix reasonable rates for the furnishing of raw or  
18 treated water for any purpose mentioned in Chapter 11 or 12 of this  
19 code.

20 (b) In this section, ~~[The term]~~ "political subdivision"  
21 ~~[when used in this section]~~ means incorporated cities, towns or  
22 villages, counties, river authorities, water districts, and other  
23 special purpose districts.

24 (c) The utility commission in reviewing and fixing  
25 reasonable rates for furnishing water under this section may use  
26 any reasonable basis for fixing rates as may be determined by the  
27 utility commission to be appropriate under the circumstances of the

1 case being reviewed; provided, however, the utility commission may  
2 not fix a rate which a political subdivision may charge for  
3 furnishing water which is less than the amount required to meet the  
4 debt service and bond coverage requirements of that political  
5 subdivision's outstanding debt.

6 (d) The utility commission's jurisdiction under this  
7 section relating to incorporated cities, towns, or villages shall  
8 be limited to water furnished by such city, town, or village to  
9 another political subdivision on a wholesale basis.

10 (e) The utility commission may establish interim rates and  
11 compel continuing service during the pendency of any rate  
12 proceeding.

13 (f) The utility commission may order a refund or assess  
14 additional charges from the date a petition for rate review is  
15 received by the utility commission of the difference between the  
16 rate actually charged and the rate fixed by the utility commission,  
17 plus interest at the statutory rate.

18 ~~[(g) No action or proceeding commenced prior to January 1,~~  
19 ~~1977, before the Texas Water Rights Commission shall be affected by~~  
20 ~~the enactment of this section.~~

21 ~~[(h) Nothing herein contained shall affect the jurisdiction~~  
22 ~~of the Public Utility Commission.]~~

23 SECTION 2.08. Section 13.002, Water Code, is amended by  
24 amending Subdivisions (2), (18), and (22) and adding Subdivisions  
25 (4-a), (4-b), (4-c), and (22-a) to read as follows:

26 (2) "Affiliated interest" or "affiliate" means:

27 (A) any person or corporation owning or holding



1 directly or indirectly five percent or more of the voting  
2 securities of a utility;

3 (B) any person or corporation in any chain of  
4 successive ownership of five percent or more of the voting  
5 securities of a utility;

6 (C) any corporation five percent or more of the  
7 voting securities of which is owned or controlled directly or  
8 indirectly by a utility;

9 (D) any corporation five percent or more of the  
10 voting securities of which is owned or controlled directly or  
11 indirectly by any person or corporation that owns or controls  
12 directly or indirectly five percent or more of the voting  
13 securities of any utility or by any person or corporation in any  
14 chain of successive ownership of five percent of those utility  
15 securities;

16 (E) any person who is an officer or director of a  
17 utility or of any corporation in any chain of successive ownership  
18 of five percent or more of voting securities of a public utility;

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

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

8 (4-a) "Class A utility" means a public utility that  
9 provides retail water or sewer utility service through 10,000 or  
10 more taps or connections.

11 (4-b) "Class B utility" means a public utility that  
12 provides retail water or sewer utility service through 500 or more  
13 taps or connections but fewer than 10,000 taps or connections.

14 (4-c) "Class C utility" means a public utility that  
15 provides retail water or sewer utility service through fewer than  
16 500 taps or connections.

17 (18) "Regulatory authority" means, in accordance with  
18 the context in which it is found, [~~either~~] the commission, the  
19 utility commission, or the governing body of a municipality.

20 (22) "Test year" means the most recent 12-month  
21 period, beginning on the first day of a calendar or fiscal year  
22 quarter, for which [~~representative~~] operating data for a retail  
23 public utility are available. [~~A utility rate filing must be based~~  
24 ~~on a test year that ended less than 12 months before the date on~~  
25 ~~which the utility made the rate filing.~~]

26 (22-a) "Utility commission" means the Public Utility  
27 Commission of Texas.

1 SECTION 2.09. Section 13.004, Water Code, is amended to  
2 read as follows:

3 Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER  
4 CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a)  
5 Notwithstanding any other law, the utility commission has the same  
6 jurisdiction over a water supply or sewer service corporation that  
7 the utility commission has under this chapter over a water and sewer  
8 utility if the utility commission finds that the water supply or  
9 sewer service corporation:

10 (1) is failing to conduct annual or special meetings  
11 in compliance with Section 67.007; or

12 (2) is operating in a manner that does not comply with  
13 the requirements for classifications as a nonprofit water supply or  
14 sewer service corporation prescribed by Sections 13.002(11) and  
15 (24).

16 (b) If the water supply or sewer service corporation  
17 voluntarily converts to a special utility district operating under  
18 Chapter 65, the utility commission's jurisdiction provided by this  
19 section ends.

20 SECTION 2.10. Section 13.011, Water Code, is amended to  
21 read as follows:

22 Sec. 13.011. EMPLOYEES. (a) The utility commission and  
23 the executive director of the commission, subject to approval, as  
24 applicable, by the utility commission or the commission, shall  
25 employ any engineering, accounting, and administrative personnel  
26 necessary to carry out each agency's powers and duties under this  
27 chapter.

1 (b) The executive director and the commission's staff are  
2 responsible for the gathering of information relating to all  
3 matters within the jurisdiction of the commission under this  
4 subchapter. The utility commission and the utility commission's  
5 staff are responsible for the gathering of information relating to  
6 all matters within the jurisdiction of the utility commission under  
7 this subchapter. The duties of the utility commission, the  
8 executive director, and the staff of the utility commission or  
9 commission, as appropriate, include:

10 (1) accumulation of evidence and other information  
11 from water and sewer utilities, ~~[and]~~ from the utility commission  
12 or commission, as appropriate, and the governing body of the  
13 respective agency, [~~commission and the board~~] and from other  
14 sources for the purposes specified by this chapter;

15 (2) preparation and presentation of evidence before  
16 the utility commission or commission, as appropriate, [~~commission~~]  
17 or its appointed examiner in proceedings;

18 (3) conducting investigations of water and sewer  
19 utilities under the jurisdiction of the utility commission or  
20 commission, as appropriate [~~commission~~];

21 (4) preparation of recommendations that the utility  
22 commission or commission, as appropriate, [~~commission~~] undertake  
23 an investigation of any matter within its jurisdiction;

24 (5) preparation of recommendations and a report for  
25 inclusion in the annual report of the utility commission or  
26 commission, as appropriate [~~commission~~];

27 (6) protection and representation of the public

1 interest[~~, together with the public interest advocate,~~] before the  
2 utility commission or commission, as appropriate [~~commission~~]; and

3 (7) other activities that are reasonably necessary to  
4 enable the utility commission and the executive director and the  
5 staff of the utility commission or commission, as appropriate, to  
6 perform their duties.

7 SECTION 2.11. Section 13.014, Water Code, is amended to  
8 read as follows:

9 Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR  
10 UTILITY COMMISSION. The attorney general shall represent the  
11 commission or the utility commission under this chapter in all  
12 matters before the state courts and any court of the United States.

13 SECTION 2.12. Subchapter B, Chapter 13, Water Code, is  
14 amended by adding Section 13.017 to read as follows:

15 Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND  
16 DUTIES. (a) In this section, "counsellor" and "office" have the  
17 meanings assigned by Section 11.003, Utilities Code.

18 (b) The independent Office of Public Utility Counsel  
19 represents the interests of residential and small commercial  
20 consumers under this chapter. The office:

21 (1) shall assess the effect of utility rate changes  
22 and other regulatory actions on residential consumers in this  
23 state;

24 (2) shall advocate in the office's own name a position  
25 determined by the counsellor to be most advantageous to a  
26 substantial number of residential consumers;

27 (3) may appear or intervene, as a party or otherwise,

1 as a matter of right on behalf of:

2 (A) residential consumers, as a class, in any  
3 proceeding before the utility commission, including an alternative  
4 dispute resolution proceeding; and

5 (B) small commercial consumers, as a class, in  
6 any proceeding in which the counsellor determines that small  
7 commercial consumers are in need of representation, including an  
8 alternative dispute resolution proceeding;

9 (4) may initiate or intervene as a matter of right or  
10 otherwise appear in a judicial proceeding:

11 (A) that involves an action taken by an  
12 administrative agency in a proceeding, including an alternative  
13 dispute resolution proceeding, in which the counsellor is  
14 authorized to appear; or

15 (B) in which the counsellor determines that  
16 residential consumers or small commercial consumers are in need of  
17 representation;

18 (5) is entitled to the same access as a party, other  
19 than utility commission staff, to records gathered by the utility  
20 commission under Section 13.133;

21 (6) is entitled to discovery of any nonprivileged  
22 matter that is relevant to the subject matter of a proceeding or  
23 petition before the utility commission;

24 (7) may represent an individual residential or small  
25 commercial consumer with respect to the consumer's disputed  
26 complaint concerning retail utility services that is unresolved  
27 before the utility commission;

1           (8) may recommend legislation to the legislature that  
2 the office determines would positively affect the interests of  
3 residential and small commercial consumers; and

4           (9) may conduct consumer outreach and education  
5 programs for residential and small commercial consumers.

6           (c) This section does not:

7           (1) affect a duty the office is required to perform  
8 under other law; or

9           (2) limit the authority of the utility commission to  
10 represent residential or small commercial consumers.

11           (d) The appearance of the counsellor in a proceeding does  
12 not preclude the appearance of other parties on behalf of  
13 residential or small commercial consumers. The counsellor may not  
14 be grouped with any other party.

15           SECTION 2.13. Section 13.041, Water Code, is amended to  
16 read as follows:

17           Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND  
18 COMMISSION [~~POWER~~]; RULES; HEARINGS. (a) The utility commission  
19 may regulate and supervise the business of each [~~every~~] water and  
20 sewer utility within its jurisdiction, including ratemaking and  
21 other economic regulation. The commission may regulate water and  
22 sewer utilities within its jurisdiction to ensure safe drinking  
23 water and environmental protection. The utility commission and the  
24 commission [~~and~~] may do all things, whether specifically designated  
25 in this chapter or implied in this chapter, necessary and  
26 convenient to the exercise of these powers [~~this power~~] and  
27 jurisdiction. The utility commission may consult with the

1 commission as necessary in carrying out its duties related to the  
2 regulation of water and sewer utilities.

3 (b) The commission and the utility commission shall adopt  
4 and enforce rules reasonably required in the exercise of [~~its~~]  
5 powers and jurisdiction of each agency, including rules governing  
6 practice and procedure before the commission and the utility  
7 commission.

8 (c) The commission and the utility commission may call and  
9 hold hearings, administer oaths, receive evidence at hearings,  
10 issue subpoenas to compel the attendance of witnesses and the  
11 production of papers and documents, and make findings of fact and  
12 decisions with respect to administering this chapter or the rules,  
13 orders, or other actions of the commission or the utility  
14 commission.

15 (c-1) In addition to the powers and duties of the State  
16 Office of Administrative Hearings under Title 2, Utilities Code,  
17 the utility commission may delegate to an administrative law judge  
18 of the State Office of Administrative Hearings the responsibility  
19 and authority to issue interlocutory orders related to interim  
20 rates under this chapter.

21 (d) The utility commission may issue emergency orders, with  
22 or without a hearing:

23 (1) to compel a water or sewer service provider that  
24 has obtained or is required to obtain a certificate of public  
25 convenience and necessity to provide continuous and adequate water  
26 service, sewer service, or both, if the discontinuance of the  
27 service is imminent or has occurred because of the service



1 provider's actions or failure to act; and

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

7 (e) The utility commission may establish reasonable  
8 compensation for the temporary service required under Subsection  
9 (d)(2) [~~of this section~~] and may allow the retail public utility  
10 receiving the service to make a temporary adjustment to its rate  
11 structure to ensure proper payment.

12 (f) If an order is issued under Subsection (d) without a  
13 hearing, the order shall fix a time, as soon after the emergency  
14 order is issued as is practicable, and place for a hearing to be  
15 held before the utility commission.

16 (g) The regulatory assessment required by Section 5.701(n)  
17 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the  
18 utility commission under Section 13.043 [~~of this code~~]. The  
19 commission has the authority to enforce payment and collection of  
20 the regulatory assessment.

21 SECTION 2.14. Section 13.042, Water Code, is amended to  
22 read as follows:

23 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND  
24 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the  
25 limitations imposed in this chapter and for the purpose of  
26 regulating rates and services so that those rates may be fair, just,  
27 and reasonable and the services adequate and efficient, the

1 governing body of each municipality has exclusive original  
2 jurisdiction over all water and sewer utility rates, operations,  
3 and services provided by a water and sewer utility within its  
4 corporate limits.

5 (b) The governing body of a municipality by ordinance may  
6 elect to have the utility commission exercise exclusive original  
7 jurisdiction over the utility rates, operation, and services of  
8 utilities, within the incorporated limits of the municipality.

9 (c) The governing body of a municipality that surrenders its  
10 jurisdiction to the utility commission may reinstate its  
11 jurisdiction by ordinance at any time after the second anniversary  
12 of the date on which the municipality surrendered its jurisdiction  
13 to the utility commission, except that the municipality may not  
14 reinstate its jurisdiction during the pendency of a rate proceeding  
15 before the utility commission. The municipality may not surrender  
16 its jurisdiction again until the second anniversary of the date on  
17 which the municipality reinstates jurisdiction.

18 (d) The utility commission shall have exclusive appellate  
19 jurisdiction to review orders or ordinances of those municipalities  
20 as provided in this chapter.

21 (e) The utility commission shall have exclusive original  
22 jurisdiction over water and sewer utility rates, operations, and  
23 services not within the incorporated limits of a municipality  
24 exercising exclusive original jurisdiction over those rates,  
25 operations, and services as provided in this chapter.

26 (f) This subchapter does not give the utility commission  
27 power or jurisdiction to regulate or supervise the rates or service

1 of a utility owned and operated by a municipality, directly or  
2 through a municipally owned corporation, within its corporate  
3 limits or to affect or limit the power, jurisdiction, or duties of a  
4 municipality that regulates land and supervises water and sewer  
5 utilities within its corporate limits, except as provided by this  
6 code.

7 SECTION 2.15. Sections 13.043(a), (b), (c), (e), (f), (g),  
8 (h), and (j), Water Code, are amended to read as follows:

9 (a) Any party to a rate proceeding before the governing body  
10 of a municipality may appeal the decision of the governing body to  
11 the utility commission. This subsection does not apply to a  
12 municipally owned utility. An appeal under this subsection must be  
13 initiated within 90 days after the date of notice of the final  
14 decision by the governing body, or within 30 days if the appeal  
15 relates to the rates of a Class A utility, by filing a petition for  
16 review with the utility commission and by serving copies on all  
17 parties to the original rate proceeding. The utility commission  
18 shall hear the appeal de novo and shall fix in its final order the  
19 rates the governing body should have fixed in the action from which  
20 the appeal was taken and may include reasonable expenses incurred  
21 in the appeal proceedings. The utility commission may establish  
22 the effective date for the utility commission's rates at the  
23 original effective date as proposed by the utility provider and may  
24 order refunds or allow a surcharge to recover lost revenues. The  
25 utility commission may consider only the information that was  
26 available to the governing body at the time the governing body made  
27 its decision and evidence of reasonable expenses incurred in the

1 appeal proceedings.

2 (b) Ratepayers of the following entities may appeal the  
3 decision of the governing body of the entity affecting their water,  
4 drainage, or sewer rates to the utility commission:

5 (1) a nonprofit water supply or sewer service  
6 corporation created and operating under Chapter 67;

7 (2) a utility under the jurisdiction of a municipality  
8 inside the corporate limits of the municipality;

9 (3) a municipally owned utility, if the ratepayers  
10 reside outside the corporate limits of the municipality;

11 (4) a district or authority created under Article III,  
12 Section 52, or Article XVI, Section 59, of the Texas Constitution  
13 that provides water or sewer service to household users; and

14 (5) a utility owned by an affected county, if the  
15 ratepayer's rates are actually or may be adversely affected. For  
16 the purposes of this section ratepayers who reside outside the  
17 boundaries of the district or authority shall be considered a  
18 separate class from ratepayers who reside inside those boundaries.

19 (c) An appeal under Subsection (b) [~~of this section~~] must be  
20 initiated by filing a petition for review with the utility  
21 commission and the entity providing service within 90 days after  
22 the effective day of the rate change or, if appealing under  
23 Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after  
24 the date on which the governing body of the municipality or affected  
25 county makes a final decision. The petition must be signed by the  
26 lesser of 10,000 or 10 percent of those ratepayers whose rates have  
27 been changed and who are eligible to appeal under Subsection (b) [~~of~~

1 ~~this section~~].

2 (e) In an appeal under Subsection (b) [~~of this section~~], the  
3 utility commission shall hear the appeal de novo and shall fix in  
4 its final order the rates the governing body should have fixed in  
5 the action from which the appeal was taken. The utility commission  
6 may establish the effective date for the utility commission's rates  
7 at the original effective date as proposed by the service provider,  
8 may order refunds or allow a surcharge to recover lost revenues, and  
9 may allow recovery of reasonable expenses incurred by the retail  
10 public utility in the appeal proceedings. The utility commission  
11 may consider only the information that was available to the  
12 governing body at the time the governing body made its decision and  
13 evidence of reasonable expenses incurred by the retail public  
14 utility in the appeal proceedings. The rates established by the  
15 utility commission in an appeal under Subsection (b) [~~of this~~  
16 ~~section~~] remain in effect until the first anniversary of the  
17 effective date proposed by the retail public utility for the rates  
18 being appealed or until changed by the service provider, whichever  
19 date is later, unless the utility commission determines that a  
20 financial hardship exists.

21 (f) A retail public utility that receives water or sewer  
22 service from another retail public utility or political subdivision  
23 of the state, including an affected county, may appeal to the  
24 utility commission a decision of the provider of water or sewer  
25 service affecting the amount paid for water or sewer service. An  
26 appeal under this subsection must be initiated within 90 days after  
27 the date of notice of the decision is received from the provider of

1 water or sewer service by the filing of a petition by the retail  
2 public utility.

3 (g) An applicant for service from an affected county or a  
4 water supply or sewer service corporation may appeal to the utility  
5 commission a decision of the county or water supply or sewer service  
6 corporation affecting the amount to be paid to obtain service other  
7 than the regular membership or tap fees. In addition to the factors  
8 specified under Subsection (j), in an appeal brought under this  
9 subsection the utility commission shall determine whether the  
10 amount paid by the applicant is consistent with the tariff of the  
11 water supply or sewer service corporation and is reasonably related  
12 to the cost of installing on-site and off-site facilities to  
13 provide service to that applicant. If the utility commission finds  
14 the amount charged to be clearly unreasonable, it shall establish  
15 the fee to be paid for that applicant. An appeal under this  
16 subsection must be initiated within 90 days after the date written  
17 notice is provided to the applicant or member of the decision of an  
18 affected county or water supply or sewer service corporation  
19 relating to the applicant's initial request for that service. A  
20 determination made by the utility commission on an appeal under  
21 this subsection is binding on all similarly situated applicants for  
22 service, and the utility commission may not consider other appeals  
23 on the same issue until the applicable provisions of the tariff of  
24 the water supply or sewer service corporation are amended.

25 (h) The utility commission may, on a motion by the utility  
26 commission [~~executive director~~] or by the appellant under  
27 Subsection (a), (b), or (f) [~~of this section~~], establish interim

1 rates to be in effect until a final decision is made.

2 (j) In an appeal under this section, the utility commission  
3 shall ensure that every rate made, demanded, or received by any  
4 retail public utility or by any two or more retail public utilities  
5 jointly shall be just and reasonable. Rates shall not be  
6 unreasonably preferential, prejudicial, or discriminatory but  
7 shall be sufficient, equitable, and consistent in application to  
8 each class of customers. The utility commission shall use a  
9 methodology that preserves the financial integrity of the retail  
10 public utility. For agreements between municipalities the utility  
11 commission shall consider the terms of any wholesale water or sewer  
12 service agreement in an appellate rate proceeding.

13 SECTION 2.16. Section 13.044(b), Water Code, is amended to  
14 read as follows:

15 (b) Notwithstanding the provisions of any resolution,  
16 ordinance, or agreement, a district may appeal the rates imposed by  
17 the municipality by filing a petition with the utility commission.  
18 The utility commission shall hear the appeal de novo and the  
19 municipality shall have the burden of proof to establish that the  
20 rates are just and reasonable. The utility commission shall fix the  
21 rates to be charged by the municipality and the municipality may not  
22 increase such rates without the approval of the utility commission.

23 SECTION 2.17. Section 13.046, Water Code, is amended to  
24 read as follows:

25 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR  
26 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The  
27 utility commission by rule shall establish a procedure that allows

1 a retail public utility that takes over the provision of services  
2 for a nonfunctioning retail water or sewer utility service provider  
3 to charge a reasonable rate for the services provided to the  
4 customers of the nonfunctioning system and to bill the customers  
5 for the services at that rate immediately to recover service costs.

6 (b) The rules must provide a streamlined process that the  
7 retail public utility that takes over the nonfunctioning system may  
8 use to apply to the utility commission for a ruling on the  
9 reasonableness of the rates the utility is charging under  
10 Subsection (a). The process must allow for adequate consideration  
11 of costs for interconnection or other costs incurred in making  
12 services available and of the costs that may necessarily be  
13 incurred to bring the nonfunctioning system into compliance with  
14 utility commission and commission rules.

15 (c) The utility commission shall provide a reasonable  
16 period for the retail public utility that takes over the  
17 nonfunctioning system to bring the nonfunctioning system into  
18 compliance with utility commission and commission rules during  
19 which the utility commission or the commission may not impose a  
20 penalty for any deficiency in the system that is present at the time  
21 the utility takes over the nonfunctioning system. The utility  
22 commission must consult with the utility before determining the  
23 period and may grant an extension of the period for good cause.

24 SECTION 2.18. Section 13.081, Water Code, is amended to  
25 read as follows:

26 Sec. 13.081. FRANCHISES. This chapter may not be construed  
27 as in any way limiting the rights and powers of a municipality to



1 grant or refuse franchises to use the streets and alleys within its  
2 limits and to make the statutory charges for their use, but no  
3 provision of any franchise agreement may limit or interfere with  
4 any power conferred on the utility commission by this chapter. If a  
5 municipality performs regulatory functions under this chapter, it  
6 may make such other charges as may be provided in the applicable  
7 franchise agreement, together with any other charges permitted by  
8 this chapter.

9 SECTION 2.19. Section 13.082, Water Code, is amended to  
10 read as follows:

11 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT  
12 AREAS. (a) Notwithstanding any other provision of this section,  
13 municipalities shall continue to regulate each kind of local  
14 utility service inside their boundaries until the utility  
15 commission has assumed jurisdiction over the respective utility  
16 pursuant to this chapter.

17 (b) If a municipality does not surrender its jurisdiction,  
18 local utility service within the boundaries of the municipality  
19 shall be exempt from regulation by the utility commission under  
20 this chapter to the extent that this chapter applies to local  
21 service, and the municipality shall have, regarding service within  
22 its boundaries, the right to exercise the same regulatory powers  
23 under the same standards and rules as the utility commission or  
24 other standards and rules not inconsistent with them. The utility  
25 commission's rules relating to service and response to requests for  
26 service for utilities operating within a municipality's corporate  
27 limits apply unless the municipality adopts its own rules.

1           (c) Notwithstanding any election, the utility commission  
2 may consider water and sewer utilities' revenues and return on  
3 investment in exempt areas in fixing rates and charges in nonexempt  
4 areas and may also exercise the powers conferred necessary to give  
5 effect to orders under this chapter for the benefit of nonexempt  
6 areas. Likewise, in fixing rates and charges in the exempt area,  
7 the governing body may consider water and sewer utilities' revenues  
8 and return on investment in nonexempt areas.

9           (d) Utilities serving exempt areas are subject to the  
10 reporting requirements of this chapter. Those reports and tariffs  
11 shall be filed with the governing body of the municipality as well  
12 as with the utility commission.

13           (e) This section does not limit the duty and power of the  
14 utility commission to regulate service and rates of municipally  
15 regulated water and sewer utilities for service provided to other  
16 areas in Texas.

17           SECTION 2.20. Section 13.085, Water Code, is amended to  
18 read as follows:

19           Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request,  
20 the utility commission may advise and assist municipalities and  
21 affected counties in connection with questions and proceedings  
22 arising under this chapter. This assistance may include aid to  
23 municipalities or an affected county in connection with matters  
24 pending before the utility commission, the courts, the governing  
25 body of any municipality, or the commissioners court of an affected  
26 county, including making members of the staff available to them as  
27 witnesses and otherwise providing evidence.

1 SECTION 2.21. Section 13.087(c), Water Code, is amended to  
2 read as follows:

3 (c) Notwithstanding any other provision of this chapter,  
4 the utility commission has jurisdiction to enforce this section.

5 SECTION 2.22. Sections 13.131(a), (b), (c), and (e), Water  
6 Code, are amended to read as follows:

7 (a) Every water and sewer utility shall keep and render to  
8 the regulatory authority in the manner and form prescribed by the  
9 utility commission uniform accounts of all business transacted.  
10 The utility commission may also prescribe forms of books, accounts,  
11 records, and memoranda to be kept by those utilities, including the  
12 books, accounts, records, and memoranda of the rendition of and  
13 capacity for service as well as the receipts and expenditures of  
14 money, and any other forms, records, and memoranda that in the  
15 judgment of the utility commission may be necessary to carry out  
16 this chapter.

17 (b) In the case of a utility subject to regulation by a  
18 federal regulatory agency, compliance with the system of accounts  
19 prescribed for the particular class of utilities by that agency may  
20 be considered a sufficient compliance with the system prescribed by  
21 the utility commission. However, the utility commission may  
22 prescribe forms of books, accounts, records, and memoranda covering  
23 information in addition to that required by the federal agency. The  
24 system of accounts and the forms of books, accounts, records, and  
25 memoranda prescribed by the utility commission for a utility or  
26 class of utilities may not conflict or be inconsistent with the  
27 systems and forms established by a federal agency for that utility

1 or class of utilities.

2 (c) The utility commission shall fix proper and adequate  
3 rates and methods of depreciation, amortization, or depletion of  
4 the several classes of property of each utility and shall require  
5 every utility to carry a proper and adequate depreciation account  
6 in accordance with those rates and methods and with any other rules  
7 the utility commission prescribes. Rules adopted under this  
8 subsection must require the book cost less net salvage of  
9 depreciable utility plant retired to be charged in its entirety to  
10 the accumulated depreciation account in a manner consistent with  
11 accounting treatment of regulated electric and gas utilities in  
12 this state. Those rates, methods, and accounts shall be utilized  
13 uniformly and consistently throughout the rate-setting and appeal  
14 proceedings.

15 (e) Every utility is required to keep and render its books,  
16 accounts, records, and memoranda accurately and faithfully in the  
17 manner and form prescribed by the utility commission and to comply  
18 with all directions of the regulatory authority relating to those  
19 books, accounts, records, and memoranda. The regulatory authority  
20 may require the examination and audit of all accounts.

21 SECTION 2.23. Section 13.132, Water Code, is amended to  
22 read as follows:

23 Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The  
24 utility commission may:

25 (1) require that water and sewer utilities report to  
26 it any information relating to themselves and affiliated interests  
27 both inside and outside this state that it considers useful in the

1 administration of this chapter, including any information relating  
2 to a transaction between the utility and an affiliated interest  
3 inside or outside this state, to the extent that the transaction is  
4 subject to the utility commission's jurisdiction;

5 (2) establish forms for all reports;

6 (3) determine the time for reports and the frequency  
7 with which any reports are to be made;

8 (4) require that any reports be made under oath;

9 (5) require that a copy of any contract or arrangement  
10 between any utility and any affiliated interest be filed with it and  
11 require that such a contract or arrangement that is not in writing  
12 be reduced to writing;

13 (6) require that a copy of any report filed with any  
14 federal agency or any governmental agency or body of any other state  
15 be filed with it; and

16 (7) require that a copy of annual reports showing all  
17 payments of compensation, other than salary or wages subject to the  
18 withholding of federal income tax, made to residents of Texas, or  
19 with respect to legal, administrative, or legislative matters in  
20 Texas, or for representation before the Texas Legislature or any  
21 governmental agency or body be filed with it.

22 (b) On the request of the governing body of any  
23 municipality, the utility commission may provide sufficient staff  
24 members to advise and consult with the municipality on any pending  
25 matter.

26 SECTION 2.24. Section 13.1325, Water Code, is amended to  
27 read as follows:

1           Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On  
 2 request, the utility commission [~~state agency with jurisdiction~~  
 3 ~~over rates charged by water and sewer utilities~~] shall provide, at a  
 4 reasonable cost, electronic copies of or Internet access to all  
 5 information provided to the utility commission [~~agency~~] under  
 6 Sections 13.016 and [~~7~~] 13.043 [~~7~~] and Subchapter F [~~13.187~~] to the  
 7 extent that the information is available and is not confidential.  
 8 Copies of all information provided to the utility commission  
 9 [~~agency~~] shall be provided to the Office of Public Utility Counsel,  
 10 on request, at no cost to the office.

11           SECTION 2.25. Section 13.133(b), Water Code, is amended to  
 12 read as follows:

13           (b) The regulatory authority may require, by order or  
 14 subpoena served on any utility, the production within this state at  
 15 the time and place it may designate of any books, accounts, papers,  
 16 or records kept by that utility outside the state or verified copies  
 17 of them if the regulatory authority [~~commission~~] so orders. A  
 18 utility failing or refusing to comply with such an order or subpoena  
 19 violates this chapter.

20           SECTION 2.26. Section 13.136, Water Code, is amended by  
 21 amending Subsections (b) and (c) and adding Subsection (b-1) to  
 22 read as follows:

23           (b) The utility commission by rule shall require each [~~Each~~]  
 24 utility to annually [~~shall~~] file a service, and financial, and  
 25 normalized earnings report in a form and at times specified by  
 26 utility commission rule. The report must include information  
 27 sufficient to enable the utility commission to properly monitor

1 utilities in this state. The utility commission shall make  
2 available to the public information in the report the utility does  
3 not file as confidential.

4 (b-1) The utility commission shall provide copies of a  
5 report described by Subsection (b) that include information filed  
6 as confidential to the Office of Public Utility Counsel on request,  
7 at no cost to the office.

8 (c) Every water supply or sewer service corporation shall  
9 file with the utility commission tariffs showing all rates that are  
10 subject to the appellate jurisdiction of the utility commission and  
11 that are in force at the time for any utility service, product, or  
12 commodity offered. Every water supply or sewer service corporation  
13 shall file with and as a part of those tariffs all rules and  
14 regulations relating to or affecting the rates, utility service,  
15 product, or commodity furnished. The filing required under this  
16 subsection shall be for informational purposes only.

17 SECTION 2.27. Section 13.137, Water Code, is amended to  
18 read as follows:

19 Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF  
20 UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

21 (1) make available and notify its customers of a  
22 business location where its customers may make payments to prevent  
23 disconnection of or to restore service:

24 (A) in each county in which the utility provides  
25 service; or

26 (B) not more than 20 miles from the residence of  
27 any residential customer if there is no location to receive

1 payments in the county; and

2 (2) have an office in a county of this state or in the  
3 immediate area in which its property or some part of its property is  
4 located in which it shall keep all books, accounts, records, and  
5 memoranda required by the utility commission to be kept in this  
6 state.

7 (b) The utility commission by rule may provide for waiving  
8 the requirements of Subsection (a)(1) for a utility for which  
9 meeting those requirements would cause a rate increase or otherwise  
10 harm or inconvenience customers. The rules must provide for an  
11 additional 14 days to be given for a customer to pay before a  
12 utility that is granted a waiver may disconnect service for late  
13 payment.

14 (c) Books, accounts, records, or memoranda required by the  
15 regulatory authority to be kept in the state may not be removed from  
16 the state, except on conditions prescribed by the utility  
17 commission.

18 SECTION 2.28. Section 13.139(b), Water Code, is amended to  
19 read as follows:

20 (b) The governing body of a municipality, as the regulatory  
21 authority for public utilities operating within its corporate  
22 limits, and the utility commission or the commission as the  
23 regulatory authority for public utilities operating outside the  
24 corporate limits of any municipality, after reasonable notice and  
25 hearing on its own motion, may:

26 (1) ascertain and fix just and reasonable standards,  
27 classifications, regulations, service rules, minimum service



1 standards or practices to be observed and followed with respect to  
2 the service to be furnished;

3 (2) ascertain and fix adequate and reasonable  
4 standards for the measurement of the quantity, quality, pressure,  
5 or other condition pertaining to the supply of the service;

6 (3) prescribe reasonable regulations for the  
7 examination and testing of the service and for the measurement of  
8 service; and

9 (4) establish or approve reasonable rules,  
10 regulations, specifications, and standards to secure the accuracy  
11 of all meters, instruments, and equipment used for the measurement  
12 of any utility service.

13 SECTION 2.29. Section 13.1395, Water Code, is amended by  
14 adding Subsection (m) to read as follows:

15 (m) The commission shall coordinate with the utility  
16 commission in the administration of this section.

17 SECTION 2.30. Sections 13.1396(b), (c), and (f), Water  
18 Code, are amended to read as follows:

19 (b) An affected utility shall submit to the office of  
20 emergency management of each county in which the utility has more  
21 than one customer, the utility commission [~~Public Utility~~  
22 ~~Commission of Texas~~], and the office of emergency management of the  
23 governor a copy of:

24 (1) the affected utility's emergency preparedness plan  
25 approved under Section 13.1395; and

26 (2) the commission's notification to the affected  
27 utility that the plan is accepted.

1 (c) Each affected utility shall submit to the utility  
2 commission, each electric utility that provides transmission and  
3 distribution service to the affected utility, each retail electric  
4 provider that sells electric power to the affected utility, the  
5 office of emergency management of each county in which the utility  
6 has water and wastewater facilities that qualify for critical load  
7 status under rules adopted by the utility commission [~~Public~~  
8 ~~Utility Commission of Texas, the Public Utility Commission of~~  
9 ~~Texas~~], and the division of emergency management of the governor:

10 (1) information identifying the location and  
11 providing a general description of all water and wastewater  
12 facilities that qualify for critical load status; and

13 (2) emergency contact information for the affected  
14 utility, including:

15 (A) the person who will serve as a point of  
16 contact and the person's telephone number;

17 (B) the person who will serve as an alternative  
18 point of contact and the person's telephone number; and

19 (C) the affected utility's mailing address.

20 (f) Not later than May 1 of each year, each electric utility  
21 and each retail electric provider shall determine whether the  
22 facilities of the affected utility qualify for critical load status  
23 under rules adopted by the utility commission [~~Public Utility~~  
24 ~~Commission of Texas~~].

25 SECTION 2.31. Section 13.142(b), Water Code, is amended to  
26 read as follows:

27 (b) The utility commission shall adopt rules concerning

1 payment of utility bills that are consistent with Chapter 2251,  
2 Government Code.

3 SECTION 2.32. Section 13.144, Water Code, is amended to  
4 read as follows:

5 Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A  
6 district or authority created under Section 52, Article III, or  
7 Section 59, Article XVI, Texas Constitution, a retail public  
8 utility, a wholesale water service, or other person providing a  
9 retail public utility with a wholesale water supply shall provide  
10 the utility commission and the commission with a certified copy of  
11 any wholesale water supply contract with a retail public utility  
12 within 30 days after the date of the execution of the contract. The  
13 submission must include the amount of water being supplied, term of  
14 the contract, consideration being given for the water, purpose of  
15 use, location of use, source of supply, point of delivery,  
16 limitations on the reuse of water, a disclosure of any affiliated  
17 interest between the parties to the contract, and any other  
18 condition or agreement relating to the contract.

19 SECTION 2.33. Section 13.147(a), Water Code, is amended to  
20 read as follows:

21 (a) A retail public utility providing water service may  
22 contract with a retail public utility providing sewer service to  
23 bill and collect the sewer service provider's fees and payments as  
24 part of a consolidated process with the billing and collection of  
25 the water service provider's fees and payments. The water service  
26 provider may provide that service only for customers who are served  
27 by both providers in an area covered by both providers'

1 certificates of public convenience and necessity. If the water  
2 service provider refuses to enter into a contract under this  
3 section or if the water service provider and sewer service provider  
4 cannot agree on the terms of a contract, the sewer service provider  
5 may petition the utility commission to issue an order requiring the  
6 water service provider to provide that service.

7 SECTION 2.34. Section 13.181(b), Water Code, is amended to  
8 read as follows:

9 (b) Subject to this chapter, the utility commission has all  
10 authority and power of the state to ensure compliance with the  
11 obligations of utilities under this chapter. For this purpose the  
12 regulatory authority may fix and regulate rates of utilities,  
13 including rules and regulations for determining the classification  
14 of customers and services and for determining the applicability of  
15 rates. A rule or order of the regulatory authority may not conflict  
16 with the rulings of any federal regulatory body. The utility  
17 commission may adopt rules which authorize a utility which is  
18 permitted under Section 13.242(c) to provide service without a  
19 certificate of public convenience and necessity to request or  
20 implement a rate increase and operate according to rules,  
21 regulations, and standards of service other than those otherwise  
22 required under this chapter provided that rates are just and  
23 reasonable for customers and the utility and that service is safe,  
24 adequate, efficient, and reasonable.

25 SECTION 2.35. Sections 13.182(c) and (d), Water Code, are  
26 amended to read as follows:

27 (c) For ratemaking purposes, the utility commission may

1 treat two or more municipalities served by a utility as a single  
2 class wherever the utility commission considers that treatment to  
3 be appropriate.

4 (d) The utility commission by rule shall establish a  
5 preference that rates under a consolidated tariff be consolidated  
6 by region. The regions under consolidated tariffs must be  
7 determined on a case-by-case basis.

8 SECTION 2.36. Section 13.183(d), Water Code, is amended to  
9 read as follows:

10 (d) A regulatory authority other than the utility  
11 commission may not approve an acquisition adjustment for a system  
12 purchased before the effective date of an ordinance authorizing  
13 acquisition adjustments.

14 SECTION 2.37. Section 13.184(a), Water Code, is amended to  
15 read as follows:

16 (a) Unless the utility commission establishes alternate  
17 rate methodologies in accordance with Section 13.183(c), the  
18 utility commission may not prescribe any rate that will yield more  
19 than a fair return on the invested capital used and useful in  
20 rendering service to the public. The governing body of a  
21 municipality exercising its original jurisdiction over rates and  
22 services may use alternate ratemaking methodologies established by  
23 ordinance or by utility commission rule in accordance with Section  
24 13.183(c). Unless the municipal regulatory authority uses  
25 alternate ratemaking methodologies established by ordinance or by  
26 utility commission rule in accordance with Section 13.183(c), it  
27 may not prescribe any rate that will yield more than a fair return

1 on the invested capital used and useful in rendering service to the  
2 public.

3 SECTION 2.38. Sections 13.185(d) and (h), Water Code, are  
4 amended to read as follows:

5 (d) Net income is the total revenues of the utility less all  
6 reasonable and necessary expenses as determined by the regulatory  
7 authority. The regulatory authority shall:

8 (1) base a utility's expenses on historic test year  
9 information adjusted for known and measurable changes, as  
10 determined by utility commission rules; and

11 (2) determine expenses and revenues in a manner  
12 consistent with Subsections (e) through (h) of this section.

13 (h) The regulatory authority may not include for ratemaking  
14 purposes:

15 (1) legislative advocacy expenses, whether made  
16 directly or indirectly, including legislative advocacy expenses  
17 included in trade association dues;

18 (2) costs of processing a refund or credit under this  
19 subchapter [~~Section 13.187 of this chapter~~]; or

20 (3) any expenditure found by the regulatory authority  
21 to be unreasonable, unnecessary, or not in the public interest,  
22 including executive salaries, advertising expenses, legal  
23 expenses, and civil penalties or fines.

24 SECTION 2.39. Section 13.187, Water Code, is amended to  
25 read as follows:

26 Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO  
27 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This

1 section applies only to a Class A utility.

2       (a-1) A utility may not make changes in its rates except by  
3 sending by mail or e-mail ~~[delivering]~~ a statement of intent to each  
4 ratepayer and to ~~[with]~~ the regulatory authority having original  
5 jurisdiction at least 35 ~~[60]~~ days before the effective date of the  
6 proposed change. The utility may send the statement of intent to a  
7 ratepayer by e-mail only if the ratepayer has agreed to receive  
8 communications electronically. The effective date of the new rates  
9 must be the first day of a billing period, and the new rates may not  
10 apply to service received before the effective date of the new  
11 rates. The statement of intent must include:

12           (1) the information required by the regulatory  
13 authority's rules;

14           (2) a billing comparison regarding the existing water  
15 rate and the new water rate computed for the use of:

16                   (A) 10,000 gallons of water; and

17                   (B) 30,000 gallons of water; ~~[and]~~

18           (3) a billing comparison regarding the existing sewer  
19 rate and the new sewer rate computed for the use of 10,000 gallons,  
20 unless the utility proposes a flat rate for sewer services; and

21           (4) a description of the process by which a ratepayer  
22 may intervene in the ratemaking proceeding.

23       (b) The utility shall mail, send by e-mail, or deliver a [A]  
24 copy of the statement of intent ~~[shall be mailed, sent by e-mail, or~~  
25 ~~delivered]~~ to the Office of Public Utility Counsel, appropriate  
26 offices of each affected municipality, and ~~[to]~~ any other affected  
27 persons as required by the regulatory authority's rules.

1 (c) When the statement of intent is delivered, the utility  
2 shall file with the regulatory authority an application to change  
3 rates. The application must include information the regulatory  
4 authority requires by rule and any appropriate cost and rate  
5 schedules and written testimony supporting the requested rate  
6 increase. If the utility fails to provide within a reasonable time  
7 after the application is filed the necessary documentation or other  
8 evidence that supports the costs and expenses that are shown in the  
9 application, the regulatory authority may disallow the  
10 nonsupported costs or expenses.

11 (d) Except as provided by Subsections [~~Subsection~~] (d-1)  
12 and (e), if the application or the statement of intent is not  
13 substantially complete or does not comply with the regulatory  
14 authority's rules, it may be rejected and the effective date of the  
15 rate change may be suspended until a properly completed application  
16 is accepted by the regulatory authority and a proper statement of  
17 intent is provided. The utility commission may also suspend the  
18 effective date of any rate change if the utility does not have a  
19 certificate of public convenience and necessity or a completed  
20 application for a certificate or to transfer a certificate pending  
21 before the utility commission or if the utility is delinquent in  
22 paying the assessment and any applicable penalties or interest  
23 required by Section 5.701(n) [~~of this code~~].

24 (d-1) After written notice to the utility, a local  
25 regulatory authority may suspend the effective date of a rate  
26 change for not more than 90 days from the proposed effective date[  
27 ~~except that the suspension shall be extended by two days for each~~



1 ~~day a hearing exceeds 15 days~~]. If the local regulatory authority  
2 does not make a final determination on the proposed rate before the  
3 expiration of the [~~applicable~~] suspension period, the proposed rate  
4 shall be considered approved. This [The] approval is subject to the  
5 authority of the local regulatory authority thereafter to continue  
6 [authority's continuation of] a hearing in progress.

7 (e) After written notice to the utility, the utility  
8 commission may suspend the effective date of a rate change for not  
9 more than 150 days from the proposed effective date. If the utility  
10 commission does not make a final determination on the proposed rate  
11 before the expiration of the suspension period, the proposed rate  
12 shall be considered approved. This approval is subject to the  
13 authority of the utility commission thereafter to continue a  
14 hearing in progress [If, before the 91st day after the effective  
15 date of the rate change, the regulatory authority receives a  
16 complaint from any affected municipality, or from the lesser of  
17 1,000 or 10 percent of the ratepayers of the utility over whose  
18 rates the regulatory authority has original jurisdiction, the  
19 regulatory authority shall set the matter for hearing].

20 (e-1) The 150-day period described by Subsection (e) shall  
21 be extended two days for each day a hearing exceeds 15 days.

22 (f) The regulatory authority shall, not later than the 30th  
23 day after the effective date of the change, begin a hearing to  
24 determine the propriety of the change [may set the matter for  
25 hearing on its own motion at any time within 120 days after the  
26 effective date of the rate change]. If the regulatory authority is  
27 the utility commission, the utility commission may refer the matter

1 to the State Office of Administrative Hearings as provided by  
2 utility commission rules [~~If more than half of the ratepayers of the~~  
3 ~~utility receive service in a county with a population of more than~~  
4 ~~3.3 million, the hearing must be held at a location in that county)].~~

5 (g) A local regulatory authority [~~The~~] hearing described by  
6 this section may be informal.

7 (g-1) If the regulatory authority is the utility  
8 commission, the utility commission shall give reasonable notice of  
9 the hearing, including notice to the governing body of each  
10 affected municipality and county. The utility is not required to  
11 provide a formal answer or file any other formal pleading in  
12 response to the notice, and the absence of an answer does not affect  
13 an order for a hearing.

14 (h) If, after hearing, the regulatory authority finds the  
15 rates currently being charged or those proposed to be charged are  
16 unreasonable or in violation of law, the regulatory authority shall  
17 determine the rates to be charged by the utility and shall fix the  
18 rates by order served on the utility.

19 (i) A utility may put a changed rate into effect throughout  
20 the area in which the utility sought to change its rates, including  
21 an area over which the utility commission is exercising appellate  
22 or original jurisdiction, by filing a bond with the utility  
23 commission if the suspension period has been extended under  
24 Subsection (e-1) and the utility commission fails to make a final  
25 determination before the 151st day after the date the rate change  
26 would otherwise be effective.

27 (j) The bonded rate may not exceed the proposed rate. The

1 bond must be payable to the utility commission in an amount, in a  
2 form, and with a surety approved by the utility commission and  
3 conditioned on refund [~~The regulatory authority, pending final~~  
4 ~~action in a rate proceeding, may order the utility to deposit all or~~  
5 ~~part of the rate increase received or to be received into an escrow~~  
6 ~~account with a financial institution approved by the regulatory~~  
7 ~~authority].~~

8       (k) Unless otherwise agreed to by the parties to the rate  
9 proceeding, the utility shall refund or credit against future  
10 bills:

11           (1) all sums collected under the bonded rates [~~during~~  
12 ~~the pendency of the rate proceeding]~~ in excess of the rate finally  
13 ordered; and

14           (2) [~~plus~~] interest on those sums at the current  
15 interest rate as determined by the regulatory authority.

16       ~~[(j) For good cause shown, the regulatory authority may~~  
17 ~~authorize the release of funds to the utility from the escrow~~  
18 ~~account during the pendency of the proceeding.~~

19       ~~[(k) If the regulatory authority receives at least the~~  
20 ~~number of complaints from ratepayers required for the regulatory~~  
21 ~~authority to set a hearing under Subsection (e), the regulatory~~  
22 ~~authority may, pending the hearing and a decision, suspend the date~~  
23 ~~the rate change would otherwise be effective. Except as provided by~~  
24 ~~Subsection (d-1), the proposed rate may not be suspended for longer~~  
25 ~~than:~~

26           ~~[(1) 90 days by a local regulatory authority; or~~

27           ~~[(2) 150 days by the commission.]~~

1           (1) At any time during the pendency of the rate proceeding  
2 the regulatory authority may fix interim rates to remain in effect  
3 during the applicable suspension period under Subsection (d-1) or  
4 Subsections (e) and (e-1) or until a final determination is made on  
5 the proposed rate. If the regulatory authority does not establish  
6 interim rates, the rates in effect when the application described  
7 by Subsection (c) was filed continue in effect during the  
8 suspension period.

9           (m) If the regulatory authority sets a final rate that is  
10 higher than the interim rate, the utility shall be allowed to  
11 collect the difference between the interim rate and final rate  
12 unless otherwise agreed to by the parties to the rate proceeding.

13           (n) For good cause shown, the regulatory authority may at  
14 any time during the proceeding require the utility to refund money  
15 collected under a proposed rate before the rate was suspended or an  
16 interim rate was established to the extent the proposed rate  
17 exceeds the existing rate or the interim rate.

18           (o) If a regulatory authority other than the utility  
19 commission establishes interim rates or bonded rates [~~an escrow~~  
20 ~~account~~], the regulatory authority must make a final determination  
21 on the rates not later than the first anniversary of the effective  
22 date of the interim rates or bonded [~~escrowed~~] rates or the rates  
23 are automatically approved as requested by the utility.

24           (p) Except to implement a rate adjustment provision  
25 approved by the regulatory authority by rule or ordinance, as  
26 applicable, or to adjust the rates of a newly acquired utility  
27 system, a utility or two or more utilities under common control and

1 ownership may not file a statement of intent to increase its rates  
2 more than once in a 12-month period, unless the regulatory  
3 authority determines that a financial hardship exists. If the  
4 regulatory authority requires the utility to deliver a corrected  
5 statement of intent, the utility is not considered to be in  
6 violation of the 12-month filing requirement.

7 SECTION 2.40. Subchapter F, Chapter 13, Water Code, is  
8 amended by adding Sections 13.1871 and 13.1872 to read as follows:

9 Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO  
10 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as  
11 provided by Section 13.1872, this section applies only to a Class B  
12 utility.

13 (b) A utility may not make changes in its rates except by  
14 sending by mail or e-mail a statement of intent to each ratepayer  
15 and to the regulatory authority having original jurisdiction at  
16 least 35 days before the effective date of the proposed change. The  
17 utility may send the statement of intent to a ratepayer by e-mail  
18 only if the ratepayer has agreed to receive communications  
19 electronically. The effective date of the new rates must be the  
20 first day of a billing period, and the new rates may not apply to  
21 service received before the effective date of the new rates. The  
22 statement of intent must include:

23 (1) the information required by the regulatory  
24 authority's rules;

25 (2) a billing comparison regarding the existing water  
26 rate and the new water rate computed for the use of:

27 (A) 10,000 gallons of water; and

1                   (B) 30,000 gallons of water;

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

5                   (4) a description of the process by which a ratepayer  
6 may file a complaint under Subsection (i).

7                   (c) The utility shall mail, send by e-mail, or deliver a  
8 copy of the statement of intent to the appropriate offices of each  
9 affected municipality and to any other affected persons as required  
10 by the regulatory authority's rules.

11                   (d) When the statement of intent is delivered, the utility  
12 shall file with the regulatory authority an application to change  
13 rates. The application must include information the regulatory  
14 authority requires by rule and any appropriate cost and rate  
15 schedules supporting the requested rate increase. In adopting  
16 rules relating to the information required in the application, the  
17 utility commission shall ensure that a utility can file a less  
18 burdensome and complex application than is required of a Class A  
19 utility. If the utility fails to provide within a reasonable time  
20 after the application is filed the necessary documentation or other  
21 evidence that supports the costs and expenses that are shown in the  
22 application, the regulatory authority may disallow the  
23 nonsupported costs or expenses.

24                   (e) Except as provided by Subsection (f) or (g), if the  
25 application or the statement of intent is not substantially  
26 complete or does not comply with the regulatory authority's rules,  
27 it may be rejected and the effective date of the rate change may be

1 suspended until a properly completed application is accepted by the  
2 regulatory authority and a proper statement of intent is provided.  
3 The utility commission may also suspend the effective date of any  
4 rate change if the utility does not have a certificate of public  
5 convenience and necessity or a completed application for a  
6 certificate or to transfer a certificate pending before the utility  
7 commission or if the utility is delinquent in paying the assessment  
8 and any applicable penalties or interest required by Section  
9 5.701(n).

10 (f) After written notice to the utility, a local regulatory  
11 authority may suspend the effective date of a rate change for not  
12 more than 90 days from the proposed effective date. If the local  
13 regulatory authority does not make a final determination on the  
14 proposed rate before the expiration of the suspension period, the  
15 proposed rate shall be considered approved. This approval is  
16 subject to the authority of the local regulatory authority  
17 thereafter to continue a hearing in progress.

18 (g) After written notice to the utility, the utility  
19 commission may suspend the effective date of a rate change for not  
20 more than 205 days from the proposed effective date. If the utility  
21 commission does not make a final determination on the proposed rate  
22 before the expiration of the suspension period, the proposed rate  
23 shall be considered approved. This approval is subject to the  
24 authority of the utility commission thereafter to continue a  
25 hearing in progress.

26 (h) The 205-day period described by Subsection (g) shall be  
27 extended by two days for each day a hearing exceeds 15 days.

1       (i) If, before the 91st day after the effective date of the  
2 rate change, the regulatory authority receives a complaint from any  
3 affected municipality, or from the lesser of 1,000 or 10 percent of  
4 the ratepayers of the utility over whose rates the regulatory  
5 authority has original jurisdiction, the regulatory authority  
6 shall set the matter for hearing.

7       (j) If the regulatory authority receives at least the number  
8 of complaints from ratepayers required for the regulatory authority  
9 to set a hearing under Subsection (i), the regulatory authority  
10 may, pending the hearing and a decision, suspend the date the rate  
11 change would otherwise be effective. Except as provided by  
12 Subsection (h), the proposed rate may not be suspended for longer  
13 than:

14               (1) 90 days by a local regulatory authority; or

15               (2) 205 days by the utility commission.

16       (k) The regulatory authority may set the matter for hearing  
17 on its own motion at any time within 120 days after the effective  
18 date of the rate change.

19               (l) The hearing may be informal.

20       (m) The regulatory authority shall give reasonable notice  
21 of the hearing, including notice to the governing body of each  
22 affected municipality and county. The utility is not required to  
23 provide a formal answer or file any other formal pleading in  
24 response to the notice, and the absence of an answer does not affect  
25 an order for a hearing.

26       (n) The utility shall mail notice of the hearing to each  
27 ratepayer before the hearing. The notice must include a



1 description of the process by which a ratepayer may intervene in the  
2 ratemaking proceeding.

3 (o) If, after hearing, the regulatory authority finds the  
4 rates currently being charged or those proposed to be charged are  
5 unreasonable or in violation of law, the regulatory authority shall  
6 determine the rates to be charged by the utility and shall fix the  
7 rates by order served on the utility.

8 (p) A utility may put a changed rate into effect throughout  
9 the area in which the utility sought to change its rates, including  
10 an area over which the utility commission is exercising appellate  
11 or original jurisdiction, by filing a bond with the utility  
12 commission if the suspension period has been extended under  
13 Subsection (h) and the utility commission fails to make a final  
14 determination before the 206th day after the date the rate change  
15 would otherwise be effective.

16 (q) The bonded rate may not exceed the proposed rate. The  
17 bond must be payable to the utility commission in an amount, in a  
18 form, and with a surety approved by the utility commission and  
19 conditioned on refund.

20 (r) Unless otherwise agreed to by the parties to the rate  
21 proceeding, the utility shall refund or credit against future  
22 bills:

23 (1) all sums collected under the bonded rates in  
24 excess of the rate finally ordered; and

25 (2) interest on those sums at the current interest  
26 rate as determined by the regulatory authority.

27 (s) At any time during the pendency of the rate proceeding

1 the regulatory authority may fix interim rates to remain in effect  
2 during the applicable suspension period under Subsection (f) or  
3 Subsections (g) and (h) or until a final determination is made on  
4 the proposed rate. If the regulatory authority does not establish  
5 interim rates, the rates in effect when the application described  
6 by Subsection (d) was filed continue in effect during the  
7 suspension period.

8 (t) If the regulatory authority sets a final rate that is  
9 higher than the interim rate, the utility shall be allowed to  
10 collect the difference between the interim rate and final rate  
11 unless otherwise agreed to by the parties to the rate proceeding.

12 (u) For good cause shown, the regulatory authority may at  
13 any time during the proceeding require the utility to refund money  
14 collected under a proposed rate before the rate was suspended or an  
15 interim rate was established to the extent the proposed rate  
16 exceeds the existing rate or the interim rate.

17 (v) If a regulatory authority other than the utility  
18 commission establishes interim rates or bonded rates, the  
19 regulatory authority must make a final determination on the rates  
20 not later than the first anniversary of the effective date of the  
21 interim rates or bonded rates or the rates are automatically  
22 approved as requested by the utility.

23 (w) Except to implement a rate adjustment provision  
24 approved by the regulatory authority by rule or ordinance, as  
25 applicable, or to adjust the rates of a newly acquired utility  
26 system, a utility or two or more utilities under common control and  
27 ownership may not file a statement of intent to increase its rates

1 more than once in a 12-month period, unless the regulatory  
2 authority determines that a financial hardship exists. If the  
3 regulatory authority requires the utility to deliver a corrected  
4 statement of intent, the utility is not considered to be in  
5 violation of the 12-month filing requirement.

6 Sec. 13.1872. CLASS C UTILITIES: RATE ADJUSTMENT.

7 (a) This section applies only to a Class C utility.

8 (b) For purposes of this section, "price index" means an  
9 appropriate price index designated annually by the utility  
10 commission for the purposes of this section.

11 (c) A utility may not make changes in its rates except by:

12 (1) filing an application for a rate adjustment under  
13 the procedures described by Subsection (e) and sending by mail, or  
14 by e-mail if the ratepayer has agreed to receive communications  
15 electronically, a notice to each ratepayer describing the proposed  
16 rate adjustment at least 30 days before the effective date of the  
17 proposed change; or

18 (2) complying with the procedures to change rates  
19 described by Section 13.1871.

20 (d) The utility shall mail, send by e-mail, or deliver a  
21 copy of the application to the appropriate offices of each affected  
22 municipality and to any other affected persons as required by the  
23 regulatory authority's rules.

24 (e) The utility commission by rule shall adopt procedures to  
25 allow a utility to receive without a hearing an annual rate  
26 adjustment based on changes in the price index. The rules must:

27 (1) include standard language to be included in the

1 notice described by Subsection (c)(1) describing the rate  
2 adjustment process; and

3 (2) provide that an annual rate adjustment described  
4 by this section may not result in a rate increase to any class or  
5 category of ratepayer of more than the lesser of:

6 (A) five percent; or

7 (B) the percentage increase in the price index  
8 between the year preceding the year in which the utility requests  
9 the adjustment and the year in which the utility requests the  
10 adjustment.

11 (f) A utility may adjust the utility's rates using the  
12 procedures adopted under Subsection (e) not more than once each  
13 year and not more than four times between rate proceedings  
14 described by Section 13.1871.

15 SECTION 2.41. Section 13.188, Water Code, is amended to  
16 read as follows:

17 Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a)  
18 Notwithstanding any other provision in this chapter, the utility  
19 commission by rule shall adopt a procedure allowing a utility to  
20 file with the utility commission an application to timely adjust  
21 the utility's rates to reflect an increase or decrease in  
22 documented energy costs in a pass through clause. The utility  
23 commission, by rule, shall require the pass through of documented  
24 decreases in energy costs within a reasonable time. The pass  
25 through, whether a decrease or increase, shall be implemented on no  
26 later than an annual basis, unless the utility commission  
27 determines a special circumstance applies.

1 (b) Notwithstanding any other provision to the contrary,  
2 this adjustment is an uncontested matter not subject to a contested  
3 case hearing. However, the utility commission [~~executive director~~]  
4 shall hold an uncontested public meeting:

5 (1) on the request of a member of the legislature who  
6 represents the area served by the water and sewer utility; or

7 (2) if the utility commission [~~executive director~~]  
8 determines that there is substantial public interest in the matter.

9 (c) A proceeding under this section is not a rate case and  
10 Sections [~~Section~~] 13.187, 13.1871, and 13.1872 do [~~does~~] not  
11 apply.

12 SECTION 2.42. Sections 13.241(a), (d), and (e), Water Code,  
13 are amended to read as follows:

14 (a) In determining whether to grant or amend a certificate  
15 of public convenience and necessity, the utility commission shall  
16 ensure that the applicant possesses the financial, managerial, and  
17 technical capability to provide continuous and adequate service.

18 (d) Before the utility commission grants a new certificate  
19 of convenience and necessity for an area which would require  
20 construction of a physically separate water or sewer system, the  
21 applicant must demonstrate to the utility commission that  
22 regionalization or consolidation with another retail public  
23 utility is not economically feasible.

24 (e) The utility commission by rule shall develop a  
25 standardized method for determining under Section 13.246(f) which  
26 of two or more retail public utilities or water supply or sewer  
27 service corporations that apply for a certificate of public

1 convenience and necessity to provide water or sewer utility service  
2 to an uncertificated area located in an economically distressed  
3 area is more capable financially, managerially, and technically of  
4 providing continuous and adequate service. In this subsection,  
5 "economically distressed area" has the meaning assigned by Section  
6 15.001.

7 SECTION 2.43. Sections 13.242(a) and (c), Water Code, are  
8 amended to read as follows:

9 (a) Unless otherwise specified, a utility, a utility  
10 operated by an affected county, or a water supply or sewer service  
11 corporation may not in any way render retail water or sewer utility  
12 service directly or indirectly to the public without first having  
13 obtained from the utility commission a certificate that the present  
14 or future public convenience and necessity will require that  
15 installation, operation, or extension, and except as otherwise  
16 provided by this subchapter, a retail public utility may not  
17 furnish, make available, render, or extend retail water or sewer  
18 utility service to any area to which retail water or sewer utility  
19 service is being lawfully furnished by another retail public  
20 utility without first having obtained a certificate of public  
21 convenience and necessity that includes the area in which the  
22 consuming facility is located.

23 (c) The utility commission may by rule allow a municipality  
24 or utility or water supply corporation to render retail water  
25 service without a certificate of public convenience and necessity  
26 if the municipality has given notice under Section 13.255 [~~of this~~  
27 ~~code~~] that it intends to provide retail water service to an area or

1 if the utility or water supply corporation has less than 15  
2 potential connections and is not within the certificated area of  
3 another retail public utility.

4 SECTION 2.44. Section 13.244, Water Code, is amended to  
5 read as follows:

6 Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;  
7 EVIDENCE AND CONSENT. (a) To obtain a certificate of public  
8 convenience and necessity or an amendment to a certificate, a  
9 public utility or water supply or sewer service corporation shall  
10 submit to the utility commission an application for a certificate  
11 or for an amendment as provided by this section.

12 (b) Each public utility and water supply or sewer service  
13 corporation shall file with the utility commission a map or maps  
14 showing all its facilities and illustrating separately facilities  
15 for production, transmission, and distribution of its services, and  
16 each certificated retail public utility shall file with the utility  
17 commission a map or maps showing any facilities, customers, or area  
18 currently being served outside its certificated areas.

19 (c) Each applicant for a certificate or for an amendment  
20 shall file with the utility commission evidence required by the  
21 utility commission to show that the applicant has received the  
22 required consent, franchise, or permit of the proper municipality  
23 or other public authority.

24 (d) An application for a certificate of public convenience  
25 and necessity or for an amendment to a certificate must contain:

26 (1) a description of the proposed service area by:

27 (A) a metes and bounds survey certified by a

1 licensed state land surveyor or a registered professional land  
2 surveyor;

3 (B) the Texas State Plane Coordinate System;

4 (C) verifiable landmarks, including a road,  
5 creek, or railroad line; or

6 (D) if a recorded plat of the area exists, lot and  
7 block number;

8 (2) a description of any requests for service in the  
9 proposed service area;

10 (3) a capital improvements plan, including a budget  
11 and estimated timeline for construction of all facilities necessary  
12 to provide full service to the entire proposed service area;

13 (4) a description of the sources of funding for all  
14 facilities;

15 (5) to the extent known, a description of current and  
16 projected land uses, including densities;

17 (6) a current financial statement of the applicant;

18 (7) according to the tax roll of the central appraisal  
19 district for each county in which the proposed service area is  
20 located, a list of the owners of each tract of land that is:

21 (A) at least 50 acres; and

22 (B) wholly or partially located within the  
23 proposed service area; and

24 (8) any other item required by the utility commission.

25 SECTION 2.45. Sections 13.245(b), (c), (c-1), (c-2), (c-3),  
26 and (e), Water Code, are amended to read as follows:

27 (b) Except as provided by Subsections (c), (c-1), and (c-2),



1 the utility commission may not grant to a retail public utility a  
2 certificate of public convenience and necessity for a service area  
3 within the boundaries or extraterritorial jurisdiction of a  
4 municipality without the consent of the municipality. The  
5 municipality may not unreasonably withhold the consent. As a  
6 condition of the consent, a municipality may require that all water  
7 and sewer facilities be designed and constructed in accordance with  
8 the municipality's standards for facilities.

9 (c) If a municipality has not consented under Subsection (b)  
10 before the 180th day after the date the municipality receives the  
11 retail public utility's application, the utility commission shall  
12 grant the certificate of public convenience and necessity without  
13 the consent of the municipality if the utility commission finds  
14 that the municipality:

- 15 (1) does not have the ability to provide service; or  
16 (2) has failed to make a good faith effort to provide  
17 service on reasonable terms and conditions.

18 (c-1) If a municipality has not consented under Subsection  
19 (b) before the 180th day after the date a landowner or a retail  
20 public utility submits to the municipality a formal request for  
21 service according to the municipality's application requirements  
22 and standards for facilities on the same or substantially similar  
23 terms as provided by the retail public utility's application to the  
24 utility commission, including a capital improvements plan required  
25 by Section 13.244(d)(3) or a subdivision plat, the utility  
26 commission may grant the certificate of public convenience and  
27 necessity without the consent of the municipality if:

1           (1) the utility commission makes the findings required  
2 by Subsection (c);

3           (2) the municipality has not entered into a binding  
4 commitment to serve the area that is the subject of the retail  
5 public utility's application to the utility commission before the  
6 180th day after the date the formal request was made; and

7           (3) the landowner or retail public utility that  
8 submitted the formal request has not unreasonably refused to:

9                   (A) comply with the municipality's service  
10 extension and development process; or

11                   (B) enter into a contract for water or sewer  
12 services with the municipality.

13           (c-2) If a municipality refuses to provide service in the  
14 proposed service area, as evidenced by a formal vote of the  
15 municipality's governing body or an official notification from the  
16 municipality, the utility commission is not required to make the  
17 findings otherwise required by this section and may grant the  
18 certificate of public convenience and necessity to the retail  
19 public utility at any time after the date of the formal vote or  
20 receipt of the official notification.

21           (c-3) The utility commission must include as a condition of  
22 a certificate of public convenience and necessity granted under  
23 Subsection (c-1) or (c-2) that all water and sewer facilities be  
24 designed and constructed in accordance with the municipality's  
25 standards for water and sewer facilities.

26           (e) If the utility commission makes a decision under  
27 Subsection (d) regarding the grant of a certificate of public

1 convenience and necessity without the consent of the municipality,  
2 the municipality or the retail public utility may appeal the  
3 decision to the appropriate state district court. The court shall  
4 hear the petition within 120 days after the date the petition is  
5 filed. On final disposition, the court may award reasonable fees to  
6 the prevailing party.

7 SECTION 2.46. Sections 13.2451(b) and (c), Water Code, are  
8 amended to read as follows:

9 (b) The utility commission may not extend a municipality's  
10 certificate of public convenience and necessity beyond its  
11 extraterritorial jurisdiction if an owner of land that is located  
12 wholly or partly outside the extraterritorial jurisdiction elects  
13 to exclude some or all of the landowner's property within a proposed  
14 service area in accordance with Section 13.246(h). This subsection  
15 does not apply to a transfer of a certificate as approved by the  
16 utility commission.

17 (c) The utility commission, after notice to the  
18 municipality and an opportunity for a hearing, may decertify an  
19 area outside a municipality's extraterritorial jurisdiction if the  
20 municipality does not provide service to the area on or before the  
21 fifth anniversary of the date the certificate of public convenience  
22 and necessity was granted for the area. This subsection does not  
23 apply to a certificate of public convenience and necessity for an  
24 area:

25 (1) that was transferred to a municipality on approval  
26 of the utility commission; and

27 (2) in relation to which the municipality has spent

1 public funds.

2 SECTION 2.47. Section 13.246, Water Code, is amended to  
3 read as follows:

4 Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL;  
5 FACTORS CONSIDERED. (a) If an application for a certificate of  
6 public convenience and necessity or for an amendment to a  
7 certificate is filed, the utility commission shall cause notice of  
8 the application to be given to affected parties and to each county  
9 and groundwater conservation district that is wholly or partly  
10 included in the area proposed to be certified. If requested, the  
11 utility commission shall fix a time and place for a hearing and give  
12 notice of the hearing. Any person affected by the application may  
13 intervene at the hearing.

14 (a-1) Except as otherwise provided by this subsection, in  
15 addition to the notice required by Subsection (a), the utility  
16 commission shall require notice to be mailed to each owner of a  
17 tract of land that is at least 25 acres and is wholly or partially  
18 included in the area proposed to be certified. Notice required  
19 under this subsection must be mailed by first class mail to the  
20 owner of the tract according to the most current tax appraisal rolls  
21 of the applicable central appraisal district at the time the  
22 utility commission received the application for the certificate or  
23 amendment. Good faith efforts to comply with the requirements of  
24 this subsection shall be considered adequate notice to landowners.  
25 Notice under this subsection is not required for a matter filed with  
26 the utility commission or the commission under:

27 (1) Section 13.248 or 13.255; or

1           (2) Chapter 65.

2           (b) The utility commission may grant applications and issue  
3 certificates and amendments to certificates only if the utility  
4 commission finds that a certificate or amendment is necessary for  
5 the service, accommodation, convenience, or safety of the public.  
6 The utility commission may issue a certificate or amendment as  
7 requested, or refuse to issue it, or issue it for the construction  
8 of only a portion of the contemplated system or facility or  
9 extension, or for the partial exercise only of the right or  
10 privilege and may impose special conditions necessary to ensure  
11 that continuous and adequate service is provided.

12           (c) Certificates of public convenience and necessity and  
13 amendments to certificates shall be granted by the utility  
14 commission on a nondiscriminatory basis after consideration by the  
15 utility commission of:

16           (1) the adequacy of service currently provided to the  
17 requested area;

18           (2) the need for additional service in the requested  
19 area, including whether any landowners, prospective landowners,  
20 tenants, or residents have requested service;

21           (3) the effect of the granting of a certificate or of  
22 an amendment on the recipient of the certificate or amendment, on  
23 the landowners in the area, and on any retail public utility of the  
24 same kind already serving the proximate area;

25           (4) the ability of the applicant to provide adequate  
26 service, including meeting the standards of the commission, taking  
27 into consideration the current and projected density and land use

1 of the area;

2 (5) the feasibility of obtaining service from an  
3 adjacent retail public utility;

4 (6) the financial ability of the applicant to pay for  
5 the facilities necessary to provide continuous and adequate service  
6 and the financial stability of the applicant, including, if  
7 applicable, the adequacy of the applicant's debt-equity ratio;

8 (7) environmental integrity;

9 (8) the probable improvement of service or lowering of  
10 cost to consumers in that area resulting from the granting of the  
11 certificate or amendment; and

12 (9) the effect on the land to be included in the  
13 certificated area.

14 (d) The utility commission may require an applicant for a  
15 certificate or for an amendment to provide a bond or other financial  
16 assurance in a form and amount specified by the utility commission  
17 to ensure that continuous and adequate utility service is provided.

18 (e) Where applicable, in addition to the other factors in  
19 this section the utility commission shall consider the efforts of  
20 the applicant:

21 (1) to extend service to any economically distressed  
22 areas located within the service areas certificated to the  
23 applicant; and

24 (2) to enforce the rules adopted under Section 16.343.

25 (f) If two or more retail public utilities or water supply  
26 or sewer service corporations apply for a certificate of public  
27 convenience and necessity to provide water or sewer utility service

1 to an uncertificated area located in an economically distressed  
2 area and otherwise meet the requirements for obtaining a new  
3 certificate, the utility commission shall grant the certificate to  
4 the retail public utility or water supply or sewer service  
5 corporation that is more capable financially, managerially, and  
6 technically of providing continuous and adequate service.

7 (g) In this section, "economically distressed area" has the  
8 meaning assigned by Section 15.001.

9 (h) Except as provided by Subsection (i), a landowner who  
10 owns a tract of land that is at least 25 acres and that is wholly or  
11 partially located within the proposed service area may elect to  
12 exclude some or all of the landowner's property from the proposed  
13 service area by providing written notice to the utility commission  
14 before the 30th day after the date the landowner receives notice of  
15 a new application for a certificate of public convenience and  
16 necessity or for an amendment to an existing certificate of public  
17 convenience and necessity. The landowner's election is effective  
18 without a further hearing or other process by the utility  
19 commission. If a landowner makes an election under this  
20 subsection, the application shall be modified so that the electing  
21 landowner's property is not included in the proposed service area.  
22 An applicant for a certificate of public convenience and necessity  
23 that has land removed from its proposed certificated service area  
24 because of a landowner's election under this subsection may not be  
25 required to provide service to the removed land for any reason,  
26 including the violation of law or utility commission or commission  
27 rules by the water or sewer system of another person.

1           (i) A landowner is not entitled to make an election under  
2 Subsection (h) but is entitled to contest the inclusion of the  
3 landowner's property in the proposed service area at a hearing held  
4 by the utility commission regarding the application if the proposed  
5 service area is located within the boundaries or extraterritorial  
6 jurisdiction of a municipality with a population of more than  
7 500,000 and the municipality or a utility owned by the municipality  
8 is the applicant.

9           SECTION 2.48. Section 13.247(a), Water Code, is amended to  
10 read as follows:

11           (a) If an area is within the boundaries of a municipality,  
12 all retail public utilities certified or entitled to certification  
13 under this chapter to provide service or operate facilities in that  
14 area may continue and extend service in its area of public  
15 convenience and necessity within the area pursuant to the rights  
16 granted by its certificate and this chapter, unless the  
17 municipality exercises its power of eminent domain to acquire the  
18 property of the retail public utility under Subsection (d). Except  
19 as provided by Section 13.255, a municipally owned or operated  
20 utility may not provide retail water and sewer utility service  
21 within the area certificated to another retail public utility  
22 without first having obtained from the utility commission a  
23 certificate of public convenience and necessity that includes the  
24 areas to be served.

25           SECTION 2.49. Section 13.248, Water Code, is amended to  
26 read as follows:

27           Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts



1 between retail public utilities designating areas to be served and  
2 customers to be served by those retail public utilities, when  
3 approved by the utility commission after public notice and hearing,  
4 are valid and enforceable and are incorporated into the appropriate  
5 areas of public convenience and necessity.

6 SECTION 2.50. Sections 13.250(b), (c), and (e), Water Code,  
7 are amended to read as follows:

8 (b) Unless the utility commission issues a certificate that  
9 neither the present nor future convenience and necessity will be  
10 adversely affected, the holder of a certificate or a person who  
11 possesses facilities used to provide utility service shall not  
12 discontinue, reduce, or impair service to a certified service area  
13 or part of a certified service area except for:

14 (1) nonpayment of charges for services provided by the  
15 certificate holder or a person who possesses facilities used to  
16 provide utility service;

17 (2) nonpayment of charges for sewer service provided  
18 by another retail public utility under an agreement between the  
19 retail public utility and the certificate holder or a person who  
20 possesses facilities used to provide utility service or under a  
21 utility commission-ordered arrangement between the two service  
22 providers;

23 (3) nonuse; or

24 (4) other similar reasons in the usual course of  
25 business.

26 (c) Any discontinuance, reduction, or impairment of  
27 service, whether with or without approval of the utility

1 commission, shall be in conformity with and subject to conditions,  
2 restrictions, and limitations that the utility commission  
3 prescribes.

4 (e) Not later than the 48th hour after the hour in which a  
5 utility files a bankruptcy petition, the utility shall report this  
6 fact to the utility commission and the commission in writing.

7 SECTION 2.51. Section 13.2502(d), Water Code, is amended to  
8 read as follows:

9 (d) This section does not limit or extend the jurisdiction  
10 of the utility commission under Section 13.043(g).

11 SECTION 2.52. Section 13.251, Water Code, is amended to  
12 read as follows:

13 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.  
14 Except as provided by Section 13.255 [~~of this code~~], a utility or a  
15 water supply or sewer service corporation may not sell, assign, or  
16 lease a certificate of public convenience and necessity or any  
17 right obtained under a certificate unless the utility commission  
18 has determined that the purchaser, assignee, or lessee is capable  
19 of rendering adequate and continuous service to every consumer  
20 within the certified area, after considering the factors under  
21 Section 13.246(c) [~~of this code~~]. The sale, assignment, or lease  
22 shall be on the conditions prescribed by the utility commission.

23 SECTION 2.53. Section 13.252, Water Code, is amended to  
24 read as follows:

25 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.  
26 If a retail public utility in constructing or extending a line,  
27 plant, or system interferes or attempts to interfere with the

1 operation of a line, plant, or system of any other retail public  
2 utility, or furnishes, makes available, renders, or extends retail  
3 water or sewer utility service to any portion of the service area of  
4 another retail public utility that has been granted or is not  
5 required to possess a certificate of public convenience and  
6 necessity, the utility commission may issue an order prohibiting  
7 the construction, extension, or provision of service or prescribing  
8 terms and conditions for locating the line, plant, or system  
9 affected or for the provision of the service.

10 SECTION 2.54. Section 13.253, Water Code, is amended to  
11 read as follows:

12 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING  
13 SERVICE. (a) After notice and hearing, the utility commission or  
14 the commission may:

15 (1) order any retail public utility that is required  
16 by law to possess a certificate of public convenience and necessity  
17 or any retail public utility that possesses a certificate of public  
18 convenience and necessity and is located in an affected county as  
19 defined in Section 16.341 to:

20 (A) provide specified improvements in its  
21 service in a defined area if service in that area is inadequate or  
22 is substantially inferior to service in a comparable area and it is  
23 reasonable to require the retail public utility to provide the  
24 improved service; or

25 (B) develop, implement, and follow financial,  
26 managerial, and technical practices that are acceptable to the  
27 utility commission to ensure that continuous and adequate service

1 is provided to any areas currently certificated to the retail  
2 public utility if the retail public utility has not provided  
3 continuous and adequate service to any of those areas and, for a  
4 utility, to provide financial assurance of the utility's ability to  
5 operate the system in accordance with applicable laws and rules, in  
6 the form of a bond or other financial assurance in a form and amount  
7 specified by the utility commission;

8 (2) order two or more public utilities or water supply  
9 or sewer service corporations to establish specified facilities for  
10 interconnecting service;

11 (3) order a public utility or water supply or sewer  
12 service corporation that has not demonstrated that it can provide  
13 continuous and adequate service from its drinking water source or  
14 sewer treatment facility to obtain service sufficient to meet its  
15 obligation to provide continuous and adequate service on at least a  
16 wholesale basis from another consenting utility service provider;  
17 or

18 (4) issue an emergency order, with or without a  
19 hearing, under Section 13.041.

20 (b) If the utility commission has reason to believe that  
21 improvements and repairs to a water or sewer service system are  
22 necessary to enable a retail public utility to provide continuous  
23 and adequate service in any portion of its service area and the  
24 retail public utility has provided financial assurance under  
25 Section 341.0355, Health and Safety Code, or under this chapter,  
26 the utility commission, after providing to the retail public  
27 utility notice and an opportunity to be heard by the commissioners

1 at a [~~commission~~] meeting of the utility commission, may  
2 immediately order specified improvements and repairs to the water  
3 or sewer system, the costs of which may be paid by the bond or other  
4 financial assurance in an amount determined by the utility  
5 commission not to exceed the amount of the bond or financial  
6 assurance. The order requiring the improvements may be an  
7 emergency order if it is issued after the retail public utility has  
8 had an opportunity to be heard [~~by the commissioners~~] at a  
9 [~~commission~~] meeting of the utility commission. After notice and  
10 hearing, the utility commission may require a retail public utility  
11 to obligate additional money to replace the financial assurance  
12 used for the improvements.

13 SECTION 2.55. Sections 13.254(a), (a-1), (a-2), (a-3),  
14 (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h),  
15 Water Code, are amended to read as follows:

16 (a) The utility commission at any time after notice and  
17 hearing may revoke or amend any certificate of public convenience  
18 and necessity with the written consent of the certificate holder or  
19 if the utility commission [~~it~~] finds that:

20 (1) the certificate holder has never provided, is no  
21 longer providing, is incapable of providing, or has failed to  
22 provide continuous and adequate service in the area, or part of the  
23 area, covered by the certificate;

24 (2) in an affected county as defined in Section  
25 16.341, the cost of providing service by the certificate holder is  
26 so prohibitively expensive as to constitute denial of service,  
27 provided that, for commercial developments or for residential

1 developments started after September 1, 1997, in an affected county  
2 as defined in Section 16.341, the fact that the cost of obtaining  
3 service from the currently certificated retail public utility makes  
4 the development economically unfeasible does not render such cost  
5 prohibitively expensive in the absence of other relevant factors;

6 (3) the certificate holder has agreed in writing to  
7 allow another retail public utility to provide service within its  
8 service area, except for an interim period, without amending its  
9 certificate; or

10 (4) the certificate holder has failed to file a cease  
11 and desist action pursuant to Section 13.252 within 180 days of the  
12 date that it became aware that another retail public utility was  
13 providing service within its service area, unless the certificate  
14 holder demonstrates good cause for its failure to file such action  
15 within the 180 days.

16 (a-1) As an alternative to decertification under Subsection  
17 (a), the owner of a tract of land that is at least 50 acres and that  
18 is not in a platted subdivision actually receiving water or sewer  
19 service may petition the utility commission under this subsection  
20 for expedited release of the area from a certificate of public  
21 convenience and necessity so that the area may receive service from  
22 another retail public utility. The fact that a certificate holder  
23 is a borrower under a federal loan program is not a bar to a request  
24 under this subsection for the release of the petitioner's land and  
25 the receipt of services from an alternative provider. On the day  
26 the petitioner submits the petition to the utility commission, the  
27 petitioner shall send, via certified mail, a copy of the petition to

1 the certificate holder, who may submit information to the utility  
2 commission to controvert information submitted by the petitioner.  
3 The petitioner must demonstrate that:

4 (1) a written request for service, other than a  
5 request for standard residential or commercial service, has been  
6 submitted to the certificate holder, identifying:

7 (A) the area for which service is sought;

8 (B) the timeframe within which service is needed  
9 for current and projected service demands in the area;

10 (C) the level and manner of service needed for  
11 current and projected service demands in the area;

12 (D) the approximate cost for the alternative  
13 provider to provide the service at the same level and manner that is  
14 requested from the certificate holder;

15 (E) the flow and pressure requirements and  
16 specific infrastructure needs, including line size and system  
17 capacity for the required level of fire protection requested; and

18 (F) any additional information requested by the  
19 certificate holder that is reasonably related to determination of  
20 the capacity or cost for providing the service;

21 (2) the certificate holder has been allowed at least  
22 90 calendar days to review and respond to the written request and  
23 the information it contains;

24 (3) the certificate holder:

25 (A) has refused to provide the service;

26 (B) is not capable of providing the service on a  
27 continuous and adequate basis within the timeframe, at the level,

1 at the approximate cost that the alternative provider is capable of  
2 providing for a comparable level of service, or in the manner  
3 reasonably needed or requested by current and projected service  
4 demands in the area; or

5 (C) conditions the provision of service on the  
6 payment of costs not properly allocable directly to the  
7 petitioner's service request, as determined by the utility  
8 commission; and

9 (4) the alternate retail public utility from which the  
10 petitioner will be requesting service possesses the financial,  
11 managerial, and technical capability to provide continuous and  
12 adequate service within the timeframe, at the level, at the cost,  
13 and in the manner reasonably needed or requested by current and  
14 projected service demands in the area.

15 (a-2) A landowner is not entitled to make the election  
16 described in Subsection (a-1) or (a-5) but is entitled to contest  
17 under Subsection (a) the involuntary certification of its property  
18 in a hearing held by the utility commission if the landowner's  
19 property is located:

20 (1) within the boundaries of any municipality or the  
21 extraterritorial jurisdiction of a municipality with a population  
22 of more than 500,000 and the municipality or retail public utility  
23 owned by the municipality is the holder of the certificate; or

24 (2) in a platted subdivision actually receiving water  
25 or sewer service.

26 (a-3) Within 60 calendar days from the date the utility  
27 commission determines the petition filed pursuant to Subsection



1 (a-1) to be administratively complete, the utility commission shall  
2 grant the petition unless the utility commission makes an express  
3 finding that the petitioner failed to satisfy the elements required  
4 in Subsection (a-1) and supports its finding with separate findings  
5 and conclusions for each element based solely on the information  
6 provided by the petitioner and the certificate holder. The utility  
7 commission may grant or deny a petition subject to terms and  
8 conditions specifically related to the service request of the  
9 petitioner and all relevant information submitted by the petitioner  
10 and the certificate holder. In addition, the utility commission  
11 may require an award of compensation as otherwise provided by this  
12 section.

13 (a-4) Chapter 2001, Government Code, does not apply to any  
14 petition filed under Subsection (a-1). The decision of the utility  
15 commission on the petition is final after any reconsideration  
16 authorized by the utility commission's rules and may not be  
17 appealed.

18 (a-6) The utility commission shall grant a petition  
19 received under Subsection (a-5) not later than the 60th day after  
20 the date the landowner files the petition. The utility commission  
21 may not deny a petition received under Subsection (a-5) based on the  
22 fact that a certificate holder is a borrower under a federal loan  
23 program. The utility commission may require an award of  
24 compensation by the petitioner to a decertified retail public  
25 utility that is the subject of a petition filed under Subsection  
26 (a-5) as otherwise provided by this section.

27 (a-8) If a certificate holder has never made service

1 available through planning, design, construction of facilities, or  
2 contractual obligations to serve the area a petitioner seeks to  
3 have released under Subsection (a-1), the utility commission is not  
4 required to find that the proposed alternative provider is capable  
5 of providing better service than the certificate holder, but only  
6 that the proposed alternative provider is capable of providing the  
7 requested service.

8 (b) Upon written request from the certificate holder, the  
9 utility commission [~~executive director~~] may cancel the certificate  
10 of a utility or water supply corporation authorized by rule to  
11 operate without a certificate of public convenience and necessity  
12 under Section 13.242(c).

13 (c) If the certificate of any retail public utility is  
14 revoked or amended, the utility commission may require one or more  
15 retail public utilities with their consent to provide service in  
16 the area in question. The order of the utility commission shall not  
17 be effective to transfer property.

18 (d) A retail public utility may not in any way render retail  
19 water or sewer service directly or indirectly to the public in an  
20 area that has been decertified under this section without providing  
21 compensation for any property that the utility commission  
22 determines is rendered useless or valueless to the decertified  
23 retail public utility as a result of the decertification.

24 (e) The determination of the monetary amount of  
25 compensation, if any, shall be determined at the time another  
26 retail public utility seeks to provide service in the previously  
27 decertified area and before service is actually provided. The

1 utility commission shall ensure that the monetary amount of  
2 compensation is determined not later than the 90th calendar day  
3 after the date on which a retail public utility notifies the utility  
4 commission of its intent to provide service to the decertified  
5 area.

6 (f) The monetary amount shall be determined by a qualified  
7 individual or firm serving as independent appraiser agreed upon by  
8 the decertified retail public utility and the retail public utility  
9 seeking to serve the area. The determination of compensation by the  
10 independent appraiser shall be binding on the utility commission.  
11 The costs of the independent appraiser shall be borne by the retail  
12 public utility seeking to serve the area.

13 (g) For the purpose of implementing this section, the value  
14 of real property owned and utilized by the retail public utility for  
15 its facilities shall be determined according to the standards set  
16 forth in Chapter 21, Property Code, governing actions in eminent  
17 domain and the value of personal property shall be determined  
18 according to the factors in this subsection. The factors ensuring  
19 that the compensation to a retail public utility is just and  
20 adequate shall include: the amount of the retail public utility's  
21 debt allocable for service to the area in question; the value of the  
22 service facilities of the retail public utility located within the  
23 area in question; the amount of any expenditures for planning,  
24 design, or construction of service facilities that are allocable to  
25 service to the area in question; the amount of the retail public  
26 utility's contractual obligations allocable to the area in  
27 question; any demonstrated impairment of service or increase of

1 cost to consumers of the retail public utility remaining after the  
2 decertification; the impact on future revenues lost from existing  
3 customers; necessary and reasonable legal expenses and  
4 professional fees; and other relevant factors. The utility  
5 commission shall adopt rules governing the evaluation of these  
6 factors.

7 (g-1) If the retail public utilities cannot agree on an  
8 independent appraiser within 10 calendar days after the date on  
9 which the retail public utility notifies the utility commission of  
10 its intent to provide service to the decertified area, each retail  
11 public utility shall engage its own appraiser at its own expense,  
12 and each appraisal shall be submitted to the utility commission  
13 within 60 calendar days. After receiving the appraisals, the  
14 utility commission shall appoint a third appraiser who shall make a  
15 determination of the compensation within 30 days. The  
16 determination may not be less than the lower appraisal or more than  
17 the higher appraisal. Each retail public utility shall pay half the  
18 cost of the third appraisal.

19 (h) A certificate holder that has land removed from its  
20 certificated service area in accordance with this section may not  
21 be required, after the land is removed, to provide service to the  
22 removed land for any reason, including the violation of law or  
23 utility commission or commission rules by a water or sewer system of  
24 another person.

25 SECTION 2.56. Sections 13.255(a), (b), (c), (d), (e),  
26 (g-1), (k), (l), and (m), Water Code, are amended to read as  
27 follows:

1           (a) In the event that an area is incorporated or annexed by a  
2 municipality, either before or after the effective date of this  
3 section, the municipality and a retail public utility that provides  
4 water or sewer service to all or part of the area pursuant to a  
5 certificate of convenience and necessity may agree in writing that  
6 all or part of the area may be served by a municipally owned  
7 utility, by a franchised utility, or by the retail public utility.  
8 In this section, the phrase "franchised utility" shall mean a  
9 retail public utility that has been granted a franchise by a  
10 municipality to provide water or sewer service inside municipal  
11 boundaries. The agreement may provide for single or dual  
12 certification of all or part of the area, for the purchase of  
13 facilities or property, and for such other or additional terms that  
14 the parties may agree on. If a franchised utility is to serve the  
15 area, the franchised utility shall also be a party to the agreement.  
16 The executed agreement shall be filed with the utility commission,  
17 and the utility commission, on receipt of the agreement, shall  
18 incorporate the terms of the agreement into the respective  
19 certificates of convenience and necessity of the parties to the  
20 agreement.

21           (b) If an agreement is not executed within 180 days after  
22 the municipality, in writing, notifies the retail public utility of  
23 its intent to provide service to the incorporated or annexed area,  
24 and if the municipality desires and intends to provide retail  
25 utility service to the area, the municipality, prior to providing  
26 service to the area, shall file an application with the utility  
27 commission to grant single certification to the municipally owned

1 water or sewer utility or to a franchised utility. If an  
2 application for single certification is filed, the utility  
3 commission shall fix a time and place for a hearing and give notice  
4 of the hearing to the municipality and franchised utility, if any,  
5 and notice of the application and hearing to the retail public  
6 utility.

7 (c) The utility commission shall grant single certification  
8 to the municipality. The utility commission shall also determine  
9 whether single certification as requested by the municipality would  
10 result in property of a retail public utility being rendered  
11 useless or valueless to the retail public utility, and shall  
12 determine in its order the monetary amount that is adequate and just  
13 to compensate the retail public utility for such property. If the  
14 municipality in its application has requested the transfer of  
15 specified property of the retail public utility to the municipality  
16 or to a franchised utility, the utility commission shall also  
17 determine in its order the adequate and just compensation to be paid  
18 for such property pursuant to the provisions of this section,  
19 including an award for damages to property remaining in the  
20 ownership of the retail public utility after single certification.  
21 The order of the utility commission shall not be effective to  
22 transfer property. A transfer of property may only be obtained  
23 under this section by a court judgment rendered pursuant to  
24 Subsection (d) or (e) [~~of this section~~]. The grant of single  
25 certification by the utility commission shall go into effect on the  
26 date the municipality or franchised utility, as the case may be,  
27 pays adequate and just compensation pursuant to court order, or

1 pays an amount into the registry of the court or to the retail  
2 public utility under Subsection (f). If the court judgment  
3 provides that the retail public utility is not entitled to any  
4 compensation, the grant of single certification shall go into  
5 effect when the court judgment becomes final. The municipality or  
6 franchised utility must provide to each customer of the retail  
7 public utility being acquired an individual written notice within  
8 60 days after the effective date for the transfer specified in the  
9 court judgment. The notice must clearly advise the customer of the  
10 identity of the new service provider, the reason for the transfer,  
11 the rates to be charged by the new service provider, and the  
12 effective date of those rates.

13 (d) In the event the final order of the utility commission  
14 is not appealed within 30 days, the municipality may request the  
15 district court of Travis County to enter a judgment consistent with  
16 the order of the utility commission. In such event, the court shall  
17 render a judgment that:

18 (1) transfers to the municipally owned utility or  
19 franchised utility title to property to be transferred to the  
20 municipally owned utility or franchised utility as delineated by  
21 the utility commission's final order and property determined by the  
22 utility commission to be rendered useless or valueless by the  
23 granting of single certification; and

24 (2) orders payment to the retail public utility of  
25 adequate and just compensation for the property as determined by  
26 the utility commission in its final order.

27 (e) Any party that is aggrieved by a final order of the

1 utility commission under this section may file an appeal with the  
2 district court of Travis County within 30 days after the order  
3 becomes final. The hearing in such an appeal before the district  
4 court shall be by trial de novo on all issues. After the hearing, if  
5 the court determines that the municipally owned utility or  
6 franchised utility is entitled to single certification under the  
7 provisions of this section, the court shall enter a judgment that:

8           (1) transfers to the municipally owned utility or  
9 franchised utility title to property requested by the municipality  
10 to be transferred to the municipally owned utility or franchised  
11 utility and located within the singly certificated area and  
12 property determined by the court or jury to be rendered useless or  
13 valueless by the granting of single certification; and

14           (2) orders payment in accordance with Subsection (g)  
15 [~~of this section~~] to the retail public utility of adequate and just  
16 compensation for the property transferred and for the property  
17 damaged as determined by the court or jury.

18           (g-1) The utility commission shall adopt rules governing  
19 the evaluation of the factors to be considered in determining the  
20 monetary compensation under Subsection (g). The utility commission  
21 by rule shall adopt procedures to ensure that the total  
22 compensation to be paid to a retail public utility under Subsection  
23 (g) is determined not later than the 90th calendar day after the  
24 date on which the utility commission determines that the  
25 municipality's application is administratively complete.

26           (k) The following conditions apply when a municipality or  
27 franchised utility makes an application to acquire the service area



1 or facilities of a retail public utility described in Subsection  
2 (j)(2):

3 (1) the utility commission or court must determine  
4 that the service provided by the retail public utility is  
5 substandard or its rates are unreasonable in view of the reasonable  
6 expenses of the utility;

7 (2) if the municipality abandons its application, the  
8 court or the utility commission is authorized to award to the retail  
9 public utility its reasonable expenses related to the proceeding  
10 hereunder, including attorney fees; and

11 (3) unless otherwise agreed by the retail public  
12 utility, the municipality must take the entire utility property of  
13 the retail public utility in a proceeding hereunder.

14 (1) For an area incorporated by a municipality, the  
15 compensation provided under Subsection (g) shall be determined by a  
16 qualified individual or firm to serve as independent appraiser, who  
17 shall be selected by the affected retail public utility, and the  
18 costs of the appraiser shall be paid by the municipality. For an  
19 area annexed by a municipality, the compensation provided under  
20 Subsection (g) shall be determined by a qualified individual or  
21 firm to which the municipality and the retail public utility agree  
22 to serve as independent appraiser. If the retail public utility and  
23 the municipality are unable to agree on a single individual or firm  
24 to serve as the independent appraiser before the 11th day after the  
25 date the retail public utility or municipality notifies the other  
26 party of the impasse, the retail public utility and municipality  
27 each shall appoint a qualified individual or firm to serve as

1 independent appraiser. On or before the 10th business day after the  
2 date of their appointment, the independent appraisers shall meet to  
3 reach an agreed determination of the amount of compensation. If the  
4 appraisers are unable to agree on a determination before the 16th  
5 business day after the date of their first meeting under this  
6 subsection, the retail public utility or municipality may petition  
7 the utility commission or a person the utility commission  
8 designates for the purpose to appoint a third qualified independent  
9 appraiser to reconcile the appraisals of the two originally  
10 appointed appraisers. The determination of the third appraiser may  
11 not be less than the lesser or more than the greater of the two  
12 original appraisals. The costs of the independent appraisers for  
13 an annexed area shall be shared equally by the retail public utility  
14 and the municipality. The determination of compensation under this  
15 subsection is binding on the utility commission.

16 (m) The utility commission shall deny an application for  
17 single certification by a municipality that fails to demonstrate  
18 compliance with the commission's minimum requirements for public  
19 drinking water systems.

20 SECTION 2.57. Section 13.2551, Water Code, is amended to  
21 read as follows:

22 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a  
23 condition to decertification or single certification under Section  
24 13.254 or 13.255, and on request by an affected retail public  
25 utility, the utility commission may order:

26 (1) the retail public utility seeking to provide  
27 service to a decertified area to serve the entire service area of

1 the retail public utility that is being decertified; and

2 (2) the transfer of the entire certificate of public  
3 convenience and necessity of a partially decertified retail public  
4 utility to the retail public utility seeking to provide service to  
5 the decertified area.

6 (b) The utility commission shall order service to the entire  
7 area under Subsection (a) if the utility commission finds that the  
8 decertified retail public utility will be unable to provide  
9 continuous and adequate service at an affordable cost to the  
10 remaining customers.

11 (c) The utility commission shall require the retail public  
12 utility seeking to provide service to the decertified area to  
13 provide continuous and adequate service to the remaining customers  
14 at a cost comparable to the cost of that service to its other  
15 customers and shall establish the terms under which the service  
16 must be provided. The terms may include:

17 (1) transferring debt and other contract obligations;  
18 (2) transferring real and personal property;  
19 (3) establishing interim service rates for affected  
20 customers during specified times; and

21 (4) other provisions necessary for the just and  
22 reasonable allocation of assets and liabilities.

23 (d) The retail public utility seeking decertification shall  
24 not charge the affected customers any transfer fee or other fee to  
25 obtain service other than the retail public utility's usual and  
26 customary rates for monthly service or the interim rates set by the  
27 utility commission, if applicable.

1 (e) The utility commission shall not order compensation to  
2 the decertificated retail utility if service to the entire service  
3 area is ordered under this section.

4 SECTION 2.58. Sections 13.257(e), (i), (r), and (s), Water  
5 Code, are amended to read as follows:

6 (e) The notice must be given to the prospective purchaser  
7 before the execution of a binding contract of purchase and sale.  
8 The notice may be given separately or as an addendum to or paragraph  
9 of the contract. If the seller fails to provide the notice required  
10 by this section, the purchaser may terminate the contract. If the  
11 seller provides the notice at or before the closing of the purchase  
12 and sale contract and the purchaser elects to close even though the  
13 notice was not timely provided before the execution of the  
14 contract, it is conclusively presumed that the purchaser has waived  
15 all rights to terminate the contract and recover damages or pursue  
16 other remedies or rights under this section. Notwithstanding any  
17 provision of this section to the contrary, a seller, title  
18 insurance company, real estate broker, or examining attorney, or an  
19 agent, representative, or person acting on behalf of the seller,  
20 company, broker, or attorney, is not liable for damages under  
21 Subsection (m) or (n) or liable for any other damages to any person  
22 for:

23 (1) failing to provide the notice required by this  
24 section to a purchaser before the execution of a binding contract of  
25 purchase and sale or at or before the closing of the purchase and  
26 sale contract if:

27 (A) the utility service provider did not file the

1 map of the certificated service area in the real property records of  
2 the county in which the service area is located and with the utility  
3 commission depicting the boundaries of the service area of the  
4 utility service provider as shown in the real property records of  
5 the county in which the service area is located; and

6 (B) the utility commission did not maintain an  
7 accurate map of the certificated service area of the utility  
8 service provider as required by this chapter; or

9 (2) unintentionally providing a notice required by  
10 this section that is incorrect under the circumstances before the  
11 execution of a binding contract of purchase and sale or at or before  
12 the closing of the purchase and sale contract.

13 (i) If the notice is given at closing as provided by  
14 Subsection (g), a purchaser, or the purchaser's heirs, successors,  
15 or assigns, may not maintain an action for damages or maintain an  
16 action against a seller, title insurance company, real estate  
17 broker, or lienholder, or any agent, representative, or person  
18 acting on behalf of the seller, company, broker, or lienholder, by  
19 reason of the seller's use of the information filed with the utility  
20 commission by the utility service provider or the seller's use of  
21 the map of the certificated service area of the utility service  
22 provider filed in the real property records to determine whether  
23 the property to be purchased is within the certificated service  
24 area of the utility service provider. An action may not be  
25 maintained against a title insurance company for the failure to  
26 disclose that the described real property is included within the  
27 certificated service area of a utility service provider if the

1 utility service provider did not file in the real property records  
2 or with the utility commission the map of the certificated service  
3 area.

4 (r) A utility service provider shall:

5 (1) record in the real property records of each county  
6 in which the service area or a portion of the service area is  
7 located a certified copy of the map of the certificate of public  
8 convenience and necessity and of any amendment to the certificate  
9 as contained in the utility commission's records, and a boundary  
10 description of the service area by:

11 (A) a metes and bounds survey certified by a  
12 licensed state land surveyor or a registered professional land  
13 surveyor;

14 (B) the Texas State Plane Coordinate System;

15 (C) verifiable landmarks, including a road,  
16 creek, or railroad line; or

17 (D) if a recorded plat of the area exists, lot and  
18 block number; and

19 (2) submit to the utility commission [~~executive~~  
20 ~~director~~] evidence of the recording.

21 (s) Each county shall accept and file in its real property  
22 records a utility service provider's map presented to the county  
23 clerk under this section if the map meets filing requirements, does  
24 not exceed 11 inches by 17 inches in size, and is accompanied by the  
25 appropriate fee. The recording required by this section must be  
26 completed not later than the 31st day after the date a utility  
27 service provider receives a final order from the utility commission

1 granting an application for a new certificate or for an amendment to  
2 a certificate that results in a change in the utility service  
3 provider's service area.

4 SECTION 2.59. Sections 13.301(a), (b), (c), (d), (e), (f),  
5 and (g), Water Code, are amended to read as follows:

6 (a) A utility or a water supply or sewer service  
7 corporation, on or before the 120th day before the effective date of  
8 a sale, acquisition, lease, or rental of a water or sewer system  
9 that is required by law to possess a certificate of public  
10 convenience and necessity or the effective date of a merger or  
11 consolidation with such a utility or water supply or sewer service  
12 corporation, shall:

13 (1) file a written application with the utility  
14 commission; and

15 (2) unless public notice is waived by the utility  
16 commission [~~executive director~~] for good cause shown, give public  
17 notice of the action.

18 (b) The utility commission may require that the person  
19 purchasing or acquiring the water or sewer system demonstrate  
20 adequate financial, managerial, and technical capability for  
21 providing continuous and adequate service to the requested area and  
22 any areas currently certificated to the person.

23 (c) If the person purchasing or acquiring the water or sewer  
24 system cannot demonstrate adequate financial capability, the  
25 utility commission may require that the person provide a bond or  
26 other financial assurance in a form and amount specified by the  
27 utility commission to ensure continuous and adequate utility

1 service is provided.

2 (d) The utility commission shall, with or without a public  
3 hearing, investigate the sale, acquisition, lease, or rental to  
4 determine whether the transaction will serve the public interest.

5 (e) Before the expiration of the 120-day notification  
6 period, the utility commission [~~executive director~~] shall notify  
7 all known parties to the transaction and the Office of Public  
8 Utility Counsel whether [~~of~~] the utility commission will [~~executive~~  
9 ~~director's decision whether to request that the commission~~] hold a  
10 public hearing to determine if the transaction will serve the  
11 public interest. The utility commission may hold [~~executive~~  
12 ~~director may request~~] a hearing if:

13 (1) the application filed with the utility commission  
14 or the public notice was improper;

15 (2) the person purchasing or acquiring the water or  
16 sewer system has not demonstrated adequate financial, managerial,  
17 and technical capability for providing continuous and adequate  
18 service to the service area being acquired and to any areas  
19 currently certificated to the person;

20 (3) the person or an affiliated interest of the person  
21 purchasing or acquiring the water or sewer system has a history of:

22 (A) noncompliance with the requirements of the  
23 utility commission, the commission, or the [~~Texas~~] Department of  
24 State Health Services; or

25 (B) continuing mismanagement or misuse of  
26 revenues as a utility service provider;

27 (4) the person purchasing or acquiring the water or



1 sewer system cannot demonstrate the financial ability to provide  
2 the necessary capital investment to ensure the provision of  
3 continuous and adequate service to the customers of the water or  
4 sewer system; or

5 (5) there are concerns that the transaction may not  
6 serve the public interest, after the application of the  
7 considerations provided by Section 13.246(c) for determining  
8 whether to grant a certificate of convenience and necessity.

9 (f) Unless the utility commission holds ~~[executive director~~  
10 ~~requests that]~~ a public hearing ~~[be held]~~, the sale, acquisition,  
11 lease, or rental may be completed as proposed:

12 (1) at the end of the 120-day period; or

13 (2) at any time after the utility commission  
14 ~~[executive director]~~ notifies the utility or water supply or sewer  
15 service corporation that a hearing will not be held ~~[requested]~~.

16 (g) If the utility commission decides to hold a hearing ~~[is~~  
17 ~~requested]~~ or if the utility or water supply or sewer service  
18 corporation fails to make the application as required or to provide  
19 public notice, the sale, acquisition, lease, or rental may not be  
20 completed unless the utility commission determines that the  
21 proposed transaction serves the public interest.

22 SECTION 2.60. Section 13.302, Water Code, is amended to  
23 read as follows:

24 Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC  
25 UTILITY: REPORT. (a) A utility may not purchase voting stock in  
26 another utility doing business in this state and a person may not  
27 acquire a controlling interest in a utility doing business in this

1 state unless the person or utility files a written application with  
2 the utility commission not later than the 61st day before the date  
3 on which the transaction is to occur.

4 (b) The utility commission may require that a person  
5 acquiring a controlling interest in a utility demonstrate adequate  
6 financial, managerial, and technical capability for providing  
7 continuous and adequate service to the requested area and any areas  
8 currently certificated to the person.

9 (c) If the person acquiring a controlling interest cannot  
10 demonstrate adequate financial capability, the utility commission  
11 may require that the person provide a bond or other financial  
12 assurance in a form and amount specified by the utility commission  
13 to ensure continuous and adequate utility service is provided.

14 (d) The utility commission [~~executive director~~] may  
15 [~~request that the commission~~] hold a public hearing on the  
16 transaction if the utility commission [~~executive director~~]  
17 believes that a criterion prescribed by Section 13.301(e) applies.

18 (e) Unless the utility commission holds [~~executive director~~  
19 ~~requests that~~] a public hearing [~~be held~~], the purchase or  
20 acquisition may be completed as proposed:

21 (1) at the end of the 60-day period; or

22 (2) at any time after the utility commission  
23 [~~executive director~~] notifies the person or utility that a hearing  
24 will not be held [~~requested~~].

25 (f) If the utility commission decides to hold a hearing [~~is~~  
26 ~~requested~~] or if the person or utility fails to make the application  
27 to the utility commission as required, the purchase or acquisition

1 may not be completed unless the utility commission determines that  
2 the proposed transaction serves the public interest. A purchase or  
3 acquisition that is not completed in accordance with the provisions  
4 of this section is void.

5 SECTION 2.61. Section 13.303, Water Code, is amended to  
6 read as follows:

7 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may  
8 not loan money, stocks, bonds, notes, or other evidences of  
9 indebtedness to any corporation or person owning or holding  
10 directly or indirectly any stock of the utility unless the utility  
11 reports the transaction to the utility commission within 60 days  
12 after the date of the transaction.

13 SECTION 2.62. Section 13.304, Water Code, is amended to  
14 read as follows:

15 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that  
16 receives notice that all or a portion of the utility's facilities or  
17 property used to provide utility service are being posted for  
18 foreclosure shall notify the utility commission and the commission  
19 in writing of that fact not later than the 10th day after the date on  
20 which the utility receives the notice.

21 (b) A financial institution that forecloses on a utility or  
22 on any part of the utility's facilities or property that are used to  
23 provide utility service is not required to provide the 120-day  
24 notice prescribed by Section 13.301, but shall provide written  
25 notice to the utility commission and the commission before the 30th  
26 day preceding the date on which the foreclosure is completed.

27 (c) The financial institution may operate the utility for an

1 interim period prescribed by utility commission rule before  
2 transferring or otherwise obtaining a certificate of convenience  
3 and necessity. A financial institution that operates a utility  
4 during an interim period under this subsection is subject to each  
5 utility commission rule to which the utility was subject and in the  
6 same manner.

7 SECTION 2.63. Section 13.341, Water Code, is amended to  
8 read as follows:

9 Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The  
10 utility commission has jurisdiction over affiliated interests  
11 having transactions with utilities under the jurisdiction of the  
12 utility commission to the extent of access to all accounts and  
13 records of those affiliated interests relating to such  
14 transactions, including but in no way limited to accounts and  
15 records of joint or general expenses, any portion of which may be  
16 applicable to those transactions.

17 SECTION 2.64. Section 13.342, Water Code, is amended to  
18 read as follows:

19 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING  
20 SECURITIES. The utility commission may require the disclosure of  
21 the identity and respective interests of every owner of any  
22 substantial interest in the voting securities of any utility or its  
23 affiliated interest. One percent or more is a substantial interest  
24 within the meaning of this section.

25 SECTION 2.65. Section 13.343(a), Water Code, is amended to  
26 read as follows:

27 (a) The owner of a utility that supplies retail water

1 service may not contract to purchase from an affiliated supplier  
2 wholesale water service for any of that owner's systems unless:

3 (1) the wholesale service is provided for not more  
4 than 90 days to remedy an emergency condition, as defined by utility  
5 commission or commission rule; or

6 (2) the utility commission [~~executive director~~]  
7 determines that the utility cannot obtain wholesale water service  
8 from another source at a lower cost than from the affiliate.

9 SECTION 2.66. Section 13.381, Water Code, is amended to  
10 read as follows:

11 Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party  
12 to a proceeding before the utility commission or the commission is  
13 entitled to judicial review under the substantial evidence rule.

14 SECTION 2.67. Section 13.382(a), Water Code, is amended to  
15 read as follows:

16 (a) Any party represented by counsel who alleges that  
17 existing rates are excessive or that rates prescribed by the  
18 utility commission are excessive and who is a prevailing party in  
19 proceedings for review of a utility commission order or decision  
20 may in the same action recover against the regulation fund  
21 reasonable fees for attorneys and expert witnesses and other costs  
22 incurred by him before the utility commission and the court. The  
23 amount of the attorney's fees shall be fixed by the court.

24 SECTION 2.68. Section 13.411, Water Code, is amended to  
25 read as follows:

26 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a)  
27 If the utility commission or the commission has reason to believe

1 that any retail public utility or any other person or corporation is  
2 engaged in or is about to engage in any act in violation of this  
3 chapter or of any order or rule of the utility commission or the  
4 commission entered or adopted under this chapter or that any retail  
5 public utility or any other person or corporation is failing to  
6 comply with this chapter or with any rule or order, the attorney  
7 general on request of the utility commission or the commission, in  
8 addition to any other remedies provided in this chapter, shall  
9 bring an action in a court of competent jurisdiction in the name of  
10 and on behalf of the utility commission or the commission against  
11 the retail public utility or other person or corporation to enjoin  
12 the commencement or continuation of any act or to require  
13 compliance with this chapter or the rule or order.

14 (b) If the utility commission or the executive director of  
15 the commission has reason to believe that the failure of the owner  
16 or operator of a water utility to properly operate, maintain, or  
17 provide adequate facilities presents an imminent threat to human  
18 health or safety, the utility commission or the executive director  
19 shall immediately:

- 20 (1) notify the utility's representative; and  
21 (2) initiate enforcement action consistent with:  
22 (A) this subchapter; and  
23 (B) procedural rules adopted by the utility  
24 commission or the commission.

25 SECTION 2.69. Section 13.4115, Water Code, is amended to  
26 read as follows:

27 Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER

1 CHARGE; PENALTY. In regard to a customer complaint arising out of a  
2 charge made by a public utility, if the utility commission [~~the~~  
3 ~~executive director~~] finds that the utility has failed to make the  
4 proper adjustment to the customer's bill after the conclusion of  
5 the complaint process established by the utility commission, the  
6 utility commission may issue an order requiring the utility to make  
7 the adjustment. Failure to comply with the order within 30 days of  
8 receiving the order is a violation for which the utility commission  
9 may impose an administrative penalty under Section 13.4151.

10 SECTION 2.70. Sections 13.412(a), (f), and (g), Water Code,  
11 are amended to read as follows:

12 (a) At the request of the utility commission or the  
13 commission, the attorney general shall bring suit for the  
14 appointment of a receiver to collect the assets and carry on the  
15 business of a water or sewer utility that:

16 (1) has abandoned operation of its facilities;

17 (2) informs the utility commission or the commission  
18 that the owner is abandoning the system;

19 (3) violates a final order of the utility commission  
20 or the commission; or

21 (4) allows any property owned or controlled by it to be  
22 used in violation of a final order of the utility commission or the  
23 commission.

24 (f) For purposes of this section and Section 13.4132,  
25 abandonment may include but is not limited to:

26 (1) failure to pay a bill or obligation owed to a  
27 retail public utility or to an electric or gas utility with the

1 result that the utility service provider has issued a notice of  
2 discontinuance of necessary services;

3 (2) failure to provide appropriate water or wastewater  
4 treatment so that a potential health hazard results;

5 (3) failure to adequately maintain facilities,  
6 resulting in potential health hazards, extended outages, or  
7 repeated service interruptions;

8 (4) failure to provide customers adequate notice of a  
9 health hazard or potential health hazard;

10 (5) failure to secure an alternative available water  
11 supply during an outage;

12 (6) displaying a pattern of hostility toward or  
13 repeatedly failing to respond to the utility commission or the  
14 commission or the utility's customers; and

15 (7) failure to provide the utility commission or the  
16 commission with adequate information on how to contact the utility  
17 for normal business and emergency purposes.

18 (g) Notwithstanding Section 64.021, Civil Practice and  
19 Remedies Code, a receiver appointed under this section may seek  
20 [~~commission~~] approval from the utility commission and the  
21 commission to acquire the water or sewer utility's facilities and  
22 transfer the utility's certificate of convenience and necessity.  
23 The receiver must apply in accordance with Subchapter H.

24 SECTION 2.71. Section 13.413, Water Code, is amended to  
25 read as follows:

26 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The  
27 receiver may, subject to the approval of the court and after giving



1 notice to all interested parties, sell or otherwise dispose of all  
2 or part of the real or personal property of a water or sewer utility  
3 against which a proceeding has been brought under this subchapter  
4 to pay the costs incurred in the operation of the receivership. The  
5 costs include:

6 (1) payment of fees to the receiver for his services;  
7 (2) payment of fees to attorneys, accountants,  
8 engineers, or any other person or entity that provides goods or  
9 services necessary to the operation of the receivership; and

10 (3) payment of costs incurred in ensuring that any  
11 property owned or controlled by a water or sewer utility is not used  
12 in violation of a final order of the utility commission or the  
13 commission.

14 SECTION 2.72. Section 13.4131, Water Code, is amended to  
15 read as follows:

16 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The  
17 utility commission, after providing to the utility notice and an  
18 opportunity for a hearing, may place a utility under supervision  
19 for gross or continuing mismanagement, gross or continuing  
20 noncompliance with this chapter or a rule adopted under this  
21 chapter [~~commission rules~~], or noncompliance with an order issued  
22 under this chapter [~~commission orders~~].

23 (b) While supervising a utility, the utility commission may  
24 require the utility to abide by conditions and requirements  
25 prescribed by the utility commission, including:

26 (1) management requirements;  
27 (2) additional reporting requirements;

1           (3) restrictions on hiring, salary or benefit  
2 increases, capital investment, borrowing, stock issuance or  
3 dividend declarations, and liquidation of assets; and

4           (4) a requirement that the utility place the utility's  
5 funds into an account in a financial institution approved by the  
6 utility commission and use of those funds shall be restricted to  
7 reasonable and necessary utility expenses.

8           (c) While supervising a utility, the utility commission may  
9 require that the utility obtain [~~commission~~] approval from the  
10 utility commission before taking any action that may be restricted  
11 under Subsection (b) [~~of this section~~]. Any action or transaction  
12 which occurs without [~~commission~~] approval may be voided by the  
13 utility commission.

14           SECTION 2.73.     Sections 13.4132(a), (b), and (d), Water  
15 Code, are amended to read as follows:

16           (a) The utility commission or the commission, after  
17 providing to the utility notice and an opportunity to be heard by  
18 the commissioners at a utility commission or commission meeting,  
19 may authorize a willing person to temporarily manage and operate a  
20 utility if the utility:

21           (1) has discontinued or abandoned operations or the  
22 provision of services; or

23           (2) has been or is being referred to the attorney  
24 general for the appointment of a receiver under Section 13.412.

25           (b) The utility commission or the commission may appoint a  
26 person under this section by emergency order, and notice of the  
27 action is adequate if the notice is mailed or hand-delivered to the

1 last known address of the utility's headquarters.

2 (d) This section does not affect the authority of the  
3 utility commission or the commission to pursue an enforcement claim  
4 against a utility or an affiliated interest.

5 SECTION 2.74. Sections 13.4133(a) and (c), Water Code, are  
6 amended to read as follows:

7 (a) Notwithstanding the requirements of Subchapter F  
8 [~~Section 13.187 of this code~~], the utility commission may authorize  
9 an emergency rate increase for a utility for which a person has been  
10 appointed under Section 13.4132 [~~of this code~~] or for which a  
11 receiver has been appointed under Section 13.412 [~~of this code~~] if  
12 the increase is necessary to ensure the provision of continuous and  
13 adequate services to the utility's customers.

14 (c) The utility commission shall schedule a hearing to  
15 establish a final rate within 15 months after the date on which an  
16 emergency rate increase takes effect. The utility commission shall  
17 require the utility to provide notice of the hearing to each  
18 customer. The additional revenues collected under an emergency  
19 rate increase are subject to refund if the utility commission finds  
20 that the rate increase was larger than necessary to ensure  
21 continuous and adequate service.

22 SECTION 2.75. Sections 13.414(a) and (c), Water Code, are  
23 amended to read as follows:

24 (a) Any retail public utility or affiliated interest that  
25 violates this chapter, fails to perform a duty imposed on it, or  
26 fails, neglects, or refuses to obey an order, rule, direction, or  
27 requirement of the utility commission or the commission or decree

1 or judgment of a court is subject to a civil penalty of not less than  
2 \$100 nor more than \$5,000 for each violation.

3 (c) The attorney general shall institute suit on his own  
4 initiative or at the request of, in the name of, and on behalf of the  
5 utility commission or the commission in a court of competent  
6 jurisdiction to recover the penalty under this section.

7 SECTION 2.76. Sections 13.4151(a), (b), (c), (d), (e), (f),  
8 (g), (h), (i), (j), (k), and (m), Water Code, are amended to read as  
9 follows:

10 (a) If a person, affiliated interest, or entity subject to  
11 the jurisdiction of the utility commission or the commission  
12 violates this chapter or a rule or order adopted under this chapter,  
13 the utility commission or the commission, as applicable, may assess  
14 a penalty against that person, affiliated interest, or entity as  
15 provided by this section. The penalty may be in an amount not to  
16 exceed \$5,000 a day. Each day a violation continues may be  
17 considered a separate violation.

18 (b) In determining the amount of the penalty, the utility  
19 commission or the commission shall consider:

20 (1) the nature, circumstances, extent, duration, and  
21 gravity of the prohibited acts or omissions;

22 (2) with respect to the alleged violator:

23 (A) the history and extent of previous  
24 violations;

25 (B) the degree of culpability, including whether  
26 the violation was attributable to mechanical or electrical failures  
27 and whether the violation could have been reasonably anticipated

1 and avoided;

2 (C) the demonstrated good faith, including  
3 actions taken by the person, affiliated interest, or entity to  
4 correct the cause of the violation;

5 (D) any economic benefit gained through the  
6 violation; and

7 (E) the amount necessary to deter future  
8 violations; and

9 (3) any other matters that justice requires.

10 (c) If, after examination of a possible violation and the  
11 facts surrounding that possible violation, the utility commission  
12 or the executive director of the commission concludes that a  
13 violation has occurred, the utility commission or the executive  
14 director may issue a preliminary report stating the facts on which  
15 that conclusion is based, recommending that a penalty under this  
16 section be imposed on the person, affiliated interest, or retail  
17 public utility charged, and recommending the amount of that  
18 proposed penalty. The utility commission or the executive director  
19 shall base the recommended amount of the proposed penalty on the  
20 factors provided by Subsection (b) [~~of this section~~], and shall  
21 analyze each factor for the benefit of the appropriate agency  
22 [~~commission~~].

23 (d) Not later than the 10th day after the date on which the  
24 report is issued, the utility commission or the executive director  
25 of the commission shall give written notice of the report to the  
26 person, affiliated interest, or retail public utility charged with  
27 the violation. The notice shall include a brief summary of the

1 charges, a statement of the amount of the penalty recommended, and a  
2 statement of the right of the person, affiliated interest, or  
3 retail public utility charged to a hearing on the occurrence of the  
4 violation, the amount of the penalty, or both.

5 (e) Not later than the 20th day after the date on which  
6 notice is received, the person, affiliated interest, or retail  
7 public utility charged may give the appropriate agency [~~commission~~]  
8 written consent to the [~~executive director's~~] report described by  
9 Subsection (c), including the recommended penalty, or may make a  
10 written request for a hearing.

11 (f) If the person, affiliated interest, or retail public  
12 utility charged with the violation consents to the penalty  
13 recommended in the report described by Subsection (c) [~~by the~~  
14 ~~executive director~~] or fails to timely respond to the notice, the  
15 utility commission or the commission by order shall assess that  
16 penalty or order a hearing to be held on the findings and  
17 recommendations in the [~~executive director's~~] report. If the  
18 utility commission or the commission assesses the penalty  
19 recommended by the report, the utility commission or the commission  
20 shall give written notice to the person, affiliated interest, or  
21 retail public utility charged of its decision.

22 (g) If the person, affiliated interest, or retail public  
23 utility charged requests or the utility commission or the  
24 commission orders a hearing, the appropriate agency [~~commission~~]  
25 shall call a hearing and give notice of the hearing. As a result of  
26 the hearing, the appropriate agency [~~commission~~] by order may find  
27 that a violation has occurred and may assess a civil penalty, may

1 find that a violation has occurred but that no penalty should be  
2 assessed, or may find that no violation has occurred. All  
3 proceedings under this subsection are subject to Chapter 2001,  
4 Government Code. In making any penalty decision, the appropriate  
5 agency [~~commission~~] shall analyze each of the factors provided by  
6 Subsection (b) [~~of this section~~].

7 (h) The utility commission or the commission shall give  
8 notice of its decision to the person, affiliated interest, or  
9 retail public utility charged, and if the appropriate agency  
10 [~~commission~~] finds that a violation has occurred and has assessed a  
11 penalty, that agency [~~the commission~~] shall give written notice to  
12 the person, affiliated interest, or retail public utility charged  
13 of its findings, of the amount of the penalty, and of the person's,  
14 affiliated interest's, or retail public utility's right to judicial  
15 review of the agency's [~~commission's~~] order. If the utility  
16 commission or the commission is required to give notice of a penalty  
17 under this subsection or Subsection (f) [~~of this section~~], the  
18 appropriate agency [~~commission~~] shall file notice of that agency's  
19 [~~its~~] decision in the Texas Register not later than the 10th day  
20 after the date on which the decision is adopted.

21 (i) Within the 30-day period immediately following the day  
22 on which the utility commission's or commission's order is final, as  
23 provided by Subchapter F, Chapter 2001, Government Code, the  
24 person, affiliated interest, or retail public utility charged with  
25 the penalty shall:

- 26 (1) pay the penalty in full; or  
27 (2) if the person, affiliated interest, or retail

1 public utility seeks judicial review of the fact of the violation,  
2 the amount of the penalty, or both:

3 (A) forward the amount of the penalty to the  
4 appropriate agency [~~commission~~] for placement in an escrow account;  
5 or

6 (B) post with the appropriate agency  
7 [~~commission~~] a supersedeas bond in a form approved by the agency  
8 [~~commission~~] for the amount of the penalty to be effective until all  
9 judicial review of the order or decision is final.

10 (j) Failure to forward the money to or to post the bond with  
11 the utility commission or the commission within the time provided  
12 by Subsection (i) [~~of this section~~] constitutes a waiver of all  
13 legal rights to judicial review. If the person, affiliated  
14 interest, or retail public utility charged fails to forward the  
15 money or post the bond as provided by Subsection (i) [~~of this~~  
16 ~~section~~], the appropriate agency [~~commission~~] or the executive  
17 director of that agency may forward the matter to the attorney  
18 general for enforcement.

19 (k) Judicial review of the order or decision of the utility  
20 commission or the commission assessing the penalty shall be under  
21 the substantial evidence rule and may be instituted by filing a  
22 petition with a district court in Travis County, as provided by  
23 Subchapter G, Chapter 2001, Government Code.

24 (m) Notwithstanding any other provision of law, the utility  
25 commission or the commission may compromise, modify, extend the  
26 time for payment of, or remit, with or without condition, any  
27 penalty imposed under this section.



1 SECTION 2.77. Section 13.417, Water Code, is amended to  
2 read as follows:

3 Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail  
4 public utility fails to comply with any lawful order of the utility  
5 commission or the commission or with any subpoena or subpoena duces  
6 tecum or if any witness refuses to testify about any matter on which  
7 he may be lawfully interrogated, the utility commission or the  
8 commission may apply to any court of competent jurisdiction to  
9 compel obedience by proceedings for contempt.

10 SECTION 2.78. Section 13.418, Water Code, is amended to  
11 read as follows:

12 Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER  
13 UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected  
14 under this chapter from a retail public utility that is not a public  
15 utility in other than criminal proceedings shall be [~~paid to the~~  
16 ~~commission and~~] deposited in the general revenue fund.

17 (b) Fines and penalties collected from a public utility  
18 under this chapter in other than criminal proceedings shall be  
19 [~~paid to the commission and~~] deposited in the water utility  
20 improvement account as provided by Section 341.0485, Health and  
21 Safety Code.

22 SECTION 2.79. Section 13.501(7), Water Code, is amended to  
23 read as follows:

24 (7) "Multiple use facility" means commercial or  
25 industrial parks, office complexes, marinas, and others  
26 specifically identified in utility commission rules with five or  
27 more units.

1 SECTION 2.80. Section 13.502(e), Water Code, is amended to  
2 read as follows:

3 (e) An owner of an apartment house, manufactured home rental  
4 community, or multiple use facility or a manager of a condominium  
5 may not change from submetered billing to allocated billing unless:

6 (1) the utility commission [~~executive director~~]  
7 approves of the change in writing after a demonstration of good  
8 cause, including meter reading or billing problems that could not  
9 feasibly be corrected or equipment failures; and

10 (2) the property owner meets rental agreement  
11 requirements established by the utility commission.

12 SECTION 2.81. Sections 13.503(a), (b), and (e), Water Code,  
13 are amended to read as follows:

14 (a) The utility commission shall encourage submetering of  
15 individual rental or dwelling units by master meter operators or  
16 building owners to enhance the conservation of water resources.

17 (b) Notwithstanding any other law, the utility commission  
18 shall adopt rules and standards under which an owner, operator, or  
19 manager of an apartment house, manufactured home rental community,  
20 or multiple use facility that is not individually metered for water  
21 for each rental or dwelling unit may install submetering equipment  
22 for each individual rental or dwelling unit for the purpose of  
23 fairly allocating the cost of each individual rental or dwelling  
24 unit's water consumption, including wastewater charges based on  
25 water consumption. In addition to other appropriate safeguards for  
26 the tenant, the rules shall require that, except as provided by this  
27 section, an apartment house owner, manufactured home rental

1 community owner, multiple use facility owner, or condominium  
2 manager may not impose on the tenant any extra charges, over and  
3 above the cost per gallon and any other applicable taxes and  
4 surcharges that are charged by the retail public utility to the  
5 owner or manager, and that the rental unit or apartment house owner  
6 or manager shall maintain adequate records regarding submetering  
7 and make the records available for inspection by the tenant during  
8 reasonable business hours. The rules shall allow an owner or  
9 manager to charge a tenant a fee for late payment of a submetered  
10 water bill if the amount of the fee does not exceed five percent of  
11 the bill paid late. All submetering equipment is subject to the  
12 rules and standards established by the utility commission for  
13 accuracy, testing, and record keeping of meters installed by  
14 utilities and to the meter-testing requirements of Section 13.140  
15 [~~of this code~~].

16 (e) The utility commission may authorize a building owner to  
17 use submetering equipment that relies on integrated radio based  
18 meter reading systems and remote registration in a building  
19 plumbing system using submeters that comply with nationally  
20 recognized plumbing standards and are as accurate as utility water  
21 meters in single application conditions.

22 SECTION 2.82. Section 13.5031, Water Code, is amended to  
23 read as follows:

24 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any  
25 other law, the utility commission shall adopt rules and standards  
26 governing billing systems or methods used by manufactured home  
27 rental community owners, apartment house owners, condominium

1 managers, or owners of other multiple use facilities for prorating  
2 or allocating among tenants nonsubmetered master metered utility  
3 service costs. In addition to other appropriate safeguards for the  
4 tenant, those rules shall require that:

5 (1) the rental agreement contain a clear written  
6 description of the method of calculation of the allocation of  
7 nonsubmetered master metered utilities for the manufactured home  
8 rental community, apartment house, or multiple use facility;

9 (2) the rental agreement contain a statement of the  
10 average manufactured home, apartment, or multiple use facility unit  
11 monthly bill for all units for any allocation of those utilities for  
12 the previous calendar year;

13 (3) except as provided by this section, an owner or  
14 condominium manager may not impose additional charges on a tenant  
15 in excess of the actual charges imposed on the owner or condominium  
16 manager for utility consumption by the manufactured home rental  
17 community, apartment house, or multiple use facility;

18 (4) the owner or condominium manager shall maintain  
19 adequate records regarding the utility consumption of the  
20 manufactured home rental community, apartment house, or multiple  
21 use facility, the charges assessed by the retail public utility,  
22 and the allocation of the utility costs to the tenants;

23 (5) the owner or condominium manager shall maintain  
24 all necessary records concerning utility allocations, including  
25 the retail public utility's bills, and shall make the records  
26 available for inspection by the tenants during normal business  
27 hours; and

1           (6) the owner or condominium manager may charge a  
2 tenant a fee for late payment of an allocated water bill if the  
3 amount of the fee does not exceed five percent of the bill paid  
4 late.

5           SECTION 2.83. Section 13.505, Water Code, is amended to  
6 read as follows:

7           Sec. 13.505. ENFORCEMENT. In addition to the enforcement  
8 provisions contained in Subchapter K [~~of this chapter~~], if an  
9 apartment house owner, condominium manager, manufactured home  
10 rental community owner, or other multiple use facility owner  
11 violates a rule of the utility commission regarding submetering of  
12 utility service consumed exclusively within the tenant's dwelling  
13 unit or multiple use facility unit or nonsubmetered master metered  
14 utility costs, the tenant may recover three times the amount of any  
15 overcharge, a civil penalty equal to one month's rent, reasonable  
16 attorney's fees, and court costs from the owner or condominium  
17 manager. However, an owner of an apartment house, manufactured  
18 home rental community, or other multiple use facility or  
19 condominium manager is not liable for a civil penalty if the owner  
20 or condominium manager proves the violation was a good faith,  
21 unintentional mistake.

22           SECTION 2.84. Section 13.512, Water Code, is amended to  
23 read as follows:

24           Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION  
25 CONTRACTS. Any eligible city is authorized to enter into  
26 privatization contracts if such action is recommended by the board  
27 of utility trustees and authorized by the governing body of the

1 eligible city pursuant to an ordinance. Any privatization contract  
2 entered into prior to the effective date of this Act is validated,  
3 ratified, and approved. Each eligible city shall file a copy of its  
4 privatization contract with the utility commission, for  
5 information purposes only, within 60 days of execution or the  
6 effective date of this Act, whichever is later.

7 SECTION 2.85. Section 13.513, Water Code, is amended to  
8 read as follows:

9 Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE  
10 PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider  
11 shall not constitute a "water and sewer utility," a "public  
12 utility," a "utility," or a "retail public utility" within the  
13 meaning of this chapter [~~Chapter 13~~] as a result of entering into or  
14 performing a privatization contract, if the governing body of the  
15 eligible city shall so elect by ordinance and provide notice  
16 thereof in writing to the utility commission; provided, however,  
17 this provision shall not affect the application of this chapter  
18 [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything  
19 contained in this section, any service provider who seeks to extend  
20 or render sewer service to any person or municipality other than, or  
21 in addition to, an eligible city may be a "public utility" for the  
22 purposes of this chapter [~~Chapter 13~~] with respect to such other  
23 person or municipality.

24 SECTION 2.86. Section 49.352(c), Water Code, is amended to  
25 read as follows:

26 (c) For purposes of this section, a municipality may obtain  
27 single certification in the manner provided by Section 13.255,

1 except that the municipality may file an application with the  
2 Public Utility Commission of Texas [~~commission~~] to grant single  
3 certification immediately after the municipality provides notice  
4 of intent to provide service as required by Section 13.255(b).

5 SECTION 2.87. Section 552.047(e), Local Government Code, is  
6 amended to read as follows:

7 (e) Users residing within the established service area, but  
8 outside the municipality's boundaries, may appeal rates  
9 established for drainage charges under [~~to the Texas Natural~~  
10 ~~Resource Conservation Commission as authorized by~~] Section  
11 13.043(b), [of the] Water Code.

12 SECTION 2.88. Section 7201.004(b), Special District Local  
13 Laws Code, is amended to read as follows:

14 (b) This section does not apply to:

15 (1) rules or regulations concerning potable water  
16 quality standards; or

17 (2) conflicts relating to service areas or  
18 certificates issued to the corporation or district by the Public  
19 Utility Commission of Texas or the Texas Commission on  
20 Environmental Quality.

21 SECTION 2.89. Section 7201.005(c), Special District Local  
22 Laws Code, is amended to read as follows:

23 (c) District boundaries may be modified in accordance with  
24 Chapters 13 and 49, Water Code, except that the boundaries must  
25 include all territory in any area included under a certificate of  
26 convenience and necessity issued by the Public Utility Commission  
27 of Texas or the Texas Commission on Environmental Quality to the

1 district.

2 SECTION 2.90. Section 7201.102, Special District Local Laws  
3 Code, is amended to read as follows:

4 Sec. 7201.102. PROVISION OF SERVICE. The district shall at  
5 all times operate and construct necessary improvements within the  
6 certificated areas established by the Public Utility Commission of  
7 Texas or the Texas Commission on Environmental Quality [~~commission~~]  
8 to provide uninterrupted, continuous, and adequate service to  
9 existing and future customers for water, sewer, and contract  
10 services.

11 SECTION 2.91. Section 8363.106(b), Special District Local  
12 Laws Code, is amended to read as follows:

13 (b) In relation to a retail public utility that provides  
14 water or sewer service to all or part of the area of the district  
15 under a certificate of public convenience and necessity, the  
16 district may exercise the powers given to a municipality provided  
17 by Section 13.255, Water Code, as if the district were a  
18 municipality that had annexed the area of the district. The Public  
19 Utility Commission of Texas [~~commission~~] shall grant single  
20 certification as to the city as provided by Section 13.255(c),  
21 Water Code, in the event that the district applies for the  
22 certification on the city's behalf in the manner provided by  
23 Section 13.255(b), Water Code.

24 SECTION 2.92. Section 8363.251(a), Special District Local  
25 Laws Code, is amended to read as follows:

26 (a) The city may dissolve the district by ordinance after  
27 provision is made for all debts incurred by the district if one or



1 more of the following does not occur:

2 (1) on or before the 90th day after the effective date  
3 of the Act enacting this chapter, the city receives one or more  
4 petitions requesting annexation of all territory in the district  
5 remaining in the extraterritorial jurisdiction of the city;

6 (2) on or before the last day of the ninth month after  
7 the effective date of the Act enacting this chapter, the city adopts  
8 one or more ordinances annexing all territory in the district  
9 remaining in the city's extraterritorial jurisdiction;

10 (3) on or before the last day of the third year after  
11 the effective date of the Act enacting this chapter, the Public  
12 Utility Commission of Texas [~~commission~~] issues an order approving  
13 the sale and transfer of a certificate of public convenience and  
14 necessity authorizing the city to provide retail water service to  
15 territory in the district; or

16 (4) by the end of the fifth year after the effective  
17 date of the Act enacting this chapter, the district has completed  
18 construction of internal streets and water and sanitary sewer  
19 facilities sufficient to serve at least 100 residential lots in the  
20 district.

21 SECTION 2.93. Section 8801.201, Special District Local Laws  
22 Code, is amended to read as follows:

23 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A  
24 person who is required to convert to surface water under this  
25 chapter and who purchases that water supply wholesale from a  
26 political subdivision as defined by Section 12.013(b), Water Code,  
27 may appeal to the Public Utility Commission of Texas [~~commission~~]

1 the rates the political subdivision charges to the person. Chapter  
2 12, Water Code, and rules adopted under that chapter apply to an  
3 appeal under this section.

4 (b) The Public Utility Commission of Texas [~~commission~~]  
5 shall hear the appeal not later than the 180th day after the date  
6 the appeal is filed.

7 (c) The Public Utility Commission of Texas [~~commission~~]  
8 shall issue a final decision on the appeal not later than the 60th  
9 day after the date the hearing ends.

10 SECTION 2.94. Section 8803.151(1), Special District Local  
11 Laws Code, is amended to read as follows:

12 (1) "Commission" means the Public Utility Commission  
13 of Texas [~~Commission on Environmental Quality~~].

14 SECTION 2.95. Section 8808.151(1), Special District Local  
15 Laws Code, is amended to read as follows:

16 (1) "Commission" means the Public Utility Commission  
17 of Texas [~~Commission on Environmental Quality~~].

18 SECTION 2.96. (a) On September 1, 2014, the following are  
19 transferred from the Texas Commission on Environmental Quality to  
20 the Public Utility Commission of Texas:

21 (1) the powers, duties, functions, programs, and  
22 activities of the Texas Commission on Environmental Quality  
23 relating to the economic regulation of water and sewer service,  
24 including the issuance and transfer of certificates of convenience  
25 and necessity, the determination of rates, and the administration  
26 of hearings and proceedings involving those matters, under Section  
27 12.013 and Chapter 13, Water Code, as provided by this Act;

1           (2) any obligations and contracts of the Texas  
2 Commission on Environmental Quality that are directly related to  
3 implementing a power, duty, function, program, or activity  
4 transferred under this Act; and

5           (3) all property and records in the custody of the  
6 Texas Commission on Environmental Quality that are related to a  
7 power, duty, function, program, or activity transferred under this  
8 Act and all funds appropriated by the legislature for that power,  
9 duty, function, program, or activity.

10          (b) The Texas Commission on Environmental Quality shall  
11 continue to carry out the commission's duties related to the  
12 economic regulation of water and sewer service under the law as it  
13 existed immediately before the effective date of this Act until  
14 September 1, 2014, and the former law is continued in effect for  
15 that purpose.

16          (c) The Texas Commission on Environmental Quality and the  
17 Public Utility Commission of Texas shall enter into a memorandum of  
18 understanding that:

19           (1) identifies in detail the applicable powers and  
20 duties that are transferred by this Act;

21           (2) establishes a plan for the identification and  
22 transfer of the records, personnel, property, and unspent  
23 appropriations of the Texas Commission on Environmental Quality  
24 that are used for purposes of the commission's powers and duties  
25 directly related to the economic regulation of water and sewer  
26 service under Section 12.013 and Chapter 13, Water Code, as amended  
27 by this Act; and

1           (3) establishes a plan for the transfer of all pending  
2 applications, hearings, rulemaking proceedings, and orders  
3 relating to the economic regulation of water and sewer service  
4 under Section 12.013 and Chapter 13, Water Code, as amended by this  
5 Act, from the Texas Commission on Environmental Quality to the  
6 Public Utility Commission of Texas.

7           (d) The memorandum of understanding under this section:

8                 (1) is not required to be adopted by rule under Section  
9 5.104, Water Code; and

10                (2) must be completed by August 1, 2014.

11           (e) The executive directors of the Texas Commission on  
12 Environmental Quality and the Public Utility Commission of Texas  
13 may agree in the memorandum of understanding under this section to  
14 transfer to the Public Utility Commission of Texas any personnel of  
15 the Texas Commission on Environmental Quality whose functions  
16 predominantly involve powers, duties, obligations, functions, and  
17 activities related to the economic regulation of water and sewer  
18 service under Section 12.013 and Chapter 13, Water Code, as amended  
19 by this Act.

20           (f) The Texas Commission on Environmental Quality and the  
21 Public Utility Commission of Texas shall periodically update the  
22 Office of Public Utility Counsel on the anticipated contents of the  
23 memorandum of understanding under this section during the  
24 development of the memorandum.

25           (g) On or after September 1, 2013, the Office of Public  
26 Utility Counsel may initiate or intervene in a contested case  
27 before the Texas Commission on Environmental Quality that the

1 office would be entitled to initiate or intervene in if the case  
2 were before the Public Utility Commission of Texas, as authorized  
3 by Chapter 13, Water Code, as amended by this Act.

4 (h) The Texas Commission on Environmental Quality and the  
5 Public Utility Commission of Texas shall appoint a transition team  
6 to accomplish the purposes of this section. The transition team may  
7 consult with the Office of Public Utility Counsel to accomplish the  
8 purposes of this section. The transition team shall establish  
9 guidelines on how the two agencies will cooperate regarding:

- 10 (1) meeting federal drinking water standards;
- 11 (2) maintaining adequate supplies of water;
- 12 (3) meeting established design criteria for  
13 wastewater treatment plants;
- 14 (4) demonstrating the economic feasibility of  
15 regionalization; and
- 16 (5) serving the needs of economically distressed  
17 areas.

18 (i) The transition team appointed under Subsection (h) of  
19 this section shall provide monthly updates to the executive  
20 directors of the Texas Commission on Environmental Quality and the  
21 Public Utility Commission of Texas on the implementation of this  
22 Act and provide a final report on the implementation to the  
23 executive directors not later than September 1, 2014.

24 (j) A rule, form, policy, procedure, or decision of the  
25 Texas Commission on Environmental Quality related to a power, duty,  
26 function, program, or activity transferred under this Act continues  
27 in effect as a rule, form, policy, procedure, or decision of the

1 Public Utility Commission of Texas and remains in effect until  
2 amended or replaced by that agency. Notwithstanding any other law,  
3 beginning September 1, 2013, the Public Utility Commission of Texas  
4 may propose rules, forms, policies, and procedures related to a  
5 function to be transferred to the Public Utility Commission of  
6 Texas under this Act.

7 (k) The Public Utility Commission of Texas and the Texas  
8 Commission on Environmental Quality shall adopt rules to implement  
9 the changes in law made by this Act to Section 12.013 and Chapter  
10 13, Water Code, not later than September 1, 2015.

11 (1) An affiliate of a Class A utility, as those terms are  
12 defined by Section 13.002, Water Code, as amended by this Act, may  
13 not file an application for a rate change on or after the effective  
14 date of this Act unless the affiliated Class A utility has filed for  
15 a rate change on or after that date. In relation to the application  
16 filed by the affiliate of the Class A utility, the Public Utility  
17 Commission of Texas:

18 (1) may not approve the rate change application until  
19 the Public Utility Commission of Texas approves the rate change  
20 application filed by the affiliated Class A utility; and

21 (2) may require the affiliate to comply with the Class  
22 A utility rate change process prescribed by Section 13.187, Water  
23 Code, regardless of whether the affiliate is classified as a Class  
24 A, B, or C utility under Section 13.002, Water Code, as amended by  
25 this Act.

26 SECTION 2.97. (a) The Public Utility Commission of Texas  
27 shall conduct a comparative analysis of the ratemaking authority of

1 the commission before the effective date of this Act and the  
2 ratemaking authority of the commission after the transition  
3 described in Section 2.96 of this article, to identify potential  
4 for procedural standardization. The Public Utility Commission of  
5 Texas shall issue a report of the analysis, with recommendations  
6 regarding rate standardization, for consideration by the 84th  
7 Legislature.

8 (b) The Public Utility Commission of Texas shall prepare a  
9 report describing staffing changes related to the transition  
10 described in Section 2.96 of this article, including reductions in  
11 staff that the commission may realize as a result of consolidated  
12 functions. The Public Utility Commission of Texas shall submit the  
13 report to the Legislative Budget Board and the governor with the  
14 legislative appropriations request for the 2016-2017 biennium.

15 SECTION 2.98. The Office of Public Utility Counsel shall  
16 prepare a report describing staffing changes related to the changes  
17 in law made to the duties of the office in this article, including  
18 reductions in staff that the office may realize as a result of  
19 consolidated functions. The Office of Public Utility Counsel shall  
20 submit the report to the Legislative Budget Board and the governor  
21 with the legislative appropriations request for the 2016-2017  
22 biennium.

23 ARTICLE 3. EFFECTIVE DATE

24 SECTION 3.01. This Act takes effect September 1, 2013.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1600 was passed by the House on March 21, 2013, by the following vote: Yeas 139, Nays 6, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1600 on April 25, 2013, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1600 on May 13, 2013, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

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Chief Clerk of the House



H.B. No. 1600

I certify that H.B. No. 1600 was passed by the Senate, with amendments, on April 23, 2013, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1600 on May 13, 2013, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

AN ACT

relating to rates for water service, to the transfer of functions relating to the economic regulation of water and sewer service from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, and to the duties of the Office of Public Utility Counsel regarding the economic regulation of water and sewer service.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction,

1 maintenance, and removal of dams;

2 (6) conduct of the state's hazardous spill prevention  
3 and control program;

4 (7) the administration of the state's program relating  
5 to inactive hazardous substance, pollutant, and contaminant  
6 disposal facilities;

7 (8) the administration of a portion of the state's  
8 injection well program;

9 (9) the administration of the state's programs  
10 involving underground water and water wells and drilled and mined  
11 shafts;

12 (10) the state's responsibilities relating to regional  
13 waste disposal;

14 (11) the responsibilities assigned to the commission  
15 by Chapters 361, 363, 382, and 401, Health and Safety Code; and

16 (12) ~~[administration of the state's water rate program  
17 under Chapter 13 of this code, and~~

18 [~~13~~] any other areas assigned to the commission by  
19 this code and other laws of this state.

20 SECTION 2. Subsection (a), Section 5.311, Water Code, is  
21 amended to read as follows:

22 (a) The commission may delegate to an administrative law  
23 judge of the State Office of Administrative Hearings the  
24 responsibility to hear any matter before the commission ~~[and to  
25 issue interlocutory orders related to interim rates under Chapter  
26 13].~~

27 SECTION 3. Section 5.507, Water Code, is amended to read as

1 follows:

2           Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT  
3 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.  
4 The ~~commission~~ or the Public Utility Commission of Texas may issue  
5 an emergency order appointing a willing person to temporarily  
6 manage and operate a utility under Section 13.4132. Notice of the  
7 action is adequate if the notice is mailed or hand delivered to the  
8 last known address of the utility's headquarters.

9           SECTION 4. Subsections (a) and (c), Section 5.508, Water  
10 Code, are amended to read as follows:

11           (a) Notwithstanding the requirements of Subchapter F,  
12 Chapter 13 [~~Section 13.187~~], the Public Utility Commission of Texas  
13 [~~commission~~] may authorize an emergency rate increase for a utility  
14 for which a person has been appointed under Section 5.507 or 13.4132  
15 [~~13.412~~] or for which a receiver has been appointed under Section  
16 13.412 [~~13.4132~~] if the increase is necessary to ensure the  
17 provision of continuous and adequate services to the utility's  
18 customers. The Public Utility Commission of Texas shall consult  
19 with the commission as needed to carry out this section.

20           (c) Notwithstanding Section 5.505, an order may be issued  
21 under this section for a term not to exceed 15 months. The Public  
22 Utility Commission of Texas [~~commission~~] shall schedule a hearing  
23 to establish a final rate within 15 months after the date on which  
24 an emergency rate increase takes effect. The additional revenues  
25 collected under an emergency rate increase are subject to refund if  
26 the utility commission finds that the rate increase was larger than  
27 necessary to ensure continuous and adequate service.

1 SECTION 5. Section 11.002, Water Code, is amended by adding  
2 Subdivision (21) to read as follows:

3 (21) "Utility commission" means the Public Utility  
4 Commission of Texas.

5 SECTION 6. Subsection (f), Section 11.041, Water Code, is  
6 amended to read as follows:

7 (f) The commission shall hold a hearing on the complaint at  
8 the time and place stated in the order. It may hear evidence orally  
9 or by affidavit in support of or against the complaint, and it may  
10 hear arguments. The utility commission may participate in the  
11 hearing if necessary to present evidence on the price or rental  
12 demanded for the available water. On completion of the hearing, the  
13 commission shall render a written decision.

14 SECTION 7. Section 12.013, Water Code, is amended to read as  
15 follows:

16 Sec. 12.013. RATE-FIXING POWER. (a) The utility  
17 commission shall fix reasonable rates for the furnishing of raw or  
18 treated water for any purpose mentioned in Chapter 11 or 12 of this  
19 code.

20 (b) In this section, [~~The term~~] "political subdivision"  
21 [~~when used in this section~~] means incorporated cities, towns or  
22 villages, counties, river authorities, water districts, and other  
23 special purpose districts.

24 (c) The utility commission in reviewing and fixing  
25 reasonable rates for furnishing water under this section may use  
26 any reasonable basis for fixing rates as may be determined by the  
27 utility commission to be appropriate under the circumstances of the

1 case being reviewed; provided, however, the utility commission may  
2 not fix a rate which a political subdivision may charge for  
3 furnishing water which is less than the amount required to meet the  
4 debt service and bond coverage requirements of that political  
5 subdivision's outstanding debt.

6 (d) The utility commission's jurisdiction under this  
7 section relating to incorporated cities, towns, or villages shall  
8 be limited to water furnished by such city, town, or village to  
9 another political subdivision on a wholesale basis.

10 (e) The utility commission may establish interim rates and  
11 compel continuing service during the pendency of any rate  
12 proceeding.

13 (f) The utility commission may order a refund or assess  
14 additional charges from the date a petition for rate review is  
15 received by the utility commission of the difference between the  
16 rate actually charged and the rate fixed by the utility commission,  
17 plus interest at the statutory rate.

18 ~~[(g) No action or proceeding commenced prior to January 1,~~  
19 ~~1977, before the Texas Water Rights Commission shall be affected by~~  
20 ~~the enactment of this section.~~

21 ~~[(h) Nothing herein contained shall affect the jurisdiction~~  
22 ~~of the Public Utility Commission.]~~

23 SECTION 8. Section 13.002, Water Code, is amended by  
24 amending Subdivisions (2), (18), and (22) and adding Subdivisions  
25 (4-a), (4-b), (4-c), and (22-a) to read as follows:

26 (2) "Affiliated interest" or "affiliate" means:

27 (A) any person or corporation owning or holding

1 directly or indirectly five percent or more of the voting  
2 securities of a utility;

3 (B) any person or corporation in any chain of  
4 successive ownership of five percent or more of the voting  
5 securities of a utility;

6 (C) any corporation five percent or more of the  
7 voting securities of which is owned or controlled directly or  
8 indirectly by a utility;

9 (D) any corporation five percent or more of the  
10 voting securities of which is owned or controlled directly or  
11 indirectly by any person or corporation that owns or controls  
12 directly or indirectly five percent or more of the voting  
13 securities of any utility or by any person or corporation in any  
14 chain of successive ownership of five percent of those utility  
15 securities;

16 (E) any person who is an officer or director of a  
17 utility or of any corporation in any chain of successive ownership  
18 of five percent or more of voting securities of a public utility;

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

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

8 (4-a) "Class A utility" means a public utility that  
9 provides retail water or sewer utility service through 10,000 or  
10 more taps or connections.

11 (4-b) "Class B utility" means a public utility that  
12 provides retail water or sewer utility service through 500 or more  
13 taps or connections but fewer than 10,000 taps or connections.

14 (4-c) "Class C utility" means a public utility that  
15 provides retail water or sewer utility service through fewer than  
16 500 taps or connections.

17 (18) "Regulatory authority" means, in accordance with  
18 the context in which it is found, [~~either~~] the commission, the  
19 utility commission, or the governing body of a municipality.

20 (22) "Test year" means the most recent 12-month  
21 period, beginning on the first day of a calendar or fiscal year  
22 quarter, for which [~~representative~~] operating data for a retail  
23 public utility are available. [~~A utility rate filing must be based~~  
24 ~~on a test year that ended less than 12 months before the date on~~  
25 ~~which the utility made the rate filing.~~]

26 (22-a) "Utility commission" means the Public Utility  
27 Commission of Texas.



1 SECTION 9. Section 13.004, Water Code, is amended to read as  
2 follows:

3 Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER  
4 CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a)  
5 Notwithstanding any other law, the utility commission has the same  
6 jurisdiction over a water supply or sewer service corporation that  
7 the utility commission has under this chapter over a water and sewer  
8 utility if the utility commission finds that the water supply or  
9 sewer service corporation:

10 (1) is failing to conduct annual or special meetings  
11 in compliance with Section 67.007; or

12 (2) is operating in a manner that does not comply with  
13 the requirements for classifications as a nonprofit water supply or  
14 sewer service corporation prescribed by Sections 13.002(11) and  
15 (24).

16 (b) If the water supply or sewer service corporation  
17 voluntarily converts to a special utility district operating under  
18 Chapter 65, the utility commission's jurisdiction provided by this  
19 section ends.

20 SECTION 10. Section 13.011, Water Code, is amended to read  
21 as follows:

22 Sec. 13.011. EMPLOYEES. (a) The utility commission and  
23 the executive director of the commission, subject to approval, as  
24 applicable, by the utility commission or the commission, shall  
25 employ any engineering, accounting, and administrative personnel  
26 necessary to carry out each agency's powers and duties under this  
27 chapter.

1 (b) The executive director and the commission's staff are  
2 responsible for the gathering of information relating to all  
3 matters within the jurisdiction of the commission under this  
4 subchapter. The utility commission and the utility commission's  
5 staff are responsible for the gathering of information relating to  
6 all matters within the jurisdiction of the utility commission under  
7 this subchapter. The duties of the utility commission, the  
8 executive director, and the staff of the utility commission or  
9 commission, as appropriate, include:

10 (1) accumulation of evidence and other information  
11 from water and sewer utilities, ~~and~~ from the utility commission  
12 or commission, as appropriate, and the governing body of the  
13 respective agency, [~~commission and the board~~] and from other  
14 sources for the purposes specified by this chapter;

15 (2) preparation and presentation of evidence before  
16 the utility commission or commission, as appropriate, [~~commission~~]  
17 or its appointed examiner in proceedings;

18 (3) conducting investigations of water and sewer  
19 utilities under the jurisdiction of the utility commission or  
20 commission, as appropriate [~~commission~~];

21 (4) preparation of recommendations that the utility  
22 commission or commission, as appropriate, [~~commission~~] undertake  
23 an investigation of any matter within its jurisdiction;

24 (5) preparation of recommendations and a report for  
25 inclusion in the annual report of the utility commission or  
26 commission, as appropriate [~~commission~~];

27 (6) protection and representation of the public

1 interest [~~7, together with the public interest advocate,~~] before the  
2 utility commission or commission, as appropriate [~~commission~~]; and

3 (7) other activities that are reasonably necessary to  
4 enable the utility commission and the executive director and the  
5 staff of the utility commission or commission, as appropriate, to  
6 perform their duties.

7 SECTION 11. Section 13.014, Water Code, is amended to read  
8 as follows:

9 Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR  
10 UTILITY COMMISSION. The attorney general shall represent the  
11 commission or the utility commission under this chapter in all  
12 matters before the state courts and any court of the United States.

13 SECTION 12. Subchapter B, Chapter 13, Water Code, is  
14 amended by adding Section 13.017 to read as follows:

15 Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND  
16 DUTIES. (a) In this section, "counsellor" and "office" have the  
17 meanings assigned by Section 11.003, Utilities Code.

18 (b) The independent Office of Public Utility Counsel  
19 represents the interests of residential and small commercial  
20 consumers under this chapter. The office:

21 (1) shall assess the effect of utility rate changes  
22 and other regulatory actions on residential consumers in this  
23 state;

24 (2) shall advocate in the office's own name a position  
25 determined by the counsellor to be most advantageous to a  
26 substantial number of residential consumers;

27 (3) may appear or intervene, as a party or otherwise,

1 as a matter of right on behalf of:

2 (A) residential consumers, as a class, in any  
3 proceeding before the utility commission, including an alternative  
4 dispute resolution proceeding; and

5 (B) small commercial consumers, as a class, in  
6 any proceeding in which the counsellor determines that small  
7 commercial consumers are in need of representation, including an  
8 alternative dispute resolution proceeding;

9 (4) may initiate or intervene as a matter of right or  
10 otherwise appear in a judicial proceeding:

11 (A) that involves an action taken by an  
12 administrative agency in a proceeding, including an alternative  
13 dispute resolution proceeding, in which the counsellor is  
14 authorized to appear; or

15 (B) in which the counsellor determines that  
16 residential consumers or small commercial consumers are in need of  
17 representation;

18 (5) is entitled to the same access as a party, other  
19 than utility commission staff, to records gathered by the utility  
20 commission under Section 13.133;

21 (6) is entitled to discovery of any nonprivileged  
22 matter that is relevant to the subject matter of a proceeding or  
23 petition before the utility commission;

24 (7) may represent an individual residential or small  
25 commercial consumer with respect to the consumer's disputed  
26 complaint concerning retail utility services that is unresolved  
27 before the utility commission;

1           (8) may recommend legislation to the legislature that  
2 the office determines would positively affect the interests of  
3 residential and small commercial consumers; and

4           (9) may conduct consumer outreach and education  
5 programs for residential and small commercial consumers.

6           (c) This section does not:

7           (1) affect a duty the office is required to perform  
8 under other law; or

9           (2) limit the authority of the utility commission to  
10 represent residential or small commercial consumers.

11           (d) The appearance of the counsellor in a proceeding does  
12 not preclude the appearance of other parties on behalf of  
13 residential or small commercial consumers. The counsellor may not  
14 be grouped with any other party.

15           SECTION 13. Section 13.041, Water Code, is amended to read  
16 as follows:

17           Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND  
18 COMMISSION [~~POWER~~]; RULES; HEARINGS. (a) The utility commission  
19 may regulate and supervise the business of each [~~every~~] water and  
20 sewer utility within its jurisdiction, including ratemaking and  
21 other economic regulation. The commission may regulate water and  
22 sewer utilities within its jurisdiction to ensure safe drinking  
23 water and environmental protection. The utility commission and the  
24 commission [~~and~~] may do all things, whether specifically designated  
25 in this chapter or implied in this chapter, necessary and  
26 convenient to the exercise of these powers [~~this power~~] and  
27 jurisdiction. The utility commission may consult with the

1 commission as necessary in carrying out its duties related to the  
2 regulation of water and sewer utilities.

3 (b) The commission and the utility commission shall adopt  
4 and enforce rules reasonably required in the exercise of [~~its~~]  
5 powers and jurisdiction of each agency, including rules governing  
6 practice and procedure before the commission and the utility  
7 commission.

8 (c) The commission and the utility commission may call and  
9 hold hearings, administer oaths, receive evidence at hearings,  
10 issue subpoenas to compel the attendance of witnesses and the  
11 production of papers and documents, and make findings of fact and  
12 decisions with respect to administering this chapter or the rules,  
13 orders, or other actions of the commission or the utility  
14 commission.

15 (c-1) In addition to the powers and duties of the State  
16 Office of Administrative Hearings under Title 2, Utilities Code,  
17 the utility commission may delegate to an administrative law judge  
18 of the State Office of Administrative Hearings the responsibility  
19 and authority to issue interlocutory orders related to interim  
20 rates under this chapter.

21 (d) The utility commission may issue emergency orders, with  
22 or without a hearing:

23 (1) to compel a water or sewer service provider that  
24 has obtained or is required to obtain a certificate of public  
25 convenience and necessity to provide continuous and adequate water  
26 service, sewer service, or both, if the discontinuance of the  
27 service is imminent or has occurred because of the service

1 provider's actions or failure to act; and

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

7 (e) The utility commission may establish reasonable  
8 compensation for the temporary service required under Subsection  
9 (d)(2) [~~of this section~~] and may allow the retail public utility  
10 receiving the service to make a temporary adjustment to its rate  
11 structure to ensure proper payment.

12 (f) If an order is issued under Subsection (d) without a  
13 hearing, the order shall fix a time, as soon after the emergency  
14 order is issued as is practicable, and place for a hearing to be  
15 held before the utility commission.

16 (g) The regulatory assessment required by Section 5.701(n)  
17 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the  
18 utility commission under Section 13.043 [~~of this code~~]. The  
19 commission has the authority to enforce payment and collection of  
20 the regulatory assessment.

21 SECTION 14. Section 13.042, Water Code, is amended to read  
22 as follows:

23 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND  
24 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the  
25 limitations imposed in this chapter and for the purpose of  
26 regulating rates and services so that those rates may be fair, just,  
27 and reasonable and the services adequate and efficient, the

1 governing body of each municipality has exclusive original  
2 jurisdiction over all water and sewer utility rates, operations,  
3 and services provided by a water and sewer utility within its  
4 corporate limits.

5 (b) The governing body of a municipality by ordinance may  
6 elect to have the utility commission exercise exclusive original  
7 jurisdiction over the utility rates, operation, and services of  
8 utilities, within the incorporated limits of the municipality.

9 (c) The governing body of a municipality that surrenders its  
10 jurisdiction to the utility commission may reinstate its  
11 jurisdiction by ordinance at any time after the second anniversary  
12 of the date on which the municipality surrendered its jurisdiction  
13 to the utility commission, except that the municipality may not  
14 reinstate its jurisdiction during the pendency of a rate proceeding  
15 before the utility commission. The municipality may not surrender  
16 its jurisdiction again until the second anniversary of the date on  
17 which the municipality reinstates jurisdiction.

18 (d) The utility commission shall have exclusive appellate  
19 jurisdiction to review orders or ordinances of those municipalities  
20 as provided in this chapter.

21 (e) The utility commission shall have exclusive original  
22 jurisdiction over water and sewer utility rates, operations, and  
23 services not within the incorporated limits of a municipality  
24 exercising exclusive original jurisdiction over those rates,  
25 operations, and services as provided in this chapter.

26 (f) This subchapter does not give the utility commission  
27 power or jurisdiction to regulate or supervise the rates or service



1 of a utility owned and operated by a municipality, directly or  
2 through a municipally owned corporation, within its corporate  
3 limits or to affect or limit the power, jurisdiction, or duties of a  
4 municipality that regulates land and supervises water and sewer  
5 utilities within its corporate limits, except as provided by this  
6 code.

7 SECTION 15. Subsections (a), (b), (c), (e), (f), (g), (h),  
8 and (j), Section 13.043, Water Code, are amended to read as follows:

9 (a) Any party to a rate proceeding before the governing body  
10 of a municipality may appeal the decision of the governing body to  
11 the utility commission. This subsection does not apply to a  
12 municipally owned utility. An appeal under this subsection must be  
13 initiated within 90 days after the date of notice of the final  
14 decision by the governing body, or within 30 days if the appeal  
15 relates to the rates of a Class A utility, by filing a petition for  
16 review with the utility commission and by serving copies on all  
17 parties to the original rate proceeding. The utility commission  
18 shall hear the appeal de novo and shall fix in its final order the  
19 rates the governing body should have fixed in the action from which  
20 the appeal was taken and may include reasonable expenses incurred  
21 in the appeal proceedings. The utility commission may establish  
22 the effective date for the utility commission's rates at the  
23 original effective date as proposed by the utility provider and may  
24 order refunds or allow a surcharge to recover lost revenues. The  
25 utility commission may consider only the information that was  
26 available to the governing body at the time the governing body made  
27 its decision and evidence of reasonable expenses incurred in the

1 appeal proceedings.

2 (b) Ratepayers of the following entities may appeal the  
3 decision of the governing body of the entity affecting their water,  
4 drainage, or sewer rates to the utility commission:

5 (1) a nonprofit water supply or sewer service  
6 corporation created and operating under Chapter 67;

7 (2) a utility under the jurisdiction of a municipality  
8 inside the corporate limits of the municipality;

9 (3) a municipally owned utility, if the ratepayers  
10 reside outside the corporate limits of the municipality;

11 (4) a district or authority created under Article III,  
12 Section 52, or Article XVI, Section 59, of the Texas Constitution  
13 that provides water or sewer service to household users; and

14 (5) a utility owned by an affected county, if the  
15 ratepayer's rates are actually or may be adversely affected. For  
16 the purposes of this section ratepayers who reside outside the  
17 boundaries of the district or authority shall be considered a  
18 separate class from ratepayers who reside inside those boundaries.

19 (c) An appeal under Subsection (b) [~~of this section~~] must be  
20 initiated by filing a petition for review with the utility  
21 commission and the entity providing service within 90 days after  
22 the effective day of the rate change or, if appealing under  
23 Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after  
24 the date on which the governing body of the municipality or affected  
25 county makes a final decision. The petition must be signed by the  
26 lesser of 10,000 or 10 percent of those ratepayers whose rates have  
27 been changed and who are eligible to appeal under Subsection (b) [~~of~~

1 ~~this section~~].

2 (e) In an appeal under Subsection (b) [~~of this section~~], the  
3 utility commission shall hear the appeal de novo and shall fix in  
4 its final order the rates the governing body should have fixed in  
5 the action from which the appeal was taken. The utility commission  
6 may establish the effective date for the utility commission's rates  
7 at the original effective date as proposed by the service provider,  
8 may order refunds or allow a surcharge to recover lost revenues, and  
9 may allow recovery of reasonable expenses incurred by the retail  
10 public utility in the appeal proceedings. The utility commission  
11 may consider only the information that was available to the  
12 governing body at the time the governing body made its decision and  
13 evidence of reasonable expenses incurred by the retail public  
14 utility in the appeal proceedings. The rates established by the  
15 utility commission in an appeal under Subsection (b) [~~of this~~  
16 ~~section~~] remain in effect until the first anniversary of the  
17 effective date proposed by the retail public utility for the rates  
18 being appealed or until changed by the service provider, whichever  
19 date is later, unless the utility commission determines that a  
20 financial hardship exists.

21 (f) A retail public utility that receives water or sewer  
22 service from another retail public utility or political subdivision  
23 of the state, including an affected county, may appeal to the  
24 utility commission a decision of the provider of water or sewer  
25 service affecting the amount paid for water or sewer service. An  
26 appeal under this subsection must be initiated within 90 days after  
27 the date of notice of the decision is received from the provider of

1 water or sewer service by the filing of a petition by the retail  
2 public utility.

3 (g) An applicant for service from an affected county or a  
4 water supply or sewer service corporation may appeal to the utility  
5 commission a decision of the county or water supply or sewer service  
6 corporation affecting the amount to be paid to obtain service other  
7 than the regular membership or tap fees. In addition to the factors  
8 specified under Subsection (j), in an appeal brought under this  
9 subsection the utility commission shall determine whether the  
10 amount paid by the applicant is consistent with the tariff of the  
11 water supply or sewer service corporation and is reasonably related  
12 to the cost of installing on-site and off-site facilities to  
13 provide service to that applicant. If the utility commission finds  
14 the amount charged to be clearly unreasonable, it shall establish  
15 the fee to be paid for that applicant. An appeal under this  
16 subsection must be initiated within 90 days after the date written  
17 notice is provided to the applicant or member of the decision of an  
18 affected county or water supply or sewer service corporation  
19 relating to the applicant's initial request for that service. A  
20 determination made by the utility commission on an appeal under  
21 this subsection is binding on all similarly situated applicants for  
22 service, and the utility commission may not consider other appeals  
23 on the same issue until the applicable provisions of the tariff of  
24 the water supply or sewer service corporation are amended.

25 (h) The utility commission may, on a motion by the utility  
26 commission [~~executive director~~] or by the appellant under  
27 Subsection (a), (b), or (f) [~~of this section~~], establish interim

1 rates to be in effect until a final decision is made.

2 (j) In an appeal under this section, the utility commission  
3 shall ensure that every rate made, demanded, or received by any  
4 retail public utility or by any two or more retail public utilities  
5 jointly shall be just and reasonable. Rates shall not be  
6 unreasonably preferential, prejudicial, or discriminatory but  
7 shall be sufficient, equitable, and consistent in application to  
8 each class of customers. The utility commission shall use a  
9 methodology that preserves the financial integrity of the retail  
10 public utility. For agreements between municipalities the utility  
11 commission shall consider the terms of any wholesale water or sewer  
12 service agreement in an appellate rate proceeding.

13 SECTION 16. Subsection (b), Section 13.044, Water Code, is  
14 amended to read as follows:

15 (b) Notwithstanding the provisions of any resolution,  
16 ordinance, or agreement, a district may appeal the rates imposed by  
17 the municipality by filing a petition with the utility commission.  
18 The utility commission shall hear the appeal de novo and the  
19 municipality shall have the burden of proof to establish that the  
20 rates are just and reasonable. The utility commission shall fix the  
21 rates to be charged by the municipality and the municipality may not  
22 increase such rates without the approval of the utility commission.

23 SECTION 17. Section 13.046, Water Code, is amended to read  
24 as follows:

25 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR  
26 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The  
27 utility commission by rule shall establish a procedure that allows

1 a retail public utility that takes over the provision of services  
2 for a nonfunctioning retail water or sewer utility service provider  
3 to charge a reasonable rate for the services provided to the  
4 customers of the nonfunctioning system and to bill the customers  
5 for the services at that rate immediately to recover service costs.

6 (b) The rules must provide a streamlined process that the  
7 retail public utility that takes over the nonfunctioning system may  
8 use to apply to the utility commission for a ruling on the  
9 reasonableness of the rates the utility is charging under  
10 Subsection (a). The process must allow for adequate consideration  
11 of costs for interconnection or other costs incurred in making  
12 services available and of the costs that may necessarily be  
13 incurred to bring the nonfunctioning system into compliance with  
14 utility commission and commission rules.

15 (c) The utility commission shall provide a reasonable  
16 period for the retail public utility that takes over the  
17 nonfunctioning system to bring the nonfunctioning system into  
18 compliance with utility commission and commission rules during  
19 which the utility commission or the commission may not impose a  
20 penalty for any deficiency in the system that is present at the time  
21 the utility takes over the nonfunctioning system. The utility  
22 commission must consult with the utility before determining the  
23 period and may grant an extension of the period for good cause.

24 SECTION 18. Section 13.081, Water Code, is amended to read  
25 as follows:

26 Sec. 13.081. FRANCHISES. This chapter may not be construed  
27 as in any way limiting the rights and powers of a municipality to

1 grant or refuse franchises to use the streets and alleys within its  
2 limits and to make the statutory charges for their use, but no  
3 provision of any franchise agreement may limit or interfere with  
4 any power conferred on the utility commission by this chapter. If a  
5 municipality performs regulatory functions under this chapter, it  
6 may make such other charges as may be provided in the applicable  
7 franchise agreement, together with any other charges permitted by  
8 this chapter.

9 SECTION 19. Section 13.082, Water Code, is amended to read  
10 as follows:

11 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT  
12 AREAS. (a) Notwithstanding any other provision of this section,  
13 municipalities shall continue to regulate each kind of local  
14 utility service inside their boundaries until the utility  
15 commission has assumed jurisdiction over the respective utility  
16 pursuant to this chapter.

17 (b) If a municipality does not surrender its jurisdiction,  
18 local utility service within the boundaries of the municipality  
19 shall be exempt from regulation by the utility commission under  
20 this chapter to the extent that this chapter applies to local  
21 service, and the municipality shall have, regarding service within  
22 its boundaries, the right to exercise the same regulatory powers  
23 under the same standards and rules as the utility commission or  
24 other standards and rules not inconsistent with them. The utility  
25 commission's rules relating to service and response to requests for  
26 service for utilities operating within a municipality's corporate  
27 limits apply unless the municipality adopts its own rules.

1           (c) Notwithstanding any election, the utility commission  
2 may consider water and sewer utilities' revenues and return on  
3 investment in exempt areas in fixing rates and charges in nonexempt  
4 areas and may also exercise the powers conferred necessary to give  
5 effect to orders under this chapter for the benefit of nonexempt  
6 areas. Likewise, in fixing rates and charges in the exempt area,  
7 the governing body may consider water and sewer utilities' revenues  
8 and return on investment in nonexempt areas.

9           (d) Utilities serving exempt areas are subject to the  
10 reporting requirements of this chapter. Those reports and tariffs  
11 shall be filed with the governing body of the municipality as well  
12 as with the utility commission.

13           (e) This section does not limit the duty and power of the  
14 utility commission to regulate service and rates of municipally  
15 regulated water and sewer utilities for service provided to other  
16 areas in Texas.

17           SECTION 20. Section 13.085, Water Code, is amended to read  
18 as follows:

19           Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request,  
20 the utility commission may advise and assist municipalities and  
21 affected counties in connection with questions and proceedings  
22 arising under this chapter. This assistance may include aid to  
23 municipalities or an affected county in connection with matters  
24 pending before the utility commission, the courts, the governing  
25 body of any municipality, or the commissioners court of an affected  
26 county, including making members of the staff available to them as  
27 witnesses and otherwise providing evidence.



1 SECTION 21. Subsection (c), Section 13.087, Water Code, is  
2 amended to read as follows:

3 (c) Notwithstanding any other provision of this chapter,  
4 the utility commission has jurisdiction to enforce this section.

5 SECTION 22. Subsections (a), (b), (c), and (e), Section  
6 13.131, Water Code, are amended to read as follows:

7 (a) Every water and sewer utility shall keep and render to  
8 the regulatory authority in the manner and form prescribed by the  
9 utility commission uniform accounts of all business transacted.  
10 The utility commission may also prescribe forms of books, accounts,  
11 records, and memoranda to be kept by those utilities, including the  
12 books, accounts, records, and memoranda of the rendition of and  
13 capacity for service as well as the receipts and expenditures of  
14 money, and any other forms, records, and memoranda that in the  
15 judgment of the utility commission may be necessary to carry out  
16 this chapter.

17 (b) In the case of a utility subject to regulation by a  
18 federal regulatory agency, compliance with the system of accounts  
19 prescribed for the particular class of utilities by that agency may  
20 be considered a sufficient compliance with the system prescribed by  
21 the utility commission. However, the utility commission may  
22 prescribe forms of books, accounts, records, and memoranda covering  
23 information in addition to that required by the federal agency. The  
24 system of accounts and the forms of books, accounts, records, and  
25 memoranda prescribed by the utility commission for a utility or  
26 class of utilities may not conflict or be inconsistent with the  
27 systems and forms established by a federal agency for that utility

1 or class of utilities.

2 (c) The utility commission shall fix proper and adequate  
3 rates and methods of depreciation, amortization, or depletion of  
4 the several classes of property of each utility and shall require  
5 every utility to carry a proper and adequate depreciation account  
6 in accordance with those rates and methods and with any other rules  
7 the utility commission prescribes. Rules adopted under this  
8 subsection must require the book cost less net salvage of  
9 depreciable utility plant retired to be charged in its entirety to  
10 the accumulated depreciation account in a manner consistent with  
11 accounting treatment of regulated electric and gas utilities in  
12 this state. Those rates, methods, and accounts shall be utilized  
13 uniformly and consistently throughout the rate-setting and appeal  
14 proceedings.

15 (e) Every utility is required to keep and render its books,  
16 accounts, records, and memoranda accurately and faithfully in the  
17 manner and form prescribed by the utility commission and to comply  
18 with all directions of the regulatory authority relating to those  
19 books, accounts, records, and memoranda. The regulatory authority  
20 may require the examination and audit of all accounts.

21 SECTION 23. Section 13.132, Water Code, is amended to read  
22 as follows:

23 Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The  
24 utility commission may:

25 (1) require that water and sewer utilities report to  
26 it any information relating to themselves and affiliated interests  
27 both inside and outside this state that it considers useful in the

1 administration of this chapter, including any information relating  
2 to a transaction between the utility and an affiliated interest  
3 inside or outside this state, to the extent that the transaction is  
4 subject to the utility commission's jurisdiction;

5 (2) establish forms for all reports;

6 (3) determine the time for reports and the frequency  
7 with which any reports are to be made;

8 (4) require that any reports be made under oath;

9 (5) require that a copy of any contract or arrangement  
10 between any utility and any affiliated interest be filed with it and  
11 require that such a contract or arrangement that is not in writing  
12 be reduced to writing;

13 (6) require that a copy of any report filed with any  
14 federal agency or any governmental agency or body of any other state  
15 be filed with it; and

16 (7) require that a copy of annual reports showing all  
17 payments of compensation, other than salary or wages subject to the  
18 withholding of federal income tax, made to residents of Texas, or  
19 with respect to legal, administrative, or legislative matters in  
20 Texas, or for representation before the Texas Legislature or any  
21 governmental agency or body be filed with it.

22 (b) On the request of the governing body of any  
23 municipality, the utility commission may provide sufficient staff  
24 members to advise and consult with the municipality on any pending  
25 matter.

26 SECTION 24. Section 13.1325, Water Code, is amended to read  
27 as follows:

1           Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On  
 2 request, the utility commission [~~state agency with jurisdiction~~  
 3 ~~over rates charged by water and sewer utilities~~] shall provide, at a  
 4 reasonable cost, electronic copies of or Internet access to all  
 5 information provided to the utility commission [~~agency~~] under  
 6 Sections 13.016 and [~~7~~] 13.043 [~~7~~] and Subchapter F [~~13.187~~] to the  
 7 extent that the information is available and is not confidential.  
 8 Copies of all information provided to the utility commission  
 9 [~~agency~~] shall be provided to the Office of Public Utility Counsel,  
 10 on request, at no cost to the office.

11           SECTION 25. Subsection (b), Section 13.133, Water Code, is  
 12 amended to read as follows:

13           (b) The regulatory authority may require, by order or  
 14 subpoena served on any utility, the production within this state at  
 15 the time and place it may designate of any books, accounts, papers,  
 16 or records kept by that utility outside the state or verified copies  
 17 of them if the regulatory authority [~~commission~~] so orders. A  
 18 utility failing or refusing to comply with such an order or subpoena  
 19 violates this chapter.

20           SECTION 26. Section 13.136, Water Code, is amended by  
 21 amending Subsections (b) and (c) and adding Subsection (b-1) to  
 22 read as follows:

23           (b) The utility commission by rule shall require each [~~Each~~  
 24 utility to annually [~~shall~~] file a service, [~~and~~] financial, and  
 25 normalized earnings report in a form and at times specified by  
 26 utility commission rule. The report must include information  
 27 sufficient to enable the utility commission to properly monitor

1 utilities in this state. The utility commission shall make  
2 available to the public information in the report the utility does  
3 not file as confidential.

4 (b-1) The utility commission shall provide copies of a  
5 report described by Subsection (b) that include information filed  
6 as confidential to the Office of Public Utility Counsel on request,  
7 at no cost to the office.

8 (c) Every water supply or sewer service corporation shall  
9 file with the utility commission tariffs showing all rates that are  
10 subject to the appellate jurisdiction of the utility commission and  
11 that are in force at the time for any utility service, product, or  
12 commodity offered. Every water supply or sewer service corporation  
13 shall file with and as a part of those tariffs all rules and  
14 regulations relating to or affecting the rates, utility service,  
15 product, or commodity furnished. The filing required under this  
16 subsection shall be for informational purposes only.

17 SECTION 27. Section 13.137, Water Code, is amended to read  
18 as follows:

19 Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF  
20 UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

21 (1) make available and notify its customers of a  
22 business location where its customers may make payments to prevent  
23 disconnection of or to restore service:

24 (A) in each county in which the utility provides  
25 service; or

26 (B) not more than 20 miles from the residence of  
27 any residential customer if there is no location to receive

1 payments in the county; and

2 (2) have an office in a county of this state or in the  
3 immediate area in which its property or some part of its property is  
4 located in which it shall keep all books, accounts, records, and  
5 memoranda required by the utility commission to be kept in this  
6 state.

7 (b) The utility commission by rule may provide for waiving  
8 the requirements of Subsection (a)(1) for a utility for which  
9 meeting those requirements would cause a rate increase or otherwise  
10 harm or inconvenience customers. The rules must provide for an  
11 additional 14 days to be given for a customer to pay before a  
12 utility that is granted a waiver may disconnect service for late  
13 payment.

14 (c) Books, accounts, records, or memoranda required by the  
15 regulatory authority to be kept in the state may not be removed from  
16 the state, except on conditions prescribed by the utility  
17 commission.

18 SECTION 28. Subsection (b), Section 13.139, Water Code, is  
19 amended to read as follows:

20 (b) The governing body of a municipality, as the regulatory  
21 authority for public utilities operating within its corporate  
22 limits, and the utility commission or the commission as the  
23 regulatory authority for public utilities operating outside the  
24 corporate limits of any municipality, after reasonable notice and  
25 hearing on its own motion, may:

26 (1) ascertain and fix just and reasonable standards,  
27 classifications, regulations, service rules, minimum service

1 standards or practices to be observed and followed with respect to  
2 the service to be furnished;

3 (2) ascertain and fix adequate and reasonable  
4 standards for the measurement of the quantity, quality, pressure,  
5 or other condition pertaining to the supply of the service;

6 (3) prescribe reasonable regulations for the  
7 examination and testing of the service and for the measurement of  
8 service; and

9 (4) establish or approve reasonable rules,  
10 regulations, specifications, and standards to secure the accuracy  
11 of all meters, instruments, and equipment used for the measurement  
12 of any utility service.

13 SECTION 29. Section 13.1395, Water Code, is amended by  
14 adding Subsection (m) to read as follows:

15 (m) The commission shall coordinate with the utility  
16 commission in the administration of this section.

17 SECTION 30. Subsections (b), (c), and (f), Section 13.1396,  
18 Water Code, are amended to read as follows:

19 (b) An affected utility shall submit to the office of  
20 emergency management of each county in which the utility has more  
21 than one customer, the utility commission [~~Public Utility~~  
22 ~~Commission of Texas~~], and the office of emergency management of the  
23 governor a copy of:

24 (1) the affected utility's emergency preparedness plan  
25 approved under Section 13.1395; and

26 (2) the commission's notification to the affected  
27 utility that the plan is accepted.

1 (c) Each affected utility shall submit to the utility  
2 commission, each electric utility that provides transmission and  
3 distribution service to the affected utility, each retail electric  
4 provider that sells electric power to the affected utility, the  
5 office of emergency management of each county in which the utility  
6 has water and wastewater facilities that qualify for critical load  
7 status under rules adopted by the utility commission [~~Public~~  
8 ~~Utility Commission of Texas, the Public Utility Commission of~~  
9 ~~Texas~~], and the division of emergency management of the governor:

10 (1) information identifying the location and  
11 providing a general description of all water and wastewater  
12 facilities that qualify for critical load status; and

13 (2) emergency contact information for the affected  
14 utility, including:

15 (A) the person who will serve as a point of  
16 contact and the person's telephone number;

17 (B) the person who will serve as an alternative  
18 point of contact and the person's telephone number; and

19 (C) the affected utility's mailing address.

20 (f) Not later than May 1 of each year, each electric utility  
21 and each retail electric provider shall determine whether the  
22 facilities of the affected utility qualify for critical load status  
23 under rules adopted by the utility commission [~~Public Utility~~  
24 ~~Commission of Texas~~].

25 SECTION 31. Subsection (b), Section 13.142, Water Code, is  
26 amended to read as follows:

27 (b) The utility commission shall adopt rules concerning



1 payment of utility bills that are consistent with Chapter 2251,  
2 Government Code.

3 SECTION 32. Section 13.144, Water Code, is amended to read  
4 as follows:

5 Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A  
6 district or authority created under Section 52, Article III, or  
7 Section 59, Article XVI, Texas Constitution, a retail public  
8 utility, a wholesale water service, or other person providing a  
9 retail public utility with a wholesale water supply shall provide  
10 the utility commission and the commission with a certified copy of  
11 any wholesale water supply contract with a retail public utility  
12 within 30 days after the date of the execution of the contract. The  
13 submission must include the amount of water being supplied, term of  
14 the contract, consideration being given for the water, purpose of  
15 use, location of use, source of supply, point of delivery,  
16 limitations on the reuse of water, a disclosure of any affiliated  
17 interest between the parties to the contract, and any other  
18 condition or agreement relating to the contract.

19 SECTION 33. Subsection (a), Section 13.147, Water Code, is  
20 amended to read as follows:

21 (a) A retail public utility providing water service may  
22 contract with a retail public utility providing sewer service to  
23 bill and collect the sewer service provider's fees and payments as  
24 part of a consolidated process with the billing and collection of  
25 the water service provider's fees and payments. The water service  
26 provider may provide that service only for customers who are served  
27 by both providers in an area covered by both providers'

1 certificates of public convenience and necessity. If the water  
2 service provider refuses to enter into a contract under this  
3 section or if the water service provider and sewer service provider  
4 cannot agree on the terms of a contract, the sewer service provider  
5 may petition the utility commission to issue an order requiring the  
6 water service provider to provide that service.

7 SECTION 34. Subsection (b), Section 13.181, Water Code, is  
8 amended to read as follows:

9 (b) Subject to this chapter, the utility commission has all  
10 authority and power of the state to ensure compliance with the  
11 obligations of utilities under this chapter. For this purpose the  
12 regulatory authority may fix and regulate rates of utilities,  
13 including rules and regulations for determining the classification  
14 of customers and services and for determining the applicability of  
15 rates. A rule or order of the regulatory authority may not conflict  
16 with the rulings of any federal regulatory body. The utility  
17 commission may adopt rules which authorize a utility which is  
18 permitted under Section 13.242(c) to provide service without a  
19 certificate of public convenience and necessity to request or  
20 implement a rate increase and operate according to rules,  
21 regulations, and standards of service other than those otherwise  
22 required under this chapter provided that rates are just and  
23 reasonable for customers and the utility and that service is safe,  
24 adequate, efficient, and reasonable.

25 SECTION 35. Subsections (c) and (d), Section 13.182, Water  
26 Code, are amended to read as follows:

27 (c) For ratemaking purposes, the utility commission may

1 treat two or more municipalities served by a utility as a single  
2 class wherever the utility commission considers that treatment to  
3 be appropriate.

4 (d) The utility commission by rule shall establish a  
5 preference that rates under a consolidated tariff be consolidated  
6 by region. The regions under consolidated tariffs must be  
7 determined on a case-by-case basis.

8 SECTION 36. Subsection (d), Section 13.183, Water Code, is  
9 amended to read as follows:

10 (d) A regulatory authority other than the utility  
11 commission may not approve an acquisition adjustment for a system  
12 purchased before the effective date of an ordinance authorizing  
13 acquisition adjustments.

14 SECTION 37. Subsection (a), Section 13.184, Water Code, is  
15 amended to read as follows:

16 (a) Unless the utility commission establishes alternate  
17 rate methodologies in accordance with Section 13.183(c), the  
18 utility commission may not prescribe any rate that will yield more  
19 than a fair return on the invested capital used and useful in  
20 rendering service to the public. The governing body of a  
21 municipality exercising its original jurisdiction over rates and  
22 services may use alternate ratemaking methodologies established by  
23 ordinance or by utility commission rule in accordance with Section  
24 13.183(c). Unless the municipal regulatory authority uses  
25 alternate ratemaking methodologies established by ordinance or by  
26 utility commission rule in accordance with Section 13.183(c), it  
27 may not prescribe any rate that will yield more than a fair return

1 on the invested capital used and useful in rendering service to the  
2 public.

3 SECTION 38. Subsections (d) and (h), Section 13.185, Water  
4 Code, are amended to read as follows:

5 (d) Net income is the total revenues of the utility less all  
6 reasonable and necessary expenses as determined by the regulatory  
7 authority. The regulatory authority shall:

8 (1) base a utility's expenses on historic test year  
9 information adjusted for known and measurable changes, as  
10 determined by utility commission rules; and

11 (2) determine expenses and revenues in a manner  
12 consistent with Subsections (e) through (h) of this section.

13 (h) The regulatory authority may not include for ratemaking  
14 purposes:

15 (1) legislative advocacy expenses, whether made  
16 directly or indirectly, including legislative advocacy expenses  
17 included in trade association dues;

18 (2) costs of processing a refund or credit under this  
19 subchapter [~~Section 13.187 of this chapter~~]; or

20 (3) any expenditure found by the regulatory authority  
21 to be unreasonable, unnecessary, or not in the public interest,  
22 including executive salaries, advertising expenses, legal  
23 expenses, and civil penalties or fines.

24 SECTION 39. Section 13.187, Water Code, is amended to read  
25 as follows:

26 Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO  
27 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This

1 section applies only to a Class A utility.

2       (a-1) A utility may not make changes in its rates except by  
3 sending by mail or e-mail ~~[delivering]~~ a statement of intent to each  
4 ratepayer and to ~~[with]~~ the regulatory authority having original  
5 jurisdiction at least 35 ~~[60]~~ days before the effective date of the  
6 proposed change. The utility may send the statement of intent to a  
7 ratepayer by e-mail only if the ratepayer has agreed to receive  
8 communications electronically. The effective date of the new rates  
9 must be the first day of a billing period, and the new rates may not  
10 apply to service received before the effective date of the new  
11 rates. The statement of intent must include:

12               (1) the information required by the regulatory  
13 authority's rules;

14               (2) a billing comparison regarding the existing water  
15 rate and the new water rate computed for the use of:

16                       (A) 10,000 gallons of water; and

17                       (B) 30,000 gallons of water; ~~[and]~~

18               (3) a billing comparison regarding the existing sewer  
19 rate and the new sewer rate computed for the use of 10,000 gallons,  
20 unless the utility proposes a flat rate for sewer services; and

21               (4) a description of the process by which a ratepayer  
22 may intervene in the ratemaking proceeding.

23       (b) The utility shall mail, send by e-mail, or deliver a [A]  
24 copy of the statement of intent ~~[shall be mailed, sent by e-mail, or~~  
25 ~~delivered]~~ to the Office of Public Utility Counsel, appropriate  
26 offices of each affected municipality, and ~~[to]~~ any other affected  
27 persons as required by the regulatory authority's rules.

1           (c) When the statement of intent is delivered, the utility  
2 shall file with the regulatory authority an application to change  
3 rates. The application must include information the regulatory  
4 authority requires by rule and any appropriate cost and rate  
5 schedules and written testimony supporting the requested rate  
6 increase. If the utility fails to provide within a reasonable time  
7 after the application is filed the necessary documentation or other  
8 evidence that supports the costs and expenses that are shown in the  
9 application, the regulatory authority may disallow the  
10 nonsupported costs or expenses.

11           (d) Except as provided by Subsections [~~Subsection~~] (d-1)  
12 and (e), if the application or the statement of intent is not  
13 substantially complete or does not comply with the regulatory  
14 authority's rules, it may be rejected and the effective date of the  
15 rate change may be suspended until a properly completed application  
16 is accepted by the regulatory authority and a proper statement of  
17 intent is provided. The utility commission may also suspend the  
18 effective date of any rate change if the utility does not have a  
19 certificate of public convenience and necessity or a completed  
20 application for a certificate or to transfer a certificate pending  
21 before the utility commission or if the utility is delinquent in  
22 paying the assessment and any applicable penalties or interest  
23 required by Section 5.701(n) [~~of this code~~].

24           (d-1) After written notice to the utility, a local  
25 regulatory authority may suspend the effective date of a rate  
26 change for not more than 90 days from the proposed effective date[~~7~~  
27 ~~except that the suspension shall be extended by two days for each~~

1 ~~day a hearing exceeds 15 days~~]. If the local regulatory authority  
2 does not make a final determination on the proposed rate before the  
3 expiration of the [~~applicable~~] suspension period, the proposed rate  
4 shall be considered approved. This [~~The~~] approval is subject to the  
5 authority of the local regulatory authority thereafter to continue  
6 [~~authority's continuation of~~] a hearing in progress.

7 (e) After written notice to the utility, the utility  
8 commission may suspend the effective date of a rate change for not  
9 more than 150 days from the proposed effective date. If the utility  
10 commission does not make a final determination on the proposed rate  
11 before the expiration of the suspension period, the proposed rate  
12 shall be considered approved. This approval is subject to the  
13 authority of the utility commission thereafter to continue a  
14 hearing in progress [~~If, before the 91st day after the effective~~  
15 ~~date of the rate change, the regulatory authority receives a~~  
16 ~~complaint from any affected municipality, or from the lesser of~~  
17 ~~1,000 or 10 percent of the ratepayers of the utility over whose~~  
18 ~~rates the regulatory authority has original jurisdiction, the~~  
19 ~~regulatory authority shall set the matter for hearing~~].

20 (e-1) The 150-day period described by Subsection (e) shall  
21 be extended two days for each day a hearing exceeds 15 days.

22 (f) The regulatory authority shall, not later than the 30th  
23 day after the effective date of the change, begin a hearing to  
24 determine the propriety of the change [~~may set the matter for~~  
25 ~~hearing on its own motion at any time within 120 days after the~~  
26 ~~effective date of the rate change~~]. If the regulatory authority is  
27 the utility commission, the utility commission may refer the matter

1 to the State Office of Administrative Hearings as provided by  
2 utility commission rules [~~If more than half of the ratepayers of the~~  
3 ~~utility receive service in a county with a population of more than~~  
4 ~~3.3 million, the hearing must be held at a location in that county~~].

5 (g) A local regulatory authority [~~The~~] hearing described by  
6 this section may be informal.

7 (g-1) If the regulatory authority is the utility  
8 commission, the utility commission shall give reasonable notice of  
9 the hearing, including notice to the governing body of each  
10 affected municipality and county. The utility is not required to  
11 provide a formal answer or file any other formal pleading in  
12 response to the notice, and the absence of an answer does not affect  
13 an order for a hearing.

14 (h) If, after hearing, the regulatory authority finds the  
15 rates currently being charged or those proposed to be charged are  
16 unreasonable or in violation of law, the regulatory authority shall  
17 determine the rates to be charged by the utility and shall fix the  
18 rates by order served on the utility.

19 (i) A utility may put a changed rate into effect throughout  
20 the area in which the utility sought to change its rates, including  
21 an area over which the utility commission is exercising appellate  
22 or original jurisdiction, by filing a bond with the utility  
23 commission if the suspension period has been extended under  
24 Subsection (e-1) and the utility commission fails to make a final  
25 determination before the 151st day after the date the rate change  
26 would otherwise be effective.

27 (j) The bonded rate may not exceed the proposed rate. The



1 bond must be payable to the utility commission in an amount, in a  
2 form, and with a surety approved by the utility commission and  
3 conditioned on refund [~~The regulatory authority, pending final~~  
4 ~~action in a rate proceeding, may order the utility to deposit all or~~  
5 ~~part of the rate increase received or to be received into an escrow~~  
6 ~~account with a financial institution approved by the regulatory~~  
7 ~~authority].~~

8 (k) Unless otherwise agreed to by the parties to the rate  
9 proceeding, the utility shall refund or credit against future  
10 bills:

11 (1) all sums collected under the bonded rates [~~during~~  
12 ~~the pendency of the rate proceeding]~~ in excess of the rate finally  
13 ordered; and

14 (2) [~~plus~~] interest on those sums at the current  
15 interest rate as determined by the regulatory authority.

16 [~~(j) For good cause shown, the regulatory authority may~~  
17 ~~authorize the release of funds to the utility from the escrow~~  
18 ~~account during the pendency of the proceeding.~~

19 [~~(k) If the regulatory authority receives at least the~~  
20 ~~number of complaints from ratepayers required for the regulatory~~  
21 ~~authority to set a hearing under Subsection (e), the regulatory~~  
22 ~~authority may, pending the hearing and a decision, suspend the date~~  
23 ~~the rate change would otherwise be effective. Except as provided by~~  
24 ~~Subsection (d-1), the proposed rate may not be suspended for longer~~  
25 ~~than:~~

26 [~~(1) 90 days by a local regulatory authority, or~~

27 [~~(2) 150 days by the commission.]~~

1           (1) At any time during the pendency of the rate proceeding  
2 the regulatory authority may fix interim rates to remain in effect  
3 during the applicable suspension period under Subsection (d-1) or  
4 Subsections (e) and (e-1) or until a final determination is made on  
5 the proposed rate. If the regulatory authority does not establish  
6 interim rates, the rates in effect when the application described  
7 by Subsection (c) was filed continue in effect during the  
8 suspension period.

9           (m) If the regulatory authority sets a final rate that is  
10 higher than the interim rate, the utility shall be allowed to  
11 collect the difference between the interim rate and final rate  
12 unless otherwise agreed to by the parties to the rate proceeding.

13           (n) For good cause shown, the regulatory authority may at  
14 any time during the proceeding require the utility to refund money  
15 collected under a proposed rate before the rate was suspended or an  
16 interim rate was established to the extent the proposed rate  
17 exceeds the existing rate or the interim rate.

18           (o) If a regulatory authority other than the utility  
19 commission establishes interim rates or bonded rates [~~an escrow~~  
20 ~~account~~], the regulatory authority must make a final determination  
21 on the rates not later than the first anniversary of the effective  
22 date of the interim rates or bonded [~~escrowed~~] rates or the rates  
23 are automatically approved as requested by the utility.

24           (p) Except to implement a rate adjustment provision  
25 approved by the regulatory authority by rule or ordinance, as  
26 applicable, or to adjust the rates of a newly acquired utility  
27 system, a utility or two or more utilities under common control and

1 ownership may not file a statement of intent to increase its rates  
2 more than once in a 12-month period, unless the regulatory  
3 authority determines that a financial hardship exists. If the  
4 regulatory authority requires the utility to deliver a corrected  
5 statement of intent, the utility is not considered to be in  
6 violation of the 12-month filing requirement.

7 SECTION 40. Subchapter F, Chapter 13, Water Code, is  
8 amended by adding Sections 13.1871 and 13.1872 to read as follows:

9 Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO  
10 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as  
11 provided by Section 13.1872, this section applies only to a Class B  
12 utility.

13 (b) A utility may not make changes in its rates except by  
14 sending by mail or e-mail a statement of intent to each ratepayer  
15 and to the regulatory authority having original jurisdiction at  
16 least 35 days before the effective date of the proposed change. The  
17 utility may send the statement of intent to a ratepayer by e-mail  
18 only if the ratepayer has agreed to receive communications  
19 electronically. The effective date of the new rates must be the  
20 first day of a billing period, and the new rates may not apply to  
21 service received before the effective date of the new rates. The  
22 statement of intent must include:

23 (1) the information required by the regulatory  
24 authority's rules;

25 (2) a billing comparison regarding the existing water  
26 rate and the new water rate computed for the use of:

27 (A) 10,000 gallons of water; and

1                   (B) 30,000 gallons of water;

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

5                   (4) a description of the process by which a ratepayer  
6 may file a complaint under Subsection (i).

7                   (c) The utility shall mail, send by e-mail, or deliver a  
8 copy of the statement of intent to the appropriate offices of each  
9 affected municipality and to any other affected persons as required  
10 by the regulatory authority's rules.

11                   (d) When the statement of intent is delivered, the utility  
12 shall file with the regulatory authority an application to change  
13 rates. The application must include information the regulatory  
14 authority requires by rule and any appropriate cost and rate  
15 schedules supporting the requested rate increase. In adopting  
16 rules relating to the information required in the application, the  
17 utility commission shall ensure that a utility can file a less  
18 burdensome and complex application than is required of a Class A  
19 utility. If the utility fails to provide within a reasonable time  
20 after the application is filed the necessary documentation or other  
21 evidence that supports the costs and expenses that are shown in the  
22 application, the regulatory authority may disallow the  
23 nonsupported costs or expenses.

24                   (e) Except as provided by Subsection (f) or (g), if the  
25 application or the statement of intent is not substantially  
26 complete or does not comply with the regulatory authority's rules,  
27 it may be rejected and the effective date of the rate change may be

1 suspended until a properly completed application is accepted by the  
2 regulatory authority and a proper statement of intent is provided.  
3 The utility commission may also suspend the effective date of any  
4 rate change if the utility does not have a certificate of public  
5 convenience and necessity or a completed application for a  
6 certificate or to transfer a certificate pending before the utility  
7 commission or if the utility is delinquent in paying the assessment  
8 and any applicable penalties or interest required by Section  
9 5.701(n).

10 (f) After written notice to the utility, a local regulatory  
11 authority may suspend the effective date of a rate change for not  
12 more than 90 days from the proposed effective date. If the local  
13 regulatory authority does not make a final determination on the  
14 proposed rate before the expiration of the suspension period, the  
15 proposed rate shall be considered approved. This approval is  
16 subject to the authority of the local regulatory authority  
17 thereafter to continue a hearing in progress.

18 (g) After written notice to the utility, the utility  
19 commission may suspend the effective date of a rate change for not  
20 more than 205 days from the proposed effective date. If the utility  
21 commission does not make a final determination on the proposed rate  
22 before the expiration of the suspension period, the proposed rate  
23 shall be considered approved. This approval is subject to the  
24 authority of the utility commission thereafter to continue a  
25 hearing in progress.

26 (h) The 205-day period described by Subsection (g) shall be  
27 extended by two days for each day a hearing exceeds 15 days.

1       (i) If, before the 91st day after the effective date of the  
2 rate change, the regulatory authority receives a complaint from any  
3 affected municipality, or from the lesser of 1,000 or 10 percent of  
4 the ratepayers of the utility over whose rates the regulatory  
5 authority has original jurisdiction, the regulatory authority  
6 shall set the matter for hearing.

7       (j) If the regulatory authority receives at least the number  
8 of complaints from ratepayers required for the regulatory authority  
9 to set a hearing under Subsection (i), the regulatory authority  
10 may, pending the hearing and a decision, suspend the date the rate  
11 change would otherwise be effective. Except as provided by  
12 Subsection (h), the proposed rate may not be suspended for longer  
13 than:

14               (1) 90 days by a local regulatory authority; or

15               (2) 205 days by the utility commission.

16       (k) The regulatory authority may set the matter for hearing  
17 on its own motion at any time within 120 days after the effective  
18 date of the rate change.

19               (l) The hearing may be informal.

20       (m) The regulatory authority shall give reasonable notice  
21 of the hearing, including notice to the governing body of each  
22 affected municipality and county. The utility is not required to  
23 provide a formal answer or file any other formal pleading in  
24 response to the notice, and the absence of an answer does not affect  
25 an order for a hearing.

26       (n) The utility shall mail notice of the hearing to each  
27 ratepayer before the hearing. The notice must include a

1 description of the process by which a ratepayer may intervene in the  
2 ratemaking proceeding.

3 (o) If, after hearing, the regulatory authority finds the  
4 rates currently being charged or those proposed to be charged are  
5 unreasonable or in violation of law, the regulatory authority shall  
6 determine the rates to be charged by the utility and shall fix the  
7 rates by order served on the utility.

8 (p) A utility may put a changed rate into effect throughout  
9 the area in which the utility sought to change its rates, including  
10 an area over which the utility commission is exercising appellate  
11 or original jurisdiction, by filing a bond with the utility  
12 commission if the suspension period has been extended under  
13 Subsection (h) and the utility commission fails to make a final  
14 determination before the 206th day after the date the rate change  
15 would otherwise be effective.

16 (q) The bonded rate may not exceed the proposed rate. The  
17 bond must be payable to the utility commission in an amount, in a  
18 form, and with a surety approved by the utility commission and  
19 conditioned on refund.

20 (r) Unless otherwise agreed to by the parties to the rate  
21 proceeding, the utility shall refund or credit against future  
22 bills:

23 (1) all sums collected under the bonded rates in  
24 excess of the rate finally ordered; and

25 (2) interest on those sums at the current interest  
26 rate as determined by the regulatory authority.

27 (s) At any time during the pendency of the rate proceeding

1 the regulatory authority may fix interim rates to remain in effect  
2 during the applicable suspension period under Subsection (f) or  
3 Subsections (g) and (h) or until a final determination is made on  
4 the proposed rate. If the regulatory authority does not establish  
5 interim rates, the rates in effect when the application described  
6 by Subsection (e) was filed continue in effect during the  
7 suspension period.

8 (t) If the regulatory authority sets a final rate that is  
9 higher than the interim rate, the utility shall be allowed to  
10 collect the difference between the interim rate and final rate  
11 unless otherwise agreed to by the parties to the rate proceeding.

12 (u) For good cause shown, the regulatory authority may at  
13 any time during the proceeding require the utility to refund money  
14 collected under a proposed rate before the rate was suspended or an  
15 interim rate was established to the extent the proposed rate  
16 exceeds the existing rate or the interim rate.

17 (v) If a regulatory authority other than the utility  
18 commission establishes interim rates or bonded rates, the  
19 regulatory authority must make a final determination on the rates  
20 not later than the first anniversary of the effective date of the  
21 interim rates or bonded rates or the rates are automatically  
22 approved as requested by the utility.

23 (w) Except to implement a rate adjustment provision  
24 approved by the regulatory authority by rule or ordinance, as  
25 applicable, or to adjust the rates of a newly acquired utility  
26 system, a utility or two or more utilities under common control and  
27 ownership may not file a statement of intent to increase its rates



1 more than once in a 12-month period, unless the regulatory  
2 authority determines that a financial hardship exists. If the  
3 regulatory authority requires the utility to deliver a corrected  
4 statement of intent, the utility is not considered to be in  
5 violation of the 12-month filing requirement.

6 Sec. 13.1872. CLASS C UTILITIES: RATE ADJUSTMENT.

7 (a) This section applies only to a Class C utility.

8 (b) For purposes of this section, "price index" means an  
9 appropriate price index designated annually by the utility  
10 commission for the purposes of this section.

11 (c) A utility may not make changes in its rates except by:

12 (1) filing an application for a rate adjustment under  
13 the procedures described by Subsection (e) and sending by mail, or  
14 by e-mail if the ratepayer has agreed to receive communications  
15 electronically, a notice to each ratepayer describing the proposed  
16 rate adjustment at least 30 days before the effective date of the  
17 proposed change; or

18 (2) complying with the procedures to change rates  
19 described by Section 13.1871.

20 (d) The utility shall mail, send by e-mail, or deliver a  
21 copy of the application to the appropriate offices of each affected  
22 municipality and to any other affected persons as required by the  
23 regulatory authority's rules.

24 (e) The utility commission by rule shall adopt procedures to  
25 allow a utility to receive without a hearing an annual rate  
26 adjustment based on changes in the price index. The rules must:

27 (1) include standard language to be included in the

1 notice described by Subsection (c)(1) describing the rate  
2 adjustment process; and

3 (2) provide that an annual rate adjustment described  
4 by this section may not result in a rate increase to any class or  
5 category of ratepayer of more than the lesser of:

6 (A) five percent; or

7 (B) the percentage increase in the price index  
8 between the year preceding the year in which the utility requests  
9 the adjustment and the year in which the utility requests the  
10 adjustment.

11 (f) A utility may adjust the utility's rates using the  
12 procedures adopted under Subsection (e) not more than once each  
13 year and not more than four times between rate proceedings  
14 described by Section 13.1871.

15 SECTION 41. Section 13.188, Water Code, is amended to read  
16 as follows:

17 Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a)  
18 Notwithstanding any other provision in this chapter, the utility  
19 commission by rule shall adopt a procedure allowing a utility to  
20 file with the utility commission an application to timely adjust  
21 the utility's rates to reflect an increase or decrease in  
22 documented energy costs in a pass through clause. The utility  
23 commission, by rule, shall require the pass through of documented  
24 decreases in energy costs within a reasonable time. The pass  
25 through, whether a decrease or increase, shall be implemented on no  
26 later than an annual basis, unless the utility commission  
27 determines a special circumstance applies.

1 (b) Notwithstanding any other provision to the contrary,  
2 this adjustment is an uncontested matter not subject to a contested  
3 case hearing. However, the utility commission [~~executive director~~]  
4 shall hold an uncontested public meeting:

5 (1) on the request of a member of the legislature who  
6 represents the area served by the water and sewer utility; or

7 (2) if the utility commission [~~executive director~~]  
8 determines that there is substantial public interest in the matter.

9 (c) A proceeding under this section is not a rate case and  
10 Sections [~~Section~~] 13.187, 13.1871, and 13.1872 do [~~does~~] not  
11 apply.

12 SECTION 42. Subsections (a), (d), and (e), Section 13.241,  
13 Water Code, are amended to read as follows:

14 (a) In determining whether to grant or amend a certificate  
15 of public convenience and necessity, the utility commission shall  
16 ensure that the applicant possesses the financial, managerial, and  
17 technical capability to provide continuous and adequate service.

18 (d) Before the utility commission grants a new certificate  
19 of convenience and necessity for an area which would require  
20 construction of a physically separate water or sewer system, the  
21 applicant must demonstrate to the utility commission that  
22 regionalization or consolidation with another retail public  
23 utility is not economically feasible.

24 (e) The utility commission by rule shall develop a  
25 standardized method for determining under Section 13.246(f) which  
26 of two or more retail public utilities or water supply or sewer  
27 service corporations that apply for a certificate of public

1 convenience and necessity to provide water or sewer utility service  
2 to an uncertificated area located in an economically distressed  
3 area is more capable financially, managerially, and technically of  
4 providing continuous and adequate service. In this subsection,  
5 "economically distressed area" has the meaning assigned by Section  
6 15.001.

7 SECTION 43. Subsections (a) and (c), Section 13.242, Water  
8 Code, are amended to read as follows:

9 (a) Unless otherwise specified, a utility, a utility  
10 operated by an affected county, or a water supply or sewer service  
11 corporation may not in any way render retail water or sewer utility  
12 service directly or indirectly to the public without first having  
13 obtained from the utility commission a certificate that the present  
14 or future public convenience and necessity will require that  
15 installation, operation, or extension, and except as otherwise  
16 provided by this subchapter, a retail public utility may not  
17 furnish, make available, render, or extend retail water or sewer  
18 utility service to any area to which retail water or sewer utility  
19 service is being lawfully furnished by another retail public  
20 utility without first having obtained a certificate of public  
21 convenience and necessity that includes the area in which the  
22 consuming facility is located.

23 (c) The utility commission may by rule allow a municipality  
24 or utility or water supply corporation to render retail water  
25 service without a certificate of public convenience and necessity  
26 if the municipality has given notice under Section 13.255 [~~of this~~  
27 ~~code~~] that it intends to provide retail water service to an area or

1 if the utility or water supply corporation has less than 15  
2 potential connections and is not within the certificated area of  
3 another retail public utility.

4 SECTION 44. Section 13.244, Water Code, is amended to read  
5 as follows:

6 Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;  
7 EVIDENCE AND CONSENT. (a) To obtain a certificate of public  
8 convenience and necessity or an amendment to a certificate, a  
9 public utility or water supply or sewer service corporation shall  
10 submit to the utility commission an application for a certificate  
11 or for an amendment as provided by this section.

12 (b) Each public utility and water supply or sewer service  
13 corporation shall file with the utility commission a map or maps  
14 showing all its facilities and illustrating separately facilities  
15 for production, transmission, and distribution of its services, and  
16 each certificated retail public utility shall file with the utility  
17 commission a map or maps showing any facilities, customers, or area  
18 currently being served outside its certificated areas.

19 (c) Each applicant for a certificate or for an amendment  
20 shall file with the utility commission evidence required by the  
21 utility commission to show that the applicant has received the  
22 required consent, franchise, or permit of the proper municipality  
23 or other public authority.

24 (d) An application for a certificate of public convenience  
25 and necessity or for an amendment to a certificate must contain:

26 (1) a description of the proposed service area by:

27 (A) a metes and bounds survey certified by a

1 licensed state land surveyor or a registered professional land  
2 surveyor;

3 (B) the Texas State Plane Coordinate System;

4 (C) verifiable landmarks, including a road,  
5 creek, or railroad line; or

6 (D) if a recorded plat of the area exists, lot and  
7 block number;

8 (2) a description of any requests for service in the  
9 proposed service area;

10 (3) a capital improvements plan, including a budget  
11 and estimated timeline for construction of all facilities necessary  
12 to provide full service to the entire proposed service area;

13 (4) a description of the sources of funding for all  
14 facilities;

15 (5) to the extent known, a description of current and  
16 projected land uses, including densities;

17 (6) a current financial statement of the applicant;

18 (7) according to the tax roll of the central appraisal  
19 district for each county in which the proposed service area is  
20 located, a list of the owners of each tract of land that is:

21 (A) at least 50 acres; and

22 (B) wholly or partially located within the  
23 proposed service area; and

24 (8) any other item required by the utility commission.

25 SECTION 45. Subsections (b), (c), (c-1), (c-2), (c-3), and  
26 (e), Section 13.245, Water Code, are amended to read as follows:

27 (b) Except as provided by Subsections (c), (c-1), and (c-2),

1 the utility commission may not grant to a retail public utility a  
2 certificate of public convenience and necessity for a service area  
3 within the boundaries or extraterritorial jurisdiction of a  
4 municipality without the consent of the municipality. The  
5 municipality may not unreasonably withhold the consent. As a  
6 condition of the consent, a municipality may require that all water  
7 and sewer facilities be designed and constructed in accordance with  
8 the municipality's standards for facilities.

9 (c) If a municipality has not consented under Subsection (b)  
10 before the 180th day after the date the municipality receives the  
11 retail public utility's application, the utility commission shall  
12 grant the certificate of public convenience and necessity without  
13 the consent of the municipality if the utility commission finds  
14 that the municipality:

- 15 (1) does not have the ability to provide service; or  
16 (2) has failed to make a good faith effort to provide  
17 service on reasonable terms and conditions.

18 (c-1) If a municipality has not consented under Subsection  
19 (b) before the 180th day after the date a landowner or a retail  
20 public utility submits to the municipality a formal request for  
21 service according to the municipality's application requirements  
22 and standards for facilities on the same or substantially similar  
23 terms as provided by the retail public utility's application to the  
24 utility commission, including a capital improvements plan required  
25 by Section 13.244(d)(3) or a subdivision plat, the utility  
26 commission may grant the certificate of public convenience and  
27 necessity without the consent of the municipality if:

1           (1) the utility commission makes the findings required  
2 by Subsection (c);

3           (2) the municipality has not entered into a binding  
4 commitment to serve the area that is the subject of the retail  
5 public utility's application to the utility commission before the  
6 180th day after the date the formal request was made; and

7           (3) the landowner or retail public utility that  
8 submitted the formal request has not unreasonably refused to:

9                   (A) comply with the municipality's service  
10 extension and development process; or

11                   (B) enter into a contract for water or sewer  
12 services with the municipality.

13           (c-2) If a municipality refuses to provide service in the  
14 proposed service area, as evidenced by a formal vote of the  
15 municipality's governing body or an official notification from the  
16 municipality, the utility commission is not required to make the  
17 findings otherwise required by this section and may grant the  
18 certificate of public convenience and necessity to the retail  
19 public utility at any time after the date of the formal vote or  
20 receipt of the official notification.

21           (c-3) The utility commission must include as a condition of  
22 a certificate of public convenience and necessity granted under  
23 Subsection (c-1) or (c-2) that all water and sewer facilities be  
24 designed and constructed in accordance with the municipality's  
25 standards for water and sewer facilities.

26           (e) If the utility commission makes a decision under  
27 Subsection (d) regarding the grant of a certificate of public



1 convenience and necessity without the consent of the municipality,  
2 the municipality or the retail public utility may appeal the  
3 decision to the appropriate state district court. The court shall  
4 hear the petition within 120 days after the date the petition is  
5 filed. On final disposition, the court may award reasonable fees to  
6 the prevailing party.

7 SECTION 46. Subsections (b) and (c), Section 13.2451, Water  
8 Code, are amended to read as follows:

9 (b) The utility commission may not extend a municipality's  
10 certificate of public convenience and necessity beyond its  
11 extraterritorial jurisdiction if an owner of land that is located  
12 wholly or partly outside the extraterritorial jurisdiction elects  
13 to exclude some or all of the landowner's property within a proposed  
14 service area in accordance with Section 13.246(h). This subsection  
15 does not apply to a transfer of a certificate as approved by the  
16 utility commission.

17 (c) The utility commission, after notice to the  
18 municipality and an opportunity for a hearing, may decertify an  
19 area outside a municipality's extraterritorial jurisdiction if the  
20 municipality does not provide service to the area on or before the  
21 fifth anniversary of the date the certificate of public convenience  
22 and necessity was granted for the area. This subsection does not  
23 apply to a certificate of public convenience and necessity for an  
24 area:

25 (1) that was transferred to a municipality on approval  
26 of the utility commission; and

27 (2) in relation to which the municipality has spent

1 public funds.

2 SECTION 47. Section 13.246, Water Code, is amended to read  
3 as follows:

4 Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL;  
5 FACTORS CONSIDERED. (a) If an application for a certificate of  
6 public convenience and necessity or for an amendment to a  
7 certificate is filed, the utility commission shall cause notice of  
8 the application to be given to affected parties and to each county  
9 and groundwater conservation district that is wholly or partly  
10 included in the area proposed to be certified. If requested, the  
11 utility commission shall fix a time and place for a hearing and give  
12 notice of the hearing. Any person affected by the application may  
13 intervene at the hearing.

14 (a-1) Except as otherwise provided by this subsection, in  
15 addition to the notice required by Subsection (a), the utility  
16 commission shall require notice to be mailed to each owner of a  
17 tract of land that is at least 25 acres and is wholly or partially  
18 included in the area proposed to be certified. Notice required  
19 under this subsection must be mailed by first class mail to the  
20 owner of the tract according to the most current tax appraisal rolls  
21 of the applicable central appraisal district at the time the  
22 utility commission received the application for the certificate or  
23 amendment. Good faith efforts to comply with the requirements of  
24 this subsection shall be considered adequate notice to landowners.  
25 Notice under this subsection is not required for a matter filed with  
26 the utility commission or the commission under:

27 (1) Section 13.248 or 13.255; or

1           (2) Chapter 65.

2           (b) The utility commission may grant applications and issue  
3 certificates and amendments to certificates only if the utility  
4 commission finds that a certificate or amendment is necessary for  
5 the service, accommodation, convenience, or safety of the public.  
6 The utility commission may issue a certificate or amendment as  
7 requested, or refuse to issue it, or issue it for the construction  
8 of only a portion of the contemplated system or facility or  
9 extension, or for the partial exercise only of the right or  
10 privilege and may impose special conditions necessary to ensure  
11 that continuous and adequate service is provided.

12           (c) Certificates of public convenience and necessity and  
13 amendments to certificates shall be granted by the utility  
14 commission on a nondiscriminatory basis after consideration by the  
15 utility commission of:

16           (1) the adequacy of service currently provided to the  
17 requested area;

18           (2) the need for additional service in the requested  
19 area, including whether any landowners, prospective landowners,  
20 tenants, or residents have requested service;

21           (3) the effect of the granting of a certificate or of  
22 an amendment on the recipient of the certificate or amendment, on  
23 the landowners in the area, and on any retail public utility of the  
24 same kind already serving the proximate area;

25           (4) the ability of the applicant to provide adequate  
26 service, including meeting the standards of the commission, taking  
27 into consideration the current and projected density and land use

1 of the area;

2 (5) the feasibility of obtaining service from an  
3 adjacent retail public utility;

4 (6) the financial ability of the applicant to pay for  
5 the facilities necessary to provide continuous and adequate service  
6 and the financial stability of the applicant, including, if  
7 applicable, the adequacy of the applicant's debt-equity ratio;

8 (7) environmental integrity;

9 (8) the probable improvement of service or lowering of  
10 cost to consumers in that area resulting from the granting of the  
11 certificate or amendment; and

12 (9) the effect on the land to be included in the  
13 certificated area.

14 (d) The utility commission may require an applicant for a  
15 certificate or for an amendment to provide a bond or other financial  
16 assurance in a form and amount specified by the utility commission  
17 to ensure that continuous and adequate utility service is provided.

18 (e) Where applicable, in addition to the other factors in  
19 this section the utility commission shall consider the efforts of  
20 the applicant:

21 (1) to extend service to any economically distressed  
22 areas located within the service areas certificated to the  
23 applicant; and

24 (2) to enforce the rules adopted under Section 16.343.

25 (f) If two or more retail public utilities or water supply  
26 or sewer service corporations apply for a certificate of public  
27 convenience and necessity to provide water or sewer utility service

1 to an uncertificated area located in an economically distressed  
2 area and otherwise meet the requirements for obtaining a new  
3 certificate, the utility commission shall grant the certificate to  
4 the retail public utility or water supply or sewer service  
5 corporation that is more capable financially, managerially, and  
6 technically of providing continuous and adequate service.

7 (g) In this section, "economically distressed area" has the  
8 meaning assigned by Section 15.001.

9 (h) Except as provided by Subsection (i), a landowner who  
10 owns a tract of land that is at least 25 acres and that is wholly or  
11 partially located within the proposed service area may elect to  
12 exclude some or all of the landowner's property from the proposed  
13 service area by providing written notice to the utility commission  
14 before the 30th day after the date the landowner receives notice of  
15 a new application for a certificate of public convenience and  
16 necessity or for an amendment to an existing certificate of public  
17 convenience and necessity. The landowner's election is effective  
18 without a further hearing or other process by the utility  
19 commission. If a landowner makes an election under this  
20 subsection, the application shall be modified so that the electing  
21 landowner's property is not included in the proposed service area.  
22 An applicant for a certificate of public convenience and necessity  
23 that has land removed from its proposed certificated service area  
24 because of a landowner's election under this subsection may not be  
25 required to provide service to the removed land for any reason,  
26 including the violation of law or utility commission or commission  
27 rules by the water or sewer system of another person.

1           (i) A landowner is not entitled to make an election under  
2 Subsection (h) but is entitled to contest the inclusion of the  
3 landowner's property in the proposed service area at a hearing held  
4 by the utility commission regarding the application if the proposed  
5 service area is located within the boundaries or extraterritorial  
6 jurisdiction of a municipality with a population of more than  
7 500,000 and the municipality or a utility owned by the municipality  
8 is the applicant.

9           SECTION 48. Subsection (a), Section 13.247, Water Code, is  
10 amended to read as follows:

11           (a) If an area is within the boundaries of a municipality,  
12 all retail public utilities certified or entitled to certification  
13 under this chapter to provide service or operate facilities in that  
14 area may continue and extend service in its area of public  
15 convenience and necessity within the area pursuant to the rights  
16 granted by its certificate and this chapter, unless the  
17 municipality exercises its power of eminent domain to acquire the  
18 property of the retail public utility under Subsection (d). Except  
19 as provided by Section 13.255, a municipally owned or operated  
20 utility may not provide retail water and sewer utility service  
21 within the area certificated to another retail public utility  
22 without first having obtained from the utility commission a  
23 certificate of public convenience and necessity that includes the  
24 areas to be served.

25           SECTION 49. Section 13.248, Water Code, is amended to read  
26 as follows:

27           Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts

1 between retail public utilities designating areas to be served and  
2 customers to be served by those retail public utilities, when  
3 approved by the utility commission after public notice and hearing,  
4 are valid and enforceable and are incorporated into the appropriate  
5 areas of public convenience and necessity.

6 SECTION 50. Subsections (b), (c), and (e), Section 13.250,  
7 Water Code, are amended to read as follows:

8 (b) Unless the utility commission issues a certificate that  
9 neither the present nor future convenience and necessity will be  
10 adversely affected, the holder of a certificate or a person who  
11 possesses facilities used to provide utility service shall not  
12 discontinue, reduce, or impair service to a certified service area  
13 or part of a certified service area except for:

14 (1) nonpayment of charges for services provided by the  
15 certificate holder or a person who possesses facilities used to  
16 provide utility service;

17 (2) nonpayment of charges for sewer service provided  
18 by another retail public utility under an agreement between the  
19 retail public utility and the certificate holder or a person who  
20 possesses facilities used to provide utility service or under a  
21 utility commission-ordered arrangement between the two service  
22 providers;

23 (3) nonuse; or

24 (4) other similar reasons in the usual course of  
25 business.

26 (c) Any discontinuance, reduction, or impairment of  
27 service, whether with or without approval of the utility

1 commission, shall be in conformity with and subject to conditions,  
2 restrictions, and limitations that the utility commission  
3 prescribes.

4 (e) Not later than the 48th hour after the hour in which a  
5 utility files a bankruptcy petition, the utility shall report this  
6 fact to the utility commission and the commission in writing.

7 SECTION 51. Subsection (d), Section 13.2502, Water Code, is  
8 amended to read as follows:

9 (d) This section does not limit or extend the jurisdiction  
10 of the utility commission under Section 13.043(g).

11 SECTION 52. Section 13.251, Water Code, is amended to read  
12 as follows:

13 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.  
14 Except as provided by Section 13.255 [~~of this code~~], a utility or a  
15 water supply or sewer service corporation may not sell, assign, or  
16 lease a certificate of public convenience and necessity or any  
17 right obtained under a certificate unless the utility commission  
18 has determined that the purchaser, assignee, or lessee is capable  
19 of rendering adequate and continuous service to every consumer  
20 within the certified area, after considering the factors under  
21 Section 13.246(c) [~~of this code~~]. The sale, assignment, or lease  
22 shall be on the conditions prescribed by the utility commission.

23 SECTION 53. Section 13.252, Water Code, is amended to read  
24 as follows:

25 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.  
26 If a retail public utility in constructing or extending a line,  
27 plant, or system interferes or attempts to interfere with the



1 operation of a line, plant, or system of any other retail public  
2 utility, or furnishes, makes available, renders, or extends retail  
3 water or sewer utility service to any portion of the service area of  
4 another retail public utility that has been granted or is not  
5 required to possess a certificate of public convenience and  
6 necessity, the utility commission may issue an order prohibiting  
7 the construction, extension, or provision of service or prescribing  
8 terms and conditions for locating the line, plant, or system  
9 affected or for the provision of the service.

10 SECTION 54. Section 13.253, Water Code, is amended to read  
11 as follows:

12 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING  
13 SERVICE. (a) After notice and hearing, the utility commission or  
14 the commission may:

15 (1) order any retail public utility that is required  
16 by law to possess a certificate of public convenience and necessity  
17 or any retail public utility that possesses a certificate of public  
18 convenience and necessity and is located in an affected county as  
19 defined in Section 16.341 to:

20 (A) provide specified improvements in its  
21 service in a defined area if service in that area is inadequate or  
22 is substantially inferior to service in a comparable area and it is  
23 reasonable to require the retail public utility to provide the  
24 improved service; or

25 (B) develop, implement, and follow financial,  
26 managerial, and technical practices that are acceptable to the  
27 utility commission to ensure that continuous and adequate service

1 is provided to any areas currently certificated to the retail  
2 public utility if the retail public utility has not provided  
3 continuous and adequate service to any of those areas and, for a  
4 utility, to provide financial assurance of the utility's ability to  
5 operate the system in accordance with applicable laws and rules, in  
6 the form of a bond or other financial assurance in a form and amount  
7 specified by the utility commission;

8           (2) order two or more public utilities or water supply  
9 or sewer service corporations to establish specified facilities for  
10 interconnecting service;

11           (3) order a public utility or water supply or sewer  
12 service corporation that has not demonstrated that it can provide  
13 continuous and adequate service from its drinking water source or  
14 sewer treatment facility to obtain service sufficient to meet its  
15 obligation to provide continuous and adequate service on at least a  
16 wholesale basis from another consenting utility service provider;  
17 or

18           (4) issue an emergency order, with or without a  
19 hearing, under Section 13.041.

20           (b) If the utility commission has reason to believe that  
21 improvements and repairs to a water or sewer service system are  
22 necessary to enable a retail public utility to provide continuous  
23 and adequate service in any portion of its service area and the  
24 retail public utility has provided financial assurance under  
25 Section 341.0355, Health and Safety Code, or under this chapter,  
26 the utility commission, after providing to the retail public  
27 utility notice and an opportunity to be heard by the commissioners

1 at a [~~commission~~] meeting of the utility commission, may  
2 immediately order specified improvements and repairs to the water  
3 or sewer system, the costs of which may be paid by the bond or other  
4 financial assurance in an amount determined by the utility  
5 commission not to exceed the amount of the bond or financial  
6 assurance. The order requiring the improvements may be an  
7 emergency order if it is issued after the retail public utility has  
8 had an opportunity to be heard [~~by the commissioners~~] at a  
9 [~~commission~~] meeting of the utility commission. After notice and  
10 hearing, the utility commission may require a retail public utility  
11 to obligate additional money to replace the financial assurance  
12 used for the improvements.

13 SECTION 55. Subsections (a), (a-1), (a-2), (a-3), (a-4),  
14 (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Section  
15 13.254, Water Code, are amended to read as follows:

16 (a) The utility commission at any time after notice and  
17 hearing may revoke or amend any certificate of public convenience  
18 and necessity with the written consent of the certificate holder or  
19 if the utility commission [~~it~~] finds that:

20 (1) the certificate holder has never provided, is no  
21 longer providing, is incapable of providing, or has failed to  
22 provide continuous and adequate service in the area, or part of the  
23 area, covered by the certificate;

24 (2) in an affected county as defined in Section  
25 16.341, the cost of providing service by the certificate holder is  
26 so prohibitively expensive as to constitute denial of service,  
27 provided that, for commercial developments or for residential

1 developments started after September 1, 1997, in an affected county  
2 as defined in Section 16.341, the fact that the cost of obtaining  
3 service from the currently certificated retail public utility makes  
4 the development economically unfeasible does not render such cost  
5 prohibitively expensive in the absence of other relevant factors;

6 (3) the certificate holder has agreed in writing to  
7 allow another retail public utility to provide service within its  
8 service area, except for an interim period, without amending its  
9 certificate; or

10 (4) the certificate holder has failed to file a cease  
11 and desist action pursuant to Section 13.252 within 180 days of the  
12 date that it became aware that another retail public utility was  
13 providing service within its service area, unless the certificate  
14 holder demonstrates good cause for its failure to file such action  
15 within the 180 days.

16 (a-1) As an alternative to decertification under Subsection  
17 (a), the owner of a tract of land that is at least 50 acres and that  
18 is not in a platted subdivision actually receiving water or sewer  
19 service may petition the utility commission under this subsection  
20 for expedited release of the area from a certificate of public  
21 convenience and necessity so that the area may receive service from  
22 another retail public utility. The fact that a certificate holder  
23 is a borrower under a federal loan program is not a bar to a request  
24 under this subsection for the release of the petitioner's land and  
25 the receipt of services from an alternative provider. On the day  
26 the petitioner submits the petition to the utility commission, the  
27 petitioner shall send, via certified mail, a copy of the petition to

1 the certificate holder, who may submit information to the utility  
2 commission to controvert information submitted by the petitioner.  
3 The petitioner must demonstrate that:

4 (1) a written request for service, other than a  
5 request for standard residential or commercial service, has been  
6 submitted to the certificate holder, identifying:

7 (A) the area for which service is sought;

8 (B) the timeframe within which service is needed  
9 for current and projected service demands in the area;

10 (C) the level and manner of service needed for  
11 current and projected service demands in the area;

12 (D) the approximate cost for the alternative  
13 provider to provide the service at the same level and manner that is  
14 requested from the certificate holder;

15 (E) the flow and pressure requirements and  
16 specific infrastructure needs, including line size and system  
17 capacity for the required level of fire protection requested; and

18 (F) any additional information requested by the  
19 certificate holder that is reasonably related to determination of  
20 the capacity or cost for providing the service;

21 (2) the certificate holder has been allowed at least  
22 90 calendar days to review and respond to the written request and  
23 the information it contains;

24 (3) the certificate holder:

25 (A) has refused to provide the service;

26 (B) is not capable of providing the service on a  
27 continuous and adequate basis within the timeframe, at the level,

1 at the approximate cost that the alternative provider is capable of  
2 providing for a comparable level of service, or in the manner  
3 reasonably needed or requested by current and projected service  
4 demands in the area; or

5 (C) conditions the provision of service on the  
6 payment of costs not properly allocable directly to the  
7 petitioner's service request, as determined by the utility  
8 commission; and

9 (4) the alternate retail public utility from which the  
10 petitioner will be requesting service possesses the financial,  
11 managerial, and technical capability to provide continuous and  
12 adequate service within the timeframe, at the level, at the cost,  
13 and in the manner reasonably needed or requested by current and  
14 projected service demands in the area.

15 (a-2) A landowner is not entitled to make the election  
16 described in Subsection (a-1) or (a-5) but is entitled to contest  
17 under Subsection (a) the involuntary certification of its property  
18 in a hearing held by the utility commission if the landowner's  
19 property is located:

20 (1) within the boundaries of any municipality or the  
21 extraterritorial jurisdiction of a municipality with a population  
22 of more than 500,000 and the municipality or retail public utility  
23 owned by the municipality is the holder of the certificate; or

24 (2) in a platted subdivision actually receiving water  
25 or sewer service.

26 (a-3) Within 60 calendar days from the date the utility  
27 commission determines the petition filed pursuant to Subsection

1 (a-1) to be administratively complete, the utility commission shall  
2 grant the petition unless the utility commission makes an express  
3 finding that the petitioner failed to satisfy the elements required  
4 in Subsection (a-1) and supports its finding with separate findings  
5 and conclusions for each element based solely on the information  
6 provided by the petitioner and the certificate holder. The utility  
7 commission may grant or deny a petition subject to terms and  
8 conditions specifically related to the service request of the  
9 petitioner and all relevant information submitted by the petitioner  
10 and the certificate holder. In addition, the utility commission  
11 may require an award of compensation as otherwise provided by this  
12 section.

13 (a-4) Chapter 2001, Government Code, does not apply to any  
14 petition filed under Subsection (a-1). The decision of the utility  
15 commission on the petition is final after any reconsideration  
16 authorized by the utility commission's rules and may not be  
17 appealed.

18 (a-6) The utility commission shall grant a petition  
19 received under Subsection (a-5) not later than the 60th day after  
20 the date the landowner files the petition. The utility commission  
21 may not deny a petition received under Subsection (a-5) based on the  
22 fact that a certificate holder is a borrower under a federal loan  
23 program. The utility commission may require an award of  
24 compensation by the petitioner to a decertified retail public  
25 utility that is the subject of a petition filed under Subsection  
26 (a-5) as otherwise provided by this section.

27 (a-8) If a certificate holder has never made service

1 available through planning, design, construction of facilities, or  
2 contractual obligations to serve the area a petitioner seeks to  
3 have released under Subsection (a-1), the utility commission is not  
4 required to find that the proposed alternative provider is capable  
5 of providing better service than the certificate holder, but only  
6 that the proposed alternative provider is capable of providing the  
7 requested service.

8 (b) Upon written request from the certificate holder, the  
9 utility commission [~~executive director~~] may cancel the certificate  
10 of a utility or water supply corporation authorized by rule to  
11 operate without a certificate of public convenience and necessity  
12 under Section 13.242(c).

13 (c) If the certificate of any retail public utility is  
14 revoked or amended, the utility commission may require one or more  
15 retail public utilities with their consent to provide service in  
16 the area in question. The order of the utility commission shall not  
17 be effective to transfer property.

18 (d) A retail public utility may not in any way render retail  
19 water or sewer service directly or indirectly to the public in an  
20 area that has been decertified under this section without providing  
21 compensation for any property that the utility commission  
22 determines is rendered useless or valueless to the decertified  
23 retail public utility as a result of the decertification.

24 (e) The determination of the monetary amount of  
25 compensation, if any, shall be determined at the time another  
26 retail public utility seeks to provide service in the previously  
27 decertified area and before service is actually provided. The



1 utility commission shall ensure that the monetary amount of  
2 compensation is determined not later than the 90th calendar day  
3 after the date on which a retail public utility notifies the utility  
4 commission of its intent to provide service to the decertified  
5 area.

6 (f) The monetary amount shall be determined by a qualified  
7 individual or firm serving as independent appraiser agreed upon by  
8 the decertified retail public utility and the retail public utility  
9 seeking to serve the area. The determination of compensation by the  
10 independent appraiser shall be binding on the utility commission.  
11 The costs of the independent appraiser shall be borne by the retail  
12 public utility seeking to serve the area.

13 (g) For the purpose of implementing this section, the value  
14 of real property owned and utilized by the retail public utility for  
15 its facilities shall be determined according to the standards set  
16 forth in Chapter 21, Property Code, governing actions in eminent  
17 domain and the value of personal property shall be determined  
18 according to the factors in this subsection. The factors ensuring  
19 that the compensation to a retail public utility is just and  
20 adequate shall include: the amount of the retail public utility's  
21 debt allocable for service to the area in question; the value of the  
22 service facilities of the retail public utility located within the  
23 area in question; the amount of any expenditures for planning,  
24 design, or construction of service facilities that are allocable to  
25 service to the area in question; the amount of the retail public  
26 utility's contractual obligations allocable to the area in  
27 question; any demonstrated impairment of service or increase of

1 cost to consumers of the retail public utility remaining after the  
2 decertification; the impact on future revenues lost from existing  
3 customers; necessary and reasonable legal expenses and  
4 professional fees; and other relevant factors. The utility  
5 commission shall adopt rules governing the evaluation of these  
6 factors.

7 (g-1) If the retail public utilities cannot agree on an  
8 independent appraiser within 10 calendar days after the date on  
9 which the retail public utility notifies the utility commission of  
10 its intent to provide service to the decertified area, each retail  
11 public utility shall engage its own appraiser at its own expense,  
12 and each appraisal shall be submitted to the utility commission  
13 within 60 calendar days. After receiving the appraisals, the  
14 utility commission shall appoint a third appraiser who shall make a  
15 determination of the compensation within 30 days. The  
16 determination may not be less than the lower appraisal or more than  
17 the higher appraisal. Each retail public utility shall pay half the  
18 cost of the third appraisal.

19 (h) A certificate holder that has land removed from its  
20 certificated service area in accordance with this section may not  
21 be required, after the land is removed, to provide service to the  
22 removed land for any reason, including the violation of law or  
23 utility commission or commission rules by a water or sewer system of  
24 another person.

25 SECTION 56. Subsections (a), (b), (c), (d), (e), (g-1),  
26 (k), (l), and (m), Section 13.255, Water Code, are amended to read  
27 as follows:

1           (a) In the event that an area is incorporated or annexed by a  
2 municipality, either before or after the effective date of this  
3 section, the municipality and a retail public utility that provides  
4 water or sewer service to all or part of the area pursuant to a  
5 certificate of convenience and necessity may agree in writing that  
6 all or part of the area may be served by a municipally owned  
7 utility, by a franchised utility, or by the retail public utility.  
8 In this section, the phrase "franchised utility" shall mean a  
9 retail public utility that has been granted a franchise by a  
10 municipality to provide water or sewer service inside municipal  
11 boundaries. The agreement may provide for single or dual  
12 certification of all or part of the area, for the purchase of  
13 facilities or property, and for such other or additional terms that  
14 the parties may agree on. If a franchised utility is to serve the  
15 area, the franchised utility shall also be a party to the agreement.  
16 The executed agreement shall be filed with the utility commission,  
17 and the utility commission, on receipt of the agreement, shall  
18 incorporate the terms of the agreement into the respective  
19 certificates of convenience and necessity of the parties to the  
20 agreement.

21           (b) If an agreement is not executed within 180 days after  
22 the municipality, in writing, notifies the retail public utility of  
23 its intent to provide service to the incorporated or annexed area,  
24 and if the municipality desires and intends to provide retail  
25 utility service to the area, the municipality, prior to providing  
26 service to the area, shall file an application with the utility  
27 commission to grant single certification to the municipally owned

1 water or sewer utility or to a franchised utility. If an  
2 application for single certification is filed, the utility  
3 commission shall fix a time and place for a hearing and give notice  
4 of the hearing to the municipality and franchised utility, if any,  
5 and notice of the application and hearing to the retail public  
6 utility.

7 (c) The utility commission shall grant single certification  
8 to the municipality. The utility commission shall also determine  
9 whether single certification as requested by the municipality would  
10 result in property of a retail public utility being rendered  
11 useless or valueless to the retail public utility, and shall  
12 determine in its order the monetary amount that is adequate and just  
13 to compensate the retail public utility for such property. If the  
14 municipality in its application has requested the transfer of  
15 specified property of the retail public utility to the municipality  
16 or to a franchised utility, the utility commission shall also  
17 determine in its order the adequate and just compensation to be paid  
18 for such property pursuant to the provisions of this section,  
19 including an award for damages to property remaining in the  
20 ownership of the retail public utility after single certification.  
21 The order of the utility commission shall not be effective to  
22 transfer property. A transfer of property may only be obtained  
23 under this section by a court judgment rendered pursuant to  
24 Subsection (d) or (e) [~~of this section~~]. The grant of single  
25 certification by the utility commission shall go into effect on the  
26 date the municipality or franchised utility, as the case may be,  
27 pays adequate and just compensation pursuant to court order, or

1 pays an amount into the registry of the court or to the retail  
2 public utility under Subsection (f). If the court judgment  
3 provides that the retail public utility is not entitled to any  
4 compensation, the grant of single certification shall go into  
5 effect when the court judgment becomes final. The municipality or  
6 franchised utility must provide to each customer of the retail  
7 public utility being acquired an individual written notice within  
8 60 days after the effective date for the transfer specified in the  
9 court judgment. The notice must clearly advise the customer of the  
10 identity of the new service provider, the reason for the transfer,  
11 the rates to be charged by the new service provider, and the  
12 effective date of those rates.

13 (d) In the event the final order of the utility commission  
14 is not appealed within 30 days, the municipality may request the  
15 district court of Travis County to enter a judgment consistent with  
16 the order of the utility commission. In such event, the court shall  
17 render a judgment that:

18 (1) transfers to the municipally owned utility or  
19 franchised utility title to property to be transferred to the  
20 municipally owned utility or franchised utility as delineated by  
21 the utility commission's final order and property determined by the  
22 utility commission to be rendered useless or valueless by the  
23 granting of single certification; and

24 (2) orders payment to the retail public utility of  
25 adequate and just compensation for the property as determined by  
26 the utility commission in its final order.

27 (e) Any party that is aggrieved by a final order of the

1 utility commission under this section may file an appeal with the  
2 district court of Travis County within 30 days after the order  
3 becomes final. The hearing in such an appeal before the district  
4 court shall be by trial de novo on all issues. After the hearing, if  
5 the court determines that the municipally owned utility or  
6 franchised utility is entitled to single certification under the  
7 provisions of this section, the court shall enter a judgment that:

8           (1) transfers to the municipally owned utility or  
9 franchised utility title to property requested by the municipality  
10 to be transferred to the municipally owned utility or franchised  
11 utility and located within the singly certificated area and  
12 property determined by the court or jury to be rendered useless or  
13 valueless by the granting of single certification; and

14           (2) orders payment in accordance with Subsection (g)  
15 [~~of this section~~] to the retail public utility of adequate and just  
16 compensation for the property transferred and for the property  
17 damaged as determined by the court or jury.

18           (g-1) The utility commission shall adopt rules governing  
19 the evaluation of the factors to be considered in determining the  
20 monetary compensation under Subsection (g). The utility commission  
21 by rule shall adopt procedures to ensure that the total  
22 compensation to be paid to a retail public utility under Subsection  
23 (g) is determined not later than the 90th calendar day after the  
24 date on which the utility commission determines that the  
25 municipality's application is administratively complete.

26           (k) The following conditions apply when a municipality or  
27 franchised utility makes an application to acquire the service area

1 or facilities of a retail public utility described in Subsection  
2 (j)(2):

3 (1) the utility commission or court must determine  
4 that the service provided by the retail public utility is  
5 substandard or its rates are unreasonable in view of the reasonable  
6 expenses of the utility;

7 (2) if the municipality abandons its application, the  
8 court or the utility commission is authorized to award to the retail  
9 public utility its reasonable expenses related to the proceeding  
10 hereunder, including attorney fees; and

11 (3) unless otherwise agreed by the retail public  
12 utility, the municipality must take the entire utility property of  
13 the retail public utility in a proceeding hereunder.

14 (1) For an area incorporated by a municipality, the  
15 compensation provided under Subsection (g) shall be determined by a  
16 qualified individual or firm to serve as independent appraiser, who  
17 shall be selected by the affected retail public utility, and the  
18 costs of the appraiser shall be paid by the municipality. For an  
19 area annexed by a municipality, the compensation provided under  
20 Subsection (g) shall be determined by a qualified individual or  
21 firm to which the municipality and the retail public utility agree  
22 to serve as independent appraiser. If the retail public utility and  
23 the municipality are unable to agree on a single individual or firm  
24 to serve as the independent appraiser before the 11th day after the  
25 date the retail public utility or municipality notifies the other  
26 party of the impasse, the retail public utility and municipality  
27 each shall appoint a qualified individual or firm to serve as

1 independent appraiser. On or before the 10th business day after the  
2 date of their appointment, the independent appraisers shall meet to  
3 reach an agreed determination of the amount of compensation. If the  
4 appraisers are unable to agree on a determination before the 16th  
5 business day after the date of their first meeting under this  
6 subsection, the retail public utility or municipality may petition  
7 the utility commission or a person the utility commission  
8 designates for the purpose to appoint a third qualified independent  
9 appraiser to reconcile the appraisals of the two originally  
10 appointed appraisers. The determination of the third appraiser may  
11 not be less than the lesser or more than the greater of the two  
12 original appraisals. The costs of the independent appraisers for  
13 an annexed area shall be shared equally by the retail public utility  
14 and the municipality. The determination of compensation under this  
15 subsection is binding on the utility commission.

16 (m) The utility commission shall deny an application for  
17 single certification by a municipality that fails to demonstrate  
18 compliance with the commission's minimum requirements for public  
19 drinking water systems.

20 SECTION 57. Section 13.2551, Water Code, is amended to read  
21 as follows:

22 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a  
23 condition to decertification or single certification under Section  
24 13.254 or 13.255, and on request by an affected retail public  
25 utility, the utility commission may order:

26 (1) the retail public utility seeking to provide  
27 service to a decertified area to serve the entire service area of



1 the retail public utility that is being decertified; and

2 (2) the transfer of the entire certificate of public  
3 convenience and necessity of a partially decertified retail public  
4 utility to the retail public utility seeking to provide service to  
5 the decertified area.

6 (b) The utility commission shall order service to the entire  
7 area under Subsection (a) if the utility commission finds that the  
8 decertified retail public utility will be unable to provide  
9 continuous and adequate service at an affordable cost to the  
10 remaining customers.

11 (c) The utility commission shall require the retail public  
12 utility seeking to provide service to the decertified area to  
13 provide continuous and adequate service to the remaining customers  
14 at a cost comparable to the cost of that service to its other  
15 customers and shall establish the terms under which the service  
16 must be provided. The terms may include:

- 17 (1) transferring debt and other contract obligations;  
18 (2) transferring real and personal property;  
19 (3) establishing interim service rates for affected  
20 customers during specified times; and  
21 (4) other provisions necessary for the just and  
22 reasonable allocation of assets and liabilities.

23 (d) The retail public utility seeking decertification shall  
24 not charge the affected customers any transfer fee or other fee to  
25 obtain service other than the retail public utility's usual and  
26 customary rates for monthly service or the interim rates set by the  
27 utility commission, if applicable.

1           (e) The utility commission shall not order compensation to  
2 the decertificated retail utility if service to the entire service  
3 area is ordered under this section.

4           SECTION 58. Subsections (e), (i), (r), and (s), Section  
5 13.257, Water Code, are amended to read as follows:

6           (e) The notice must be given to the prospective purchaser  
7 before the execution of a binding contract of purchase and sale.  
8 The notice may be given separately or as an addendum to or paragraph  
9 of the contract. If the seller fails to provide the notice required  
10 by this section, the purchaser may terminate the contract. If the  
11 seller provides the notice at or before the closing of the purchase  
12 and sale contract and the purchaser elects to close even though the  
13 notice was not timely provided before the execution of the  
14 contract, it is conclusively presumed that the purchaser has waived  
15 all rights to terminate the contract and recover damages or pursue  
16 other remedies or rights under this section. Notwithstanding any  
17 provision of this section to the contrary, a seller, title  
18 insurance company, real estate broker, or examining attorney, or an  
19 agent, representative, or person acting on behalf of the seller,  
20 company, broker, or attorney, is not liable for damages under  
21 Subsection (m) or (n) or liable for any other damages to any person  
22 for:

23           (1) failing to provide the notice required by this  
24 section to a purchaser before the execution of a binding contract of  
25 purchase and sale or at or before the closing of the purchase and  
26 sale contract if:

27           (A) the utility service provider did not file the

1 map of the certificated service area in the real property records of  
2 the county in which the service area is located and with the utility  
3 commission depicting the boundaries of the service area of the  
4 utility service provider as shown in the real property records of  
5 the county in which the service area is located; and

6 (B) the utility commission did not maintain an  
7 accurate map of the certificated service area of the utility  
8 service provider as required by this chapter; or

9 (2) unintentionally providing a notice required by  
10 this section that is incorrect under the circumstances before the  
11 execution of a binding contract of purchase and sale or at or before  
12 the closing of the purchase and sale contract.

13 (i) If the notice is given at closing as provided by  
14 Subsection (g), a purchaser, or the purchaser's heirs, successors,  
15 or assigns, may not maintain an action for damages or maintain an  
16 action against a seller, title insurance company, real estate  
17 broker, or lienholder, or any agent, representative, or person  
18 acting on behalf of the seller, company, broker, or lienholder, by  
19 reason of the seller's use of the information filed with the utility  
20 commission by the utility service provider or the seller's use of  
21 the map of the certificated service area of the utility service  
22 provider filed in the real property records to determine whether  
23 the property to be purchased is within the certificated service  
24 area of the utility service provider. An action may not be  
25 maintained against a title insurance company for the failure to  
26 disclose that the described real property is included within the  
27 certificated service area of a utility service provider if the

1 utility service provider did not file in the real property records  
2 or with the utility commission the map of the certificated service  
3 area.

4 (r) A utility service provider shall:

5 (1) record in the real property records of each county  
6 in which the service area or a portion of the service area is  
7 located a certified copy of the map of the certificate of public  
8 convenience and necessity and of any amendment to the certificate  
9 as contained in the utility commission's records, and a boundary  
10 description of the service area by:

11 (A) a metes and bounds survey certified by a  
12 licensed state land surveyor or a registered professional land  
13 surveyor;

14 (B) the Texas State Plane Coordinate System;

15 (C) verifiable landmarks, including a road,  
16 creek, or railroad line; or

17 (D) if a recorded plat of the area exists, lot and  
18 block number; and

19 (2) submit to the utility commission [~~executive~~  
20 ~~director~~] evidence of the recording.

21 (s) Each county shall accept and file in its real property  
22 records a utility service provider's map presented to the county  
23 clerk under this section if the map meets filing requirements, does  
24 not exceed 11 inches by 17 inches in size, and is accompanied by the  
25 appropriate fee. The recording required by this section must be  
26 completed not later than the 31st day after the date a utility  
27 service provider receives a final order from the utility commission

1 granting an application for a new certificate or for an amendment to  
2 a certificate that results in a change in the utility service  
3 provider's service area.

4 SECTION 59. Subsections (a), (b), (c), (d), (e), (f), and  
5 (g), Section 13.301, Water Code, are amended to read as follows:

6 (a) A utility or a water supply or sewer service  
7 corporation, on or before the 120th day before the effective date of  
8 a sale, acquisition, lease, or rental of a water or sewer system  
9 that is required by law to possess a certificate of public  
10 convenience and necessity or the effective date of a merger or  
11 consolidation with such a utility or water supply or sewer service  
12 corporation, shall:

13 (1) file a written application with the utility  
14 commission; and

15 (2) unless public notice is waived by the utility  
16 commission [~~executive director~~] for good cause shown, give public  
17 notice of the action.

18 (b) The utility commission may require that the person  
19 purchasing or acquiring the water or sewer system demonstrate  
20 adequate financial, managerial, and technical capability for  
21 providing continuous and adequate service to the requested area and  
22 any areas currently certificated to the person.

23 (c) If the person purchasing or acquiring the water or sewer  
24 system cannot demonstrate adequate financial capability, the  
25 utility commission may require that the person provide a bond or  
26 other financial assurance in a form and amount specified by the  
27 utility commission to ensure continuous and adequate utility

1 service is provided.

2 (d) The utility commission shall, with or without a public  
3 hearing, investigate the sale, acquisition, lease, or rental to  
4 determine whether the transaction will serve the public interest.

5 (e) Before the expiration of the 120-day notification  
6 period, the utility commission [~~executive director~~] shall notify  
7 all known parties to the transaction and the Office of Public  
8 Utility Counsel whether [~~of~~] the utility commission will [~~executive~~  
9 ~~director's decision whether to request that the commission~~] hold a  
10 public hearing to determine if the transaction will serve the  
11 public interest. The utility commission may hold [~~executive~~  
12 ~~director may request~~] a hearing if:

13 (1) the application filed with the utility commission  
14 or the public notice was improper;

15 (2) the person purchasing or acquiring the water or  
16 sewer system has not demonstrated adequate financial, managerial,  
17 and technical capability for providing continuous and adequate  
18 service to the service area being acquired and to any areas  
19 currently certificated to the person;

20 (3) the person or an affiliated interest of the person  
21 purchasing or acquiring the water or sewer system has a history of:

22 (A) noncompliance with the requirements of the  
23 utility commission, the commission, or the [~~Texas~~] Department of  
24 State Health Services; or

25 (B) continuing mismanagement or misuse of  
26 revenues as a utility service provider;

27 (4) the person purchasing or acquiring the water or

1 sewer system cannot demonstrate the financial ability to provide  
2 the necessary capital investment to ensure the provision of  
3 continuous and adequate service to the customers of the water or  
4 sewer system; or

5 (5) there are concerns that the transaction may not  
6 serve the public interest, after the application of the  
7 considerations provided by Section 13.246(c) for determining  
8 whether to grant a certificate of convenience and necessity.

9 (f) Unless the utility commission holds ~~[executive director~~  
10 ~~requests that]~~ a public hearing ~~[be held]~~, the sale, acquisition,  
11 lease, or rental may be completed as proposed:

12 (1) at the end of the 120-day period; or

13 (2) at any time after the utility commission  
14 ~~[executive director]~~ notifies the utility or water supply or sewer  
15 service corporation that a hearing will not be held ~~[requested]~~.

16 (g) If the utility commission decides to hold a hearing ~~[is~~  
17 ~~requested]~~ or if the utility or water supply or sewer service  
18 corporation fails to make the application as required or to provide  
19 public notice, the sale, acquisition, lease, or rental may not be  
20 completed unless the utility commission determines that the  
21 proposed transaction serves the public interest.

22 SECTION 60. Section 13.302, Water Code, is amended to read  
23 as follows:

24 Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC  
25 UTILITY: REPORT. (a) A utility may not purchase voting stock in  
26 another utility doing business in this state and a person may not  
27 acquire a controlling interest in a utility doing business in this

1 state unless the person or utility files a written application with  
2 the utility commission not later than the 61st day before the date  
3 on which the transaction is to occur.

4 (b) The utility commission may require that a person  
5 acquiring a controlling interest in a utility demonstrate adequate  
6 financial, managerial, and technical capability for providing  
7 continuous and adequate service to the requested area and any areas  
8 currently certificated to the person.

9 (c) If the person acquiring a controlling interest cannot  
10 demonstrate adequate financial capability, the utility commission  
11 may require that the person provide a bond or other financial  
12 assurance in a form and amount specified by the utility commission  
13 to ensure continuous and adequate utility service is provided.

14 (d) The utility commission [~~executive director~~] may  
15 [~~request that the commission~~] hold a public hearing on the  
16 transaction if the utility commission [~~executive director~~]  
17 believes that a criterion prescribed by Section 13.301(e) applies.

18 (e) Unless the utility commission holds [~~executive director~~  
19 ~~requests that~~] a public hearing [~~be held~~], the purchase or  
20 acquisition may be completed as proposed:

21 (1) at the end of the 60-day period; or

22 (2) at any time after the utility commission  
23 [~~executive director~~] notifies the person or utility that a hearing  
24 will not be held [~~requested~~].

25 (f) If the utility commission decides to hold a hearing [~~is~~  
26 ~~requested~~] or if the person or utility fails to make the application  
27 to the utility commission as required, the purchase or acquisition



1 may not be completed unless the utility commission determines that  
2 the proposed transaction serves the public interest. A purchase or  
3 acquisition that is not completed in accordance with the provisions  
4 of this section is void.

5 SECTION 61. Section 13.303, Water Code, is amended to read  
6 as follows:

7 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may  
8 not loan money, stocks, bonds, notes, or other evidences of  
9 indebtedness to any corporation or person owning or holding  
10 directly or indirectly any stock of the utility unless the utility  
11 reports the transaction to the utility commission within 60 days  
12 after the date of the transaction.

13 SECTION 62. Section 13.304, Water Code, is amended to read  
14 as follows:

15 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that  
16 receives notice that all or a portion of the utility's facilities or  
17 property used to provide utility service are being posted for  
18 foreclosure shall notify the utility commission and the commission  
19 in writing of that fact not later than the 10th day after the date on  
20 which the utility receives the notice.

21 (b) A financial institution that forecloses on a utility or  
22 on any part of the utility's facilities or property that are used to  
23 provide utility service is not required to provide the 120-day  
24 notice prescribed by Section 13.301, but shall provide written  
25 notice to the utility commission and the commission before the 30th  
26 day preceding the date on which the foreclosure is completed.

27 (c) The financial institution may operate the utility for an

1 interim period prescribed by utility commission rule before  
2 transferring or otherwise obtaining a certificate of convenience  
3 and necessity. A financial institution that operates a utility  
4 during an interim period under this subsection is subject to each  
5 utility commission rule to which the utility was subject and in the  
6 same manner.

7 SECTION 63. Section 13.341, Water Code, is amended to read  
8 as follows:

9 Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The  
10 utility commission has jurisdiction over affiliated interests  
11 having transactions with utilities under the jurisdiction of the  
12 utility commission to the extent of access to all accounts and  
13 records of those affiliated interests relating to such  
14 transactions, including but in no way limited to accounts and  
15 records of joint or general expenses, any portion of which may be  
16 applicable to those transactions.

17 SECTION 64. Section 13.342, Water Code, is amended to read  
18 as follows:

19 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING  
20 SECURITIES. The utility commission may require the disclosure of  
21 the identity and respective interests of every owner of any  
22 substantial interest in the voting securities of any utility or its  
23 affiliated interest. One percent or more is a substantial interest  
24 within the meaning of this section.

25 SECTION 65. Subsection (a), Section 13.343, Water Code, is  
26 amended to read as follows:

27 (a) The owner of a utility that supplies retail water

1 service may not contract to purchase from an affiliated supplier  
2 wholesale water service for any of that owner's systems unless:

3 (1) the wholesale service is provided for not more  
4 than 90 days to remedy an emergency condition, as defined by utility  
5 commission or commission rule; or

6 (2) the utility commission [~~executive director~~]  
7 determines that the utility cannot obtain wholesale water service  
8 from another source at a lower cost than from the affiliate.

9 SECTION 66. Section 13.381, Water Code, is amended to read  
10 as follows:

11 Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party  
12 to a proceeding before the utility commission or the commission is  
13 entitled to judicial review under the substantial evidence rule.

14 SECTION 67. Subsection (a), Section 13.382, Water Code, is  
15 amended to read as follows:

16 (a) Any party represented by counsel who alleges that  
17 existing rates are excessive or that rates prescribed by the  
18 utility commission are excessive and who is a prevailing party in  
19 proceedings for review of a utility commission order or decision  
20 may in the same action recover against the regulation fund  
21 reasonable fees for attorneys and expert witnesses and other costs  
22 incurred by him before the utility commission and the court. The  
23 amount of the attorney's fees shall be fixed by the court.

24 SECTION 68. Section 13.411, Water Code, is amended to read  
25 as follows:

26 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a)  
27 If the utility commission or the commission has reason to believe

1 that any retail public utility or any other person or corporation is  
2 engaged in or is about to engage in any act in violation of this  
3 chapter or of any order or rule of the utility commission or the  
4 commission entered or adopted under this chapter or that any retail  
5 public utility or any other person or corporation is failing to  
6 comply with this chapter or with any rule or order, the attorney  
7 general on request of the utility commission or the commission, in  
8 addition to any other remedies provided in this chapter, shall  
9 bring an action in a court of competent jurisdiction in the name of  
10 and on behalf of the utility commission or the commission against  
11 the retail public utility or other person or corporation to enjoin  
12 the commencement or continuation of any act or to require  
13 compliance with this chapter or the rule or order.

14 (b) If the utility commission or the executive director of  
15 the commission has reason to believe that the failure of the owner  
16 or operator of a water utility to properly operate, maintain, or  
17 provide adequate facilities presents an imminent threat to human  
18 health or safety, the utility commission or the executive director  
19 shall immediately:

- 20 (1) notify the utility's representative; and  
21 (2) initiate enforcement action consistent with:  
22 (A) this subchapter; and  
23 (B) procedural rules adopted by the utility  
24 commission or the commission.

25 SECTION 69. Section 13.4115, Water Code, is amended to read  
26 as follows:

27 Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER

1 CHARGE; PENALTY. In regard to a customer complaint arising out of a  
2 charge made by a public utility, if the utility commission [~~the~~  
3 ~~executive director~~] finds that the utility has failed to make the  
4 proper adjustment to the customer's bill after the conclusion of  
5 the complaint process established by the utility commission, the  
6 utility commission may issue an order requiring the utility to make  
7 the adjustment. Failure to comply with the order within 30 days of  
8 receiving the order is a violation for which the utility commission  
9 may impose an administrative penalty under Section 13.4151.

10 SECTION 70. Subsections (a), (f), and (g), Section 13.412,  
11 Water Code, are amended to read as follows:

12 (a) At the request of the utility commission or the  
13 commission, the attorney general shall bring suit for the  
14 appointment of a receiver to collect the assets and carry on the  
15 business of a water or sewer utility that:

16 (1) has abandoned operation of its facilities;

17 (2) informs the utility commission or the commission  
18 that the owner is abandoning the system;

19 (3) violates a final order of the utility commission  
20 or the commission; or

21 (4) allows any property owned or controlled by it to be  
22 used in violation of a final order of the utility commission or the  
23 commission.

24 (f) For purposes of this section and Section 13.4132,  
25 abandonment may include but is not limited to:

26 (1) failure to pay a bill or obligation owed to a  
27 retail public utility or to an electric or gas utility with the

1 result that the utility service provider has issued a notice of  
2 discontinuance of necessary services;

3 (2) failure to provide appropriate water or wastewater  
4 treatment so that a potential health hazard results;

5 (3) failure to adequately maintain facilities,  
6 resulting in potential health hazards, extended outages, or  
7 repeated service interruptions;

8 (4) failure to provide customers adequate notice of a  
9 health hazard or potential health hazard;

10 (5) failure to secure an alternative available water  
11 supply during an outage;

12 (6) displaying a pattern of hostility toward or  
13 repeatedly failing to respond to the utility commission or the  
14 commission or the utility's customers; and

15 (7) failure to provide the utility commission or the  
16 commission with adequate information on how to contact the utility  
17 for normal business and emergency purposes.

18 (g) Notwithstanding Section 64.021, Civil Practice and  
19 Remedies Code, a receiver appointed under this section may seek  
20 [~~commission~~] approval from the utility commission and the  
21 commission to acquire the water or sewer utility's facilities and  
22 transfer the utility's certificate of convenience and necessity.  
23 The receiver must apply in accordance with Subchapter H.

24 SECTION 71. Section 13.413, Water Code, is amended to read  
25 as follows:

26 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The  
27 receiver may, subject to the approval of the court and after giving

1 notice to all interested parties, sell or otherwise dispose of all  
2 or part of the real or personal property of a water or sewer utility  
3 against which a proceeding has been brought under this subchapter  
4 to pay the costs incurred in the operation of the receivership. The  
5 costs include:

- 6 (1) payment of fees to the receiver for his services;
- 7 (2) payment of fees to attorneys, accountants,  
8 engineers, or any other person or entity that provides goods or  
9 services necessary to the operation of the receivership; and
- 10 (3) payment of costs incurred in ensuring that any  
11 property owned or controlled by a water or sewer utility is not used  
12 in violation of a final order of the utility commission or the  
13 commission.

14 SECTION 72. Section 13.4131, Water Code, is amended to read  
15 as follows:

16 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The  
17 utility commission, after providing to the utility notice and an  
18 opportunity for a hearing, may place a utility under supervision  
19 for gross or continuing mismanagement, gross or continuing  
20 noncompliance with this chapter or a rule adopted under this  
21 chapter [~~commission rules~~], or noncompliance with an order issued  
22 under this chapter [~~commission orders~~].

23 (b) While supervising a utility, the utility commission may  
24 require the utility to abide by conditions and requirements  
25 prescribed by the utility commission, including:

- 26 (1) management requirements;
- 27 (2) additional reporting requirements;

1           (3) restrictions on hiring, salary or benefit  
2 increases, capital investment, borrowing, stock issuance or  
3 dividend declarations, and liquidation of assets; and

4           (4) a requirement that the utility place the utility's  
5 funds into an account in a financial institution approved by the  
6 utility commission and use of those funds shall be restricted to  
7 reasonable and necessary utility expenses.

8           (c) While supervising a utility, the utility commission may  
9 require that the utility obtain [~~commission~~] approval from the  
10 utility commission before taking any action that may be restricted  
11 under Subsection (b) [~~of this section~~]. Any action or transaction  
12 which occurs without [~~commission~~] approval may be voided by the  
13 utility commission.

14           SECTION 73. Subsections (a), (b), and (d), Section 13.4132,  
15 Water Code, are amended to read as follows:

16           (a) The utility commission or the commission, after  
17 providing to the utility notice and an opportunity to be heard by  
18 the commissioners at a utility commission or commission meeting,  
19 may authorize a willing person to temporarily manage and operate a  
20 utility if the utility:

21           (1) has discontinued or abandoned operations or the  
22 provision of services; or

23           (2) has been or is being referred to the attorney  
24 general for the appointment of a receiver under Section 13.412.

25           (b) The utility commission or the commission may appoint a  
26 person under this section by emergency order, and notice of the  
27 action is adequate if the notice is mailed or hand-delivered to the



1 last known address of the utility's headquarters.

2 (d) This section does not affect the authority of the  
3 utility commission or the commission to pursue an enforcement claim  
4 against a utility or an affiliated interest.

5 SECTION 74. Subsections (a) and (c), Section 13.4133, Water  
6 Code, are amended to read as follows:

7 (a) Notwithstanding the requirements of Subchapter F  
8 [~~Section 13.187 of this code~~], the utility commission may authorize  
9 an emergency rate increase for a utility for which a person has been  
10 appointed under Section 13.4132 [~~of this code~~] or for which a  
11 receiver has been appointed under Section 13.412 [~~of this code~~] if  
12 the increase is necessary to ensure the provision of continuous and  
13 adequate services to the utility's customers.

14 (c) The utility commission shall schedule a hearing to  
15 establish a final rate within 15 months after the date on which an  
16 emergency rate increase takes effect. The utility commission shall  
17 require the utility to provide notice of the hearing to each  
18 customer. The additional revenues collected under an emergency  
19 rate increase are subject to refund if the utility commission finds  
20 that the rate increase was larger than necessary to ensure  
21 continuous and adequate service.

22 SECTION 75. Subsections (a) and (c), Section 13.414, Water  
23 Code, are amended to read as follows:

24 (a) Any retail public utility or affiliated interest that  
25 violates this chapter, fails to perform a duty imposed on it, or  
26 fails, neglects, or refuses to obey an order, rule, direction, or  
27 requirement of the utility commission or the commission or decree

1 or judgment of a court is subject to a civil penalty of not less than  
2 \$100 nor more than \$5,000 for each violation.

3 (c) The attorney general shall institute suit on his own  
4 initiative or at the request of, in the name of, and on behalf of the  
5 utility commission or the commission in a court of competent  
6 jurisdiction to recover the penalty under this section.

7 SECTION 76. Subsections (a), (b), (c), (d), (e), (f), (g),  
8 (h), (i), (j), (k), and (m), Section 13.4151, Water Code, are  
9 amended to read as follows:

10 (a) If a person, affiliated interest, or entity subject to  
11 the jurisdiction of the utility commission or the commission  
12 violates this chapter or a rule or order adopted under this chapter,  
13 the utility commission or the commission, as applicable, may assess  
14 a penalty against that person, affiliated interest, or entity as  
15 provided by this section. The penalty may be in an amount not to  
16 exceed \$5,000 a day. Each day a violation continues may be  
17 considered a separate violation.

18 (b) In determining the amount of the penalty, the utility  
19 commission or the commission shall consider:

20 (1) the nature, circumstances, extent, duration, and  
21 gravity of the prohibited acts or omissions;

22 (2) with respect to the alleged violator:

23 (A) the history and extent of previous  
24 violations;

25 (B) the degree of culpability, including whether  
26 the violation was attributable to mechanical or electrical failures  
27 and whether the violation could have been reasonably anticipated

1 and avoided;

2 (C) the demonstrated good faith, including  
3 actions taken by the person, affiliated interest, or entity to  
4 correct the cause of the violation;

5 (D) any economic benefit gained through the  
6 violation; and

7 (E) the amount necessary to deter future  
8 violations; and

9 (3) any other matters that justice requires.

10 (c) If, after examination of a possible violation and the  
11 facts surrounding that possible violation, the utility commission  
12 or the executive director of the commission concludes that a  
13 violation has occurred, the utility commission or the executive  
14 director may issue a preliminary report stating the facts on which  
15 that conclusion is based, recommending that a penalty under this  
16 section be imposed on the person, affiliated interest, or retail  
17 public utility charged, and recommending the amount of that  
18 proposed penalty. The utility commission or the executive director  
19 shall base the recommended amount of the proposed penalty on the  
20 factors provided by Subsection (b) [~~of this section~~], and shall  
21 analyze each factor for the benefit of the appropriate agency  
22 [~~commission~~].

23 (d) Not later than the 10th day after the date on which the  
24 report is issued, the utility commission or the executive director  
25 of the commission shall give written notice of the report to the  
26 person, affiliated interest, or retail public utility charged with  
27 the violation. The notice shall include a brief summary of the

1 charges, a statement of the amount of the penalty recommended, and a  
2 statement of the right of the person, affiliated interest, or  
3 retail public utility charged to a hearing on the occurrence of the  
4 violation, the amount of the penalty, or both.

5 (e) Not later than the 20th day after the date on which  
6 notice is received, the person, affiliated interest, or retail  
7 public utility charged may give the appropriate agency [~~commission~~]  
8 written consent to the [~~executive director's~~] report described by  
9 Subsection (c), including the recommended penalty, or may make a  
10 written request for a hearing.

11 (f) If the person, affiliated interest, or retail public  
12 utility charged with the violation consents to the penalty  
13 recommended in the report described by Subsection (c) [~~by the~~  
14 ~~executive director~~] or fails to timely respond to the notice, the  
15 utility commission or the commission by order shall assess that  
16 penalty or order a hearing to be held on the findings and  
17 recommendations in the [~~executive director's~~] report. If the  
18 utility commission or the commission assesses the penalty  
19 recommended by the report, the utility commission or the commission  
20 shall give written notice to the person, affiliated interest, or  
21 retail public utility charged of its decision.

22 (g) If the person, affiliated interest, or retail public  
23 utility charged requests or the utility commission or the  
24 commission orders a hearing, the appropriate agency [~~commission~~]  
25 shall call a hearing and give notice of the hearing. As a result of  
26 the hearing, the appropriate agency [~~commission~~] by order may find  
27 that a violation has occurred and may assess a civil penalty, may

1 find that a violation has occurred but that no penalty should be  
2 assessed, or may find that no violation has occurred. All  
3 proceedings under this subsection are subject to Chapter 2001,  
4 Government Code. In making any penalty decision, the appropriate  
5 agency [~~commission~~] shall analyze each of the factors provided by  
6 Subsection (b) [~~of this section~~].

7 (h) The utility commission or the commission shall give  
8 notice of its decision to the person, affiliated interest, or  
9 retail public utility charged, and if the appropriate agency  
10 [~~commission~~] finds that a violation has occurred and has assessed a  
11 penalty, that agency [~~the commission~~] shall give written notice to  
12 the person, affiliated interest, or retail public utility charged  
13 of its findings, of the amount of the penalty, and of the person's,  
14 affiliated interest's, or retail public utility's right to judicial  
15 review of the agency's [~~commission's~~] order. If the utility  
16 commission or the commission is required to give notice of a penalty  
17 under this subsection or Subsection (f) [~~of this section~~], the  
18 appropriate agency [~~commission~~] shall file notice of that agency's  
19 [~~its~~] decision in the Texas Register not later than the 10th day  
20 after the date on which the decision is adopted.

21 (i) Within the 30-day period immediately following the day  
22 on which the utility commission's or commission's order is final, as  
23 provided by Subchapter F, Chapter 2001, Government Code, the  
24 person, affiliated interest, or retail public utility charged with  
25 the penalty shall:

- 26 (1) pay the penalty in full; or  
27 (2) if the person, affiliated interest, or retail

1 public utility seeks judicial review of the fact of the violation,  
2 the amount of the penalty, or both:

3 (A) forward the amount of the penalty to the  
4 appropriate agency [~~commission~~] for placement in an escrow account;  
5 or

6 (B) post with the appropriate agency  
7 [~~commission~~] a supersedeas bond in a form approved by the agency  
8 [~~commission~~] for the amount of the penalty to be effective until all  
9 judicial review of the order or decision is final.

10 (j) Failure to forward the money to or to post the bond with  
11 the utility commission or the commission within the time provided  
12 by Subsection (i) [~~of this section~~] constitutes a waiver of all  
13 legal rights to judicial review. If the person, affiliated  
14 interest, or retail public utility charged fails to forward the  
15 money or post the bond as provided by Subsection (i) [~~of this~~  
16 ~~section~~], the appropriate agency [~~commission~~] or the executive  
17 director of that agency may forward the matter to the attorney  
18 general for enforcement.

19 (k) Judicial review of the order or decision of the utility  
20 commission or the commission assessing the penalty shall be under  
21 the substantial evidence rule and may be instituted by filing a  
22 petition with a district court in Travis County, as provided by  
23 Subchapter G, Chapter 2001, Government Code.

24 (m) Notwithstanding any other provision of law, the utility  
25 commission or the commission may compromise, modify, extend the  
26 time for payment of, or remit, with or without condition, any  
27 penalty imposed under this section.

1 SECTION 77. Section 13.417, Water Code, is amended to read  
2 as follows:

3 Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail  
4 public utility fails to comply with any lawful order of the utility  
5 commission or the commission or with any subpoena or subpoena duces  
6 tecum or if any witness refuses to testify about any matter on which  
7 he may be lawfully interrogated, the utility commission or the  
8 commission may apply to any court of competent jurisdiction to  
9 compel obedience by proceedings for contempt.

10 SECTION 78. Section 13.418, Water Code, is amended to read  
11 as follows:

12 Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER  
13 UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected  
14 under this chapter from a retail public utility that is not a public  
15 utility in other than criminal proceedings shall be [~~paid to the~~  
16 ~~commission and~~] deposited in the general revenue fund.

17 (b) Fines and penalties collected from a public utility  
18 under this chapter in other than criminal proceedings shall be  
19 [~~paid to the commission and~~] deposited in the water utility  
20 improvement account as provided by Section 341.0485, Health and  
21 Safety Code.

22 SECTION 79. Subdivision (7), Section 13.501, Water Code, is  
23 amended to read as follows:

24 (7) "Multiple use facility" means commercial or  
25 industrial parks, office complexes, marinas, and others  
26 specifically identified in utility commission rules with five or  
27 more units.

1 SECTION 80. Subsection (e), Section 13.502, Water Code, is  
2 amended to read as follows:

3 (e) An owner of an apartment house, manufactured home rental  
4 community, or multiple use facility or a manager of a condominium  
5 may not change from submetered billing to allocated billing unless:

6 (1) the utility commission [~~executive director~~]  
7 approves of the change in writing after a demonstration of good  
8 cause, including meter reading or billing problems that could not  
9 feasibly be corrected or equipment failures; and

10 (2) the property owner meets rental agreement  
11 requirements established by the utility commission.

12 SECTION 81. Subsections (a), (b), and (e), Section 13.503,  
13 Water Code, are amended to read as follows:

14 (a) The utility commission shall encourage submetering of  
15 individual rental or dwelling units by master meter operators or  
16 building owners to enhance the conservation of water resources.

17 (b) Notwithstanding any other law, the utility commission  
18 shall adopt rules and standards under which an owner, operator, or  
19 manager of an apartment house, manufactured home rental community,  
20 or multiple use facility that is not individually metered for water  
21 for each rental or dwelling unit may install submetering equipment  
22 for each individual rental or dwelling unit for the purpose of  
23 fairly allocating the cost of each individual rental or dwelling  
24 unit's water consumption, including wastewater charges based on  
25 water consumption. In addition to other appropriate safeguards for  
26 the tenant, the rules shall require that, except as provided by this  
27 section, an apartment house owner, manufactured home rental



1 community owner, multiple use facility owner, or condominium  
2 manager may not impose on the tenant any extra charges, over and  
3 above the cost per gallon and any other applicable taxes and  
4 surcharges that are charged by the retail public utility to the  
5 owner or manager, and that the rental unit or apartment house owner  
6 or manager shall maintain adequate records regarding submetering  
7 and make the records available for inspection by the tenant during  
8 reasonable business hours. The rules shall allow an owner or  
9 manager to charge a tenant a fee for late payment of a submetered  
10 water bill if the amount of the fee does not exceed five percent of  
11 the bill paid late. All submetering equipment is subject to the  
12 rules and standards established by the utility commission for  
13 accuracy, testing, and record keeping of meters installed by  
14 utilities and to the meter-testing requirements of Section 13.140  
15 [~~of this code~~].

16 (e) The utility commission may authorize a building owner to  
17 use submetering equipment that relies on integrated radio based  
18 meter reading systems and remote registration in a building  
19 plumbing system using submeters that comply with nationally  
20 recognized plumbing standards and are as accurate as utility water  
21 meters in single application conditions.

22 SECTION 82. Section 13.5031, Water Code, is amended to read  
23 as follows:

24 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any  
25 other law, the utility commission shall adopt rules and standards  
26 governing billing systems or methods used by manufactured home  
27 rental community owners, apartment house owners, condominium

1 managers, or owners of other multiple use facilities for prorating  
2 or allocating among tenants nonsubmetered master metered utility  
3 service costs. In addition to other appropriate safeguards for the  
4 tenant, those rules shall require that:

5 (1) the rental agreement contain a clear written  
6 description of the method of calculation of the allocation of  
7 nonsubmetered master metered utilities for the manufactured home  
8 rental community, apartment house, or multiple use facility;

9 (2) the rental agreement contain a statement of the  
10 average manufactured home, apartment, or multiple use facility unit  
11 monthly bill for all units for any allocation of those utilities for  
12 the previous calendar year;

13 (3) except as provided by this section, an owner or  
14 condominium manager may not impose additional charges on a tenant  
15 in excess of the actual charges imposed on the owner or condominium  
16 manager for utility consumption by the manufactured home rental  
17 community, apartment house, or multiple use facility;

18 (4) the owner or condominium manager shall maintain  
19 adequate records regarding the utility consumption of the  
20 manufactured home rental community, apartment house, or multiple  
21 use facility, the charges assessed by the retail public utility,  
22 and the allocation of the utility costs to the tenants;

23 (5) the owner or condominium manager shall maintain  
24 all necessary records concerning utility allocations, including  
25 the retail public utility's bills, and shall make the records  
26 available for inspection by the tenants during normal business  
27 hours; and

1           (6) the owner or condominium manager may charge a  
2 tenant a fee for late payment of an allocated water bill if the  
3 amount of the fee does not exceed five percent of the bill paid  
4 late.

5           SECTION 83. Section 13.505, Water Code, is amended to read  
6 as follows:

7           Sec. 13.505. ENFORCEMENT. In addition to the enforcement  
8 provisions contained in Subchapter K [~~of this chapter~~], if an  
9 apartment house owner, condominium manager, manufactured home  
10 rental community owner, or other multiple use facility owner  
11 violates a rule of the utility commission regarding submetering of  
12 utility service consumed exclusively within the tenant's dwelling  
13 unit or multiple use facility unit or nonsubmetered master metered  
14 utility costs, the tenant may recover three times the amount of any  
15 overcharge, a civil penalty equal to one month's rent, reasonable  
16 attorney's fees, and court costs from the owner or condominium  
17 manager. However, an owner of an apartment house, manufactured  
18 home rental community, or other multiple use facility or  
19 condominium manager is not liable for a civil penalty if the owner  
20 or condominium manager proves the violation was a good faith,  
21 unintentional mistake.

22           SECTION 84. Section 13.512, Water Code, is amended to read  
23 as follows:

24           Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION  
25 CONTRACTS. Any eligible city is authorized to enter into  
26 privatization contracts if such action is recommended by the board  
27 of utility trustees and authorized by the governing body of the

1 eligible city pursuant to an ordinance. Any privatization contract  
2 entered into prior to the effective date of this Act is validated,  
3 ratified, and approved. Each eligible city shall file a copy of its  
4 privatization contract with the utility commission, for  
5 information purposes only, within 60 days of execution or the  
6 effective date of this Act, whichever is later.

7 SECTION 85. Section 13.513, Water Code, is amended to read  
8 as follows:

9 Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE  
10 PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider  
11 shall not constitute a "water and sewer utility," a "public  
12 utility," a "utility," or a "retail public utility" within the  
13 meaning of this chapter [~~Chapter 13~~] as a result of entering into or  
14 performing a privatization contract, if the governing body of the  
15 eligible city shall so elect by ordinance and provide notice  
16 thereof in writing to the utility commission; provided, however,  
17 this provision shall not affect the application of this chapter  
18 [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything  
19 contained in this section, any service provider who seeks to extend  
20 or render sewer service to any person or municipality other than, or  
21 in addition to, an eligible city may be a "public utility" for the  
22 purposes of this chapter [~~Chapter 13~~] with respect to such other  
23 person or municipality.

24 SECTION 86. Subsection (c), Section 49.352, Water Code, is  
25 amended to read as follows:

26 (c) For purposes of this section, a municipality may obtain  
27 single certification in the manner provided by Section 13.255,

1 except that the municipality may file an application with the  
2 Public Utility Commission of Texas [~~commission~~] to grant single  
3 certification immediately after the municipality provides notice  
4 of intent to provide service as required by Section 13.255(b).

5 SECTION 87. Subsection (e), Section 552.047, Local  
6 Government Code, is amended to read as follows:

7 (e) Users residing within the established service area, but  
8 outside the municipality's boundaries, may appeal rates  
9 established for drainage charges under [~~to the Texas Natural~~  
10 ~~Resource Conservation Commission as authorized by~~] Section  
11 13.043(b), [of the] Water Code.

12 SECTION 88. Subsection (b), Section 7201.004, Special  
13 District Local Laws Code, is amended to read as follows:

14 (b) This section does not apply to:

15 (1) rules or regulations concerning potable water  
16 quality standards; or

17 (2) conflicts relating to service areas or  
18 certificates issued to the corporation or district by the Public  
19 Utility Commission of Texas or the Texas Commission on  
20 Environmental Quality.

21 SECTION 89. Subsection (c), Section 7201.005, Special  
22 District Local Laws Code, is amended to read as follows:

23 (c) District boundaries may be modified in accordance with  
24 Chapters 13 and 49, Water Code, except that the boundaries must  
25 include all territory in any area included under a certificate of  
26 convenience and necessity issued by the Public Utility Commission  
27 of Texas or the Texas Commission on Environmental Quality to the

1 district.

2 SECTION 90. Section 7201.102, Special District Local Laws  
3 Code, is amended to read as follows:

4 Sec. 7201.102. PROVISION OF SERVICE. The district shall at  
5 all times operate and construct necessary improvements within the  
6 certificated areas established by the Public Utility Commission of  
7 Texas or the Texas Commission on Environmental Quality [~~commission~~]  
8 to provide uninterrupted, continuous, and adequate service to  
9 existing and future customers for water, sewer, and contract  
10 services.

11 SECTION 91. Subsection (b), Section 8363.106, Special  
12 District Local Laws Code, is amended to read as follows:

13 (b) In relation to a retail public utility that provides  
14 water or sewer service to all or part of the area of the district  
15 under a certificate of public convenience and necessity, the  
16 district may exercise the powers given to a municipality provided  
17 by Section 13.255, Water Code, as if the district were a  
18 municipality that had annexed the area of the district. The Public  
19 Utility Commission of Texas [~~commission~~] shall grant single  
20 certification as to the city as provided by Section 13.255(c),  
21 Water Code, in the event that the district applies for the  
22 certification on the city's behalf in the manner provided by  
23 Section 13.255(b), Water Code.

24 SECTION 92. Subsection (a), Section 8363.251, Special  
25 District Local Laws Code, is amended to read as follows:

26 (a) The city may dissolve the district by ordinance after  
27 provision is made for all debts incurred by the district if one or

1 more of the following does not occur:

2 (1) on or before the 90th day after the effective date  
3 of the Act enacting this chapter, the city receives one or more  
4 petitions requesting annexation of all territory in the district  
5 remaining in the extraterritorial jurisdiction of the city;

6 (2) on or before the last day of the ninth month after  
7 the effective date of the Act enacting this chapter, the city adopts  
8 one or more ordinances annexing all territory in the district  
9 remaining in the city's extraterritorial jurisdiction;

10 (3) on or before the last day of the third year after  
11 the effective date of the Act enacting this chapter, the Public  
12 Utility Commission of Texas [~~commission~~] issues an order approving  
13 the sale and transfer of a certificate of public convenience and  
14 necessity authorizing the city to provide retail water service to  
15 territory in the district; or

16 (4) by the end of the fifth year after the effective  
17 date of the Act enacting this chapter, the district has completed  
18 construction of internal streets and water and sanitary sewer  
19 facilities sufficient to serve at least 100 residential lots in the  
20 district.

21 SECTION 93. Section 8801.201, Special District Local Laws  
22 Code, is amended to read as follows:

23 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A  
24 person who is required to convert to surface water under this  
25 chapter and who purchases that water supply wholesale from a  
26 political subdivision as defined by Section 12.013(b), Water Code,  
27 may appeal to the Public Utility Commission of Texas [~~commission~~]

1 the rates the political subdivision charges to the person. Chapter  
2 12, Water Code, and rules adopted under that chapter apply to an  
3 appeal under this section.

4 (b) The Public Utility Commission of Texas [~~commission~~]  
5 shall hear the appeal not later than the 180th day after the date  
6 the appeal is filed.

7 (c) The Public Utility Commission of Texas [~~commission~~]  
8 shall issue a final decision on the appeal not later than the 60th  
9 day after the date the hearing ends.

10 SECTION 94. Subdivision (1), Section 8803.151, Special  
11 District Local Laws Code, is amended to read as follows:

12 (1) "Commission" means the Public Utility Commission  
13 of Texas [~~Commission on Environmental Quality~~].

14 SECTION 95. Subdivision (1), Section 8808.151, Special  
15 District Local Laws Code, is amended to read as follows:

16 (1) "Commission" means the Public Utility Commission  
17 of Texas [~~Commission on Environmental Quality~~].

18 SECTION 96. (a) On September 1, 2014, the following are  
19 transferred from the Texas Commission on Environmental Quality to  
20 the Public Utility Commission of Texas:

21 (1) the powers, duties, functions, programs, and  
22 activities of the Texas Commission on Environmental Quality  
23 relating to the economic regulation of water and sewer service,  
24 including the issuance and transfer of certificates of convenience  
25 and necessity, the determination of rates, and the administration  
26 of hearings and proceedings involving those matters, under Section  
27 12.013 and Chapter 13, Water Code, as provided by this Act;



1           (2) any obligations and contracts of the Texas  
2 Commission on Environmental Quality that are directly related to  
3 implementing a power, duty, function, program, or activity  
4 transferred under this Act; and

5           (3) all property and records in the custody of the  
6 Texas Commission on Environmental Quality that are related to a  
7 power, duty, function, program, or activity transferred under this  
8 Act and all funds appropriated by the legislature for that power,  
9 duty, function, program, or activity.

10          (b) The Texas Commission on Environmental Quality shall  
11 continue to carry out the commission's duties related to the  
12 economic regulation of water and sewer service under the law as it  
13 existed immediately before the effective date of this Act until  
14 September 1, 2014, and the former law is continued in effect for  
15 that purpose.

16          (c) The Texas Commission on Environmental Quality and the  
17 Public Utility Commission of Texas shall enter into a memorandum of  
18 understanding that:

19           (1) identifies in detail the applicable powers and  
20 duties that are transferred by this Act;

21           (2) establishes a plan for the identification and  
22 transfer of the records, personnel, property, and unspent  
23 appropriations of the Texas Commission on Environmental Quality  
24 that are used for purposes of the commission's powers and duties  
25 directly related to the economic regulation of water and sewer  
26 service under Section 12.013 and Chapter 13, Water Code, as amended  
27 by this Act; and

1           (3) establishes a plan for the transfer of all pending  
2 applications, hearings, rulemaking proceedings, and orders  
3 relating to the economic regulation of water and sewer service  
4 under Section 12.013 and Chapter 13, Water Code, as amended by this  
5 Act, from the Texas Commission on Environmental Quality to the  
6 Public Utility Commission of Texas.

7           (d) The memorandum of understanding under this section:

8                 (1) is not required to be adopted by rule under Section  
9 5.104, Water Code; and

10                (2) must be completed by August 1, 2014.

11           (e) The executive directors of the Texas Commission on  
12 Environmental Quality and the Public Utility Commission of Texas  
13 may agree in the memorandum of understanding under this section to  
14 transfer to the Public Utility Commission of Texas any personnel of  
15 the Texas Commission on Environmental Quality whose functions  
16 predominantly involve powers, duties, obligations, functions, and  
17 activities related to the economic regulation of water and sewer  
18 service under Section 12.013 and Chapter 13, Water Code, as amended  
19 by this Act.

20           (f) The Texas Commission on Environmental Quality and the  
21 Public Utility Commission of Texas shall periodically update the  
22 Office of Public Utility Counsel on the anticipated contents of the  
23 memorandum of understanding under this section during the  
24 development of the memorandum.

25           (g) On or after September 1, 2013, the Office of Public  
26 Utility Counsel may initiate or intervene in a contested case  
27 before the Texas Commission on Environmental Quality that the

1 office would be entitled to initiate or intervene in if the case  
2 were before the Public Utility Commission of Texas, as authorized  
3 by Chapter 13, Water Code, as amended by this Act.

4 (h) The Texas Commission on Environmental Quality and the  
5 Public Utility Commission of Texas shall appoint a transition team  
6 to accomplish the purposes of this section. The transition team may  
7 consult with the Office of Public Utility Counsel to accomplish the  
8 purposes of this section. The transition team shall establish  
9 guidelines on how the two agencies will cooperate regarding:

- 10 (1) meeting federal drinking water standards;
- 11 (2) maintaining adequate supplies of water;
- 12 (3) meeting established design criteria for  
13 wastewater treatment plants;
- 14 (4) demonstrating the economic feasibility of  
15 regionalization; and
- 16 (5) serving the needs of economically distressed  
17 areas.

18 (i) The transition team appointed under Subsection (h) of  
19 this section shall provide monthly updates to the executive  
20 directors of the Texas Commission on Environmental Quality and the  
21 Public Utility Commission of Texas on the implementation of this  
22 Act and provide a final report on the implementation to the  
23 executive directors not later than September 1, 2014.

24 (j) A rule, form, policy, procedure, or decision of the  
25 Texas Commission on Environmental Quality related to a power, duty,  
26 function, program, or activity transferred under this Act continues  
27 in effect as a rule, form, policy, procedure, or decision of the

1 Public Utility Commission of Texas and remains in effect until  
2 amended or replaced by that agency. Notwithstanding any other law,  
3 beginning September 1, 2013, the Public Utility Commission of Texas  
4 may propose rules, forms, policies, and procedures related to a  
5 function to be transferred to the Public Utility Commission of  
6 Texas under this Act.

7 (k) The Public Utility Commission of Texas and the Texas  
8 Commission on Environmental Quality shall adopt rules to implement  
9 the changes in law made by this Act to Section 12.013 and Chapter  
10 13, Water Code, not later than September 1, 2015.

11 (1) An affiliate of a Class A utility, as those terms are  
12 defined by Section 13.002, Water Code, as amended by this Act, may  
13 not file an application for a rate change on or after the effective  
14 date of this Act unless the affiliated Class A utility has filed for  
15 a rate change on or after that date. In relation to the application  
16 filed by the affiliate of the Class A utility, the Public Utility  
17 Commission of Texas:

18 (1) may not approve the rate change application until  
19 the Public Utility Commission of Texas approves the rate change  
20 application filed by the affiliated Class A utility; and

21 (2) may require the affiliate to comply with the Class  
22 A utility rate change process prescribed by Section 13.187, Water  
23 Code, regardless of whether the affiliate is classified as a Class  
24 A, B, or C utility under Section 13.002, Water Code, as amended by  
25 this Act.

26 SECTION 97. This Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 567 passed the Senate on April 3, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 13, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 567 passed the House, with amendments, on May 3, 2013, by the following vote: Yeas 141, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

AN ACT

relating to appointment of a receiver for a water or sewer utility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.412(a), Water Code, is amended to read as follows:

(a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

(1) has abandoned operation of its facilities;

(2) informs the utility commission or the commission that the owner is abandoning the system;

(3) violates a final order of the utility commission or the commission; ~~[or]~~

(4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission; or

(5) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(A) this chapter;

(B) Chapter 7; or

(C) Chapter 341, Health and Safety Code.

SECTION 2. This Act takes effect September 1, 2017.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 294 was passed by the House on April 26, 2017, by the following vote: Yeas 148, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 294 was passed by the Senate on May 12, 2017, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

AN ACT

relating to an application for the amendment of a certificate of public convenience and necessity in an area within the boundaries of a political subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.002, Water Code, is amended by adding Subdivision (13-a) to read as follows:

(13-a) "Municipal utility district" means a political subdivision of this state operating under Chapter 54.

SECTION 2. Section 13.244(a), Water Code, is amended to read as follows:

(a) Except as provided by Section 13.258, to ~~to~~ obtain a certificate of public convenience and necessity or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the utility commission an application for a certificate or for an amendment as provided by this section.

SECTION 3. Section 13.246, Water Code, is amended by adding Subsection (j) to read as follows:

(j) This section does not apply to an application under Section 13.258.

SECTION 4. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.258 to read as follows:

Sec. 13.258. UTILITY'S APPLICATION FOR AMENDMENT AND USE OF MUNICIPAL UTILITY DISTRICT'S CERTIFICATE UNDER CONTRACT.



1 (a) Notwithstanding any other provision of this chapter, a Class A  
2 utility may apply to the commission for an amendment of a  
3 certificate of convenience and necessity held by a municipal  
4 utility district to allow the utility to have the same rights and  
5 powers under the certificate as the municipal utility district.

6 (b) This section does not apply to a certificate of  
7 convenience and necessity held by a municipal utility district  
8 located wholly or partly inside of the corporate limits or  
9 extraterritorial jurisdiction of a municipality with a population  
10 of two million or more.

11 (c) An application under this section must be accompanied  
12 by:

13 (1) information identifying the applicant;

14 (2) the identifying number of the certificate of  
15 convenience and necessity to be amended;

16 (3) the written consent of the municipal utility  
17 district that holds the certificate of convenience and necessity;

18 (4) a written statement by the municipal utility  
19 district that the application is supported by a contract between  
20 the municipal utility district and the utility for the utility to  
21 provide services inside the certificated area and inside the  
22 boundaries of the municipal utility district; and

23 (5) a description of the proposed service area by:

24 (A) a metes and bounds survey certified by a  
25 licensed state land surveyor or a registered professional land  
26 surveyor;

27 (B) the Texas State Plane Coordinate System;

1                   (C) verifiable landmarks, including roads,  
2 creeks, or railroad lines; or

3                   (D) if a recorded plat of the area exists, lot and  
4 block number.

5           (d) For an application under this section, the utility  
6 commission may not require any information other than the  
7 information required by this section.

8           (e) Not later than the 60th day after the date an applicant  
9 files an application for an amendment under this section, the  
10 utility commission shall review whether the application is  
11 complete. If the utility commission finds that the application is  
12 complete, the utility commission shall:

13                   (1) find that the amendment of the certificate is  
14 necessary for the service, accommodation, convenience, or safety of  
15 the public; and

16                   (2) grant the application and amend the certificate.

17           (f) The utility commission's decision under this section  
18 becomes final after reconsideration, if any, authorized by utility  
19 commission rule, and may not be appealed.

20           (g) The consent of a municipality is not required for the  
21 utility commission to amend a certificate as provided by Subsection  
22 (a) for an area that is in the municipality's extraterritorial  
23 jurisdiction.

24           (h) Sections [13.241\(d\)](#) and [13.245](#) do not apply to an  
25 application under this section.

26           (i) Chapter [2001](#), Government Code, does not apply to an  
27 application for an amendment of a certificate of convenience and

1 necessity under this section.

2 SECTION 5. Section 341.035(d), Health and Safety Code, is  
3 amended to read as follows:

4 (d) A person is not required to file a business plan under  
5 Subsection (a)(1) or (b) if the person:

6 (1) is a county;

7 (2) is a retail public utility as defined by Section  
8 13.002, Water Code, unless that person is a utility as defined by  
9 that section;

10 (3) has executed an agreement with a political  
11 subdivision to transfer the ownership and operation of the water  
12 supply system to the political subdivision; ~~or~~

13 (4) is a Class A utility, as defined by Section 13.002,  
14 Water Code, that has applied for or been granted an amendment of a  
15 certificate of convenience and necessity under Section 13.258,  
16 Water Code, for the area in which the construction of the public  
17 drinking water supply system will operate; or

18 (5) is a noncommunity nontransient water system and  
19 the person has demonstrated financial assurance under Chapter 361  
20 or 382 of this code or Chapter 26, Water Code.

21 SECTION 6. The change in law made by this Act applies only  
22 to an application for an amendment of a certificate of public  
23 convenience and necessity filed on or after the effective date of  
24 this Act. An application filed before the effective date of this  
25 Act is governed by the law in effect on the date the application is  
26 filed, and the former law is continued in effect for that purpose.

27 SECTION 7. This Act takes effect September 1, 2017.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1842 passed the Senate on May 4, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 26, 2017, by the following vote: Yeas 29, Nays 2.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1842 passed the House, with amendment, on May 22, 2017, by the following vote: Yeas 139, Nays 6, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §35.202 *without change* to the proposal as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4634).

### **Background and Summary of the Factual Basis for the Adopted Repeal**

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### **Section Discussion**

#### *§35.202, Emergency Order for Rate Increase in Certain Situations*

The commission adopts the repeal of §35.202. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### **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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to repeal an obsolete TCEQ rule in Chapter 35 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to repeal the rule relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rulemaking will 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 adoption will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted repeal will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does

not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

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

The commission adopts this rulemaking for the purpose of repealing an obsolete rule in Chapter 35 relating to the economic regulation of water and wastewater utilities as



those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the adopted rulemaking based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of the 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 rulemaking because the adopted repeal neither relates to, nor has any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of the adoption. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to repeal an obsolete TCEQ rule relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rulemaking will 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. No comments were received regarding consistency with the CMP.

### **Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 35.

**SUBCHAPTER E: EMERGENCY ORDERS FOR UTILITIES**

**[§35.202]**

**Statutory Authority**

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

**[§35.202. Emergency Order for Rate Increase in Certain Situations.]**

[(a) The commission or executive director may authorize an emergency rate increase under Texas Water Code, §5.508 and §13.4133 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) when the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.]

[(b) Notwithstanding the provisions of §35.22 of this title (relating to Term and Renewal of Orders), an emergency rate increase may be granted under this section for a period not to exceed 15 calendar months from the date on which the increase takes effect. The commission shall schedule a hearing to establish a final rate within that period.]

[(c) A request for an emergency rate increase must be filed by the utility in accordance with, and must contain the information required by, §35.24 of this title (relating to Application for Emergency or Temporary Order) and the following:]

[(1) the effective date of the rate increase;]

[(2) sufficient information to support the computation of the proposed rates; and]

[(3) any other information requested by the executive director.]

[(d) The effective date must be the first day of a billing cycle, unless otherwise authorized by the commission or the executive director.]

[(e) Any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of an increase which is not related to consumption may be billed at the emergency rate on the effective date or the first billing after approval by the commission or the executive director.]

[(f) A utility receiving authorization for an emergency rate increase shall provide notice of the increase to each ratepayer as soon as possible, but not later than the effective date for the new rate. The notice shall contain the following:]

[(1) the utility's name and address, the previous rates, the emergency rates, the effective date of the rate increase, and the classes of utility customers affected; and]

[(2) this statement: "This emergency rate increase has been approved by the Texas Natural Resource Conservation Commission under authority granted by the Texas Water Code, §5.508 and §13.4133, to ensure the provision of continuous and adequate service to the utility's customers. The commission is also required to

schedule a hearing to establish a final rate within 15 months after the date on which the emergency rates take effect. The utility is required to provide notice of the hearing to all customers at least 10 days before the date of the hearing. The additional revenues collected under this emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service."]

[g) The utility shall maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §291.31 of this title (relating to Cost of Service).]

[h) During the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §291.30 of this title (relating to Escrow of Proceeds Received Under Rate Increase).]

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§37.5001, 37.5002, and 37.5011, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4636) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule

language to current Texas Register style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

*§37.5001, Applicability*

The commission adopts amended §37.5001 to remove "retail public utilities" and the reference to Chapter 291. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

*§37.5002, Definitions*

The commission adopts amended §37.5002 to remove the reference to §291.3. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

*§37.5011, Financial Assurance for a Public Water System*

The commission adopts amended §37.5011 to remove "or Retail Public Utility" from the section title and language in subsections (b) and (c) which pertain to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

**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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 37 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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 rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an

agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 37 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does

not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules 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 rule because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rules and found that they are neither identified

in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are 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. No comments were received regarding consistency with the CMP.

#### **Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 37.

**SUBCHAPTER O: FINANCIAL ASSURANCE FOR PUBLIC DRINKING WATER SYSTEMS  
[AND UTILITIES]**

**§§37.5001, 37.5002, 37.5011**

**Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

**§37.5001. Applicability.**

This subchapter applies to public water systems [and retail public utilities] required to provide evidence of financial assurance under Chapter 290 of this title (relating to Public Drinking Water)[, or Chapter 291 of this title (relating to Utility Regulation)].

**§37.5002. Definitions.**

For definitions of words and terms and other definitions not found in Subchapter A of this chapter [Chapter,] (relating to General Financial Assurance Requirements)[,] see §290.38[,] of this title (relating to Definitions [Rules and Regulations for Public Water Systems])[, and §291.3, of this title (relating to Definitions of Terms)].

**§37.5011. Financial Assurance for a Public Water System [or Retail Public Utility].**

(a) Financial assurance demonstrations shall comply with the wordings of the mechanisms as described in Subchapter A of this chapter (relating to General Financial Assurance Requirements), Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), and Subchapter D of this chapter (relating to Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), except operation should be substituted for closure.

(b) The prospective owner or operator of a public water system may be ordered to provide adequate financial assurance to operate the system as specified in §290.39(f) of this title (relating to General Provisions). A public water system that was constructed without approval or has a history of noncompliance or is subject to commission enforcement action as specified in §290.39(n) of this title, may be required

to provide financial assurance to operate the system in accordance with applicable laws and rules. [Financial assurance may be required of an applicant requesting approval for a certificate or a certificate amendment or a person establishing, purchasing or acquiring a retail public utility as specified in §291.102(d) of this title (relating to Criteria for Considering and Granting Certificates or Amendments), and §291.109(c) of this title (relating to Report of Sale, Merger, Etc: Investigation; Disallowance of Transaction). A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial assurance as specified in §291.111(c) of this title (relating to Purchase of Voting Stock in Another Utility). The commission may order a utility that has failed to provide continuous and adequate service to provide financial assurance to ensure that the system will be operated as required by §291.114 of this title (relating to Requirements to Provide Continuous and Adequate Service). Such financial assurance will allow for payment of improvements and repairs to the water or sewer system.]

[(c) If rate increases or customer surcharges are determined by the executive director to be an acceptable form for demonstrating financial assurance in accordance with §290.39(n)(3) of this title, such funds shall be deposited into an escrow account with an escrow agent that has the authority to act as an escrow agent and whose escrow operations are regulated and examined by a federal or state agency. At least annually a statement of the account shall be submitted to the executive director.]



The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§50.31, 50.45, 50.131, and 50.145, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4639) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes included appropriate

and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs were removed, subsequent paragraphs were renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

*§50.31, Purpose and Applicability*

The commission adopts amended §50.31 to remove subsection (b)(4) and (12). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

*§50.45, Corrections to Permits*

The commission adopts amended §50.45 to remove subsection (b)(4) and (5). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

*§50.131, Purpose and Applicability*

The commission adopts amended §50.131 to remove subsection (b)(4) and (12). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

*§50.145, Corrections to Permits*

The commission adopts amended §50.145 to remove subsection (b)(4) and (5). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

### **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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend Chapter 50 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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 rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

#### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 50 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property.

Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules 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 rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are 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. No comments were received regarding consistency with the CMP.

**Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 50.

## **SUBCHAPTER C: ACTION BY THE EXECUTIVE DIRECTOR**

### **§50.31, §50.45**

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§50.31. Purpose and Applicability.**

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating



to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

[(4) certificates of convenience and necessity;]

(4) [(5)] district matters under Texas Water Code (TWC), Chapters 49 - 66 [of the Texas Water Code];

(5) [(6)] districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(6) [(7)] extensions of time to commence or complete construction;

(7) [(8)] industrial and hazardous waste permits;

(8) [(9)] municipal solid waste permits;

(9) [(10)] on-site waste water disposal system permits;

(10) [(11)] radioactive material permits or licenses;

[(12)] rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;

(11) [(13)] underground injection control permits;

(12) [(14)] water rights permits;

(13) [(15)] wastewater permits;

(14) [(16)] weather modification measures permits;

(15) [(17)] driller licenses under TWC [Texas Water Code], Chapter 32;

(16) [(18)] pump installer licenses under TWC [Texas Water Code], Chapter 33;

(17) [(19)] irrigator or installer registrations under TWC [Texas Water Code], Chapter 34;

(18) [(20)] municipal management district matters under Texas Local Government Code, Chapter 375;

(19) [(21)] determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency; and

(20) [(22)] certification of an organization that is installing plumbing in a "self-help" project, in a county any part of which is within 50 miles of an international border.

(c) This subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program);

(3) air quality standard exemptions;

(4) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(5) district matters under TWC [Texas Water Code], Chapters 49 - 66, as follows:

(A) an appeal under TWC [Texas Water Code], §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC [Texas Water Code], Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC [Texas Water Code], §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC [Texas Water Code], §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under TWC [Texas Water Code], §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under TWC [Texas Water Code], §54.030 for conversion of a district to a municipal utility district;

(6) emergency or temporary orders or temporary authorizations;

(7) actions of the executive director under Chapters 101, 111 - 115 [111, 112, 113, 114, 115], 117, and 118[, and 119] of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants [Control of Air Pollution From Toxic Materials]; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes[; and Control of Air Pollution From Carbon Monoxide]);

(8) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(9) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection [Notwithstanding subsections] (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.39(b) - (f) of this title (relating to Motion for Reconsideration) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

**§50.45. Corrections to Permits.**

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program). The executive director, on his own motion or at the request of the permittee, may make a non-substantive [nonsubstantive] correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue non-substantive [nonsubstantive] permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

[(4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;]

[(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;]

(4) [(6)] to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(5) [(7)] to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(6) [(8)] to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(7) [(9)] to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(8) [(10)] to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.



## **SUBCHAPTER G: ACTION BY THE EXECUTIVE DIRECTOR**

### **§50.131, §50.145**

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§50.131. Purpose and Applicability.**

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission. This subchapter does not affect the executive director's authority to act on an application where that authority is delegated elsewhere.

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 to certifications of Water Quality Management Plan (WQMP) updates. Applications that are administratively complete before September 1, 1999 are

subject to Subchapter B of this chapter (relating to Action by the Commission). Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

[(4) certificates of convenience and necessity;]

(4) [(5)] district matters under Texas Water Code (TWC), Chapters 49 - 66 [of the Texas Water Code];

(5) [(6)] districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(6) [(7)] extensions of time to commence or complete construction;

(7) [(8)] industrial and hazardous waste permits;

(8) [(9)] municipal solid waste permits;

(9) [(10)] on-site wastewater disposal system permits;

(10) [(11)] radioactive waste or radioactive material permits or licenses;

[(12)] rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;]

(11) [(13)] underground injection control permits;

(12) [(14)] water rights permits;

(13) [(15)] wastewater permits;

(14) [(16)] weather modification measures permits;

(15) [(17)] driller licenses under TWC [Texas Water Code], Chapter 32;

(16) [(18)] pump installer licenses under TWC [Texas Water Code], Chapter 33;

(17) [(19)] irrigator or installer registrations under TWC [Texas Water Code], Chapter 34; and

(18) [(20)] municipal management district matters under Texas Local Government Code, Chapter 375.

(c) In addition to those things excluded from coverage under [this chapter in] §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under TWC [Texas Water Code], Chapters 49 - 66, as follows:

(A) an appeal under TWC [Texas Water Code], §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC [Texas Water Code], Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC [Texas Water Code], §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC [Texas Water Code], §54.239, of a board decision involving the cost, purchase, or use of facilities; or

(E) an application under TWC [Texas Water Code], §54.030 for conversion of a district to a municipal utility district;

(5) actions of the executive director under Chapters 101, 111 - 115, [111, 112, 113, 114, 115,] 117, and 118[, and 119] of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants [Control of Air Pollution From Toxic Materials]; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes[; and Control of Air Pollution From Carbon Monoxide]);

(6) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(7) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection [Notwithstanding subsections] (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

#### **§50.145. Corrections to Permits.**

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program). The executive director, on his own motion or at the request of the permittee, may make a non-substantive [nonsubstantive] correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue non-substantive [nonsubstantive] permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

[(4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;]

[(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;]

(4) [(6)] to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(5) [(7)] to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(6) [(8)] to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(7) [(9)] to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(8) [(10)] to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.



The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§55.1, 55.27, 55.101, and 55.250, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4645) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology.

Where subsections were removed, subsequent subsections were re-lettered accordingly.

These changes are non-substantive and generally not specifically discussed in this preamble.

*§55.1, Applicability*

The commission adopts amended §55.1(a) to remove the reference to Texas Water Code (TWC), §12.013 and Chapter 13. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable. Additionally, the commission adopts to remove the reference to TWC, §11.036 and §11.041, because Chapter 55, Subchapters D and G do not apply to TWC, §11.036 and §11.041.

*§55.27, Commission Action on Hearing Request*

The commission adopts amended §55.27 to remove subsection (d), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also adopts to remove §55.27(e), because the language in the subsection is obsolete due to the repeal of Chapter 80, Subchapter E in September 1999.

*§55.101, Applicability*

The commission adopts amended §55.101(g)(5) to remove the reference to TWC, §12.013 and Chapter 13 and revise the sentence accordingly to account for the removal. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable. Additionally, the commission adopts to remove the requirements for the executive director to review hearing requests, determine the sufficiency of hearing requests, and refer the application to the chief clerk for hearing

processing, because those requirements are not applicable to TWC, §11.036 and §11.041, petitions.

*§55.250, Applicability*

The commission adopts amended §55.250 to remove the reference to TWC, §12.013 and Chapter 13 and revise the sentence accordingly to account for the removal. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

**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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic

regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 55 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend the rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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 rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a

state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 55 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules 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 rule because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are 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. No comments were received regarding consistency with the CMP.

### **Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 55.

## SUBCHAPTER A: APPLICABILITY AND DEFINITIONS

### §55.1

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§55.1. Applicability.**

(a) This chapter is divided into subchapters, each of which governs only certain specific types of applications. This subchapter and Subchapter B of this chapter (relating to Hearing Requests, Public Comment) describe the hearing request and comment procedures which will continue to apply to applications declared administratively complete before September 1, 1999. Subchapter D of this chapter (relating to Applicability and Definitions) describes the applications that will be subject to Subchapters E, F, and G of this chapter [title] (relating to Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on



Certain Applications). Subchapters E and F of this chapter establish public comment, public meeting, request for reconsideration and contested case hearing procedures that apply to applications filed under Texas Water Code (TWC), Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382 that are declared administratively complete on or after September 1, 1999. Subchapter G of this chapter addresses requests for contested case hearing and public comment procedures on applications filed under other statutory provisions that are declared administratively complete on or after September 1, 1999[, except applications filed under Texas Water Code, Chapter 13 and §§11.036, 11.041 and 12.013].

(b) Hearing requests and comments regarding any permit application that is declared administratively complete before September 1, 1999 are subject to this subchapter and Subchapter B of this chapter.

(c) This subchapter and Subchapter B of this chapter do not apply to hearing requests on:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting under Chapter 106 of this title (relating to Permits by Rule [Exemptions from Permitting]) except for construction of

concrete batch plants which are not temporarily located contiguous or adjacent to a public works project; and

(4) applications for weather modification licenses or permits under TWC [Texas Water Code], Chapter 18.

(d) This subchapter and Subchapter B of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations) [that chapter];

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(6) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(7) applications where the opportunity for a contested case hearing does not exist under the law.

## SUBCHAPTER B: HEARING REQUESTS, PUBLIC COMMENT

### §55.27

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§55.27. Commission Action on Hearing Request.**

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the Texas Administrative Procedure Act (APA) [APA]. The commission will evaluate the hearing request at the scheduled commission meeting, and may:

(1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;

(2) determine that a hearing request does not meet the requirements of this subchapter, and refer the application to a public meeting to develop public comment before acting on the application;

(3) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to the State Office of Administrative Hearings (SOAH) [SOAH] for a hearing; or

(4) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA.

(b) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director;

(2) made by an affected person if the request:

(A) is reasonable;

(B) is supported by competent evidence;

(C) complies with the requirements of §55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment);

(D) is timely filed with the chief clerk; and

(E) is pursuant to a right to hearing authorized by law;

(3) for an air quality permit, made by a legislator in the general area of the facility if the request:

(A) is reasonable;

(B) complies with the requirements of §55.21 of this title, except for §55.21(d)(2) - (4) of this title [subsection (c)(2)-(4)];

(C) is timely filed with the chief clerk; and

(D) is pursuant to a right to hearing authorized by law.

(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.

[(d) The executive director shall determine the sufficiency of hearing requests on utility matters listed in this subsection. If a hearing request meets the requirements in this subsection, the executive director shall refer the hearing request to the chief clerk. The executive director shall review hearing requests concerning the following matters and shall use the specified standards for reviewing the requests.]

[(1) If a utility files a statement of intent to change rates under Texas Water Code, §13.187, the executive director shall evaluate any complaints or hearing requests received and determine if a hearing is required.]

[(2) If a person files an application or petition concerning a certificate of convenience and necessity under Texas Water Code, Chapter 13, Subchapter G, the executive director shall evaluate any complaints or hearing requests and determine if a hearing is required.]

[(3) If a person files an appeal under Texas Water Code, §13.043, invoking the commission's appellate jurisdiction over water, sewer, or drainage rates, the executive director shall evaluate the appeal and determine if a hearing is required.]

[(e) During a commission meeting, the commission may determine whether the application should be processed under the requirements of Chapter 80, Subchapter E of this title (relating to Freezing the Process). The commission may consider the number and sophistication of the parties or potential parties, the expected length of the hearing, and the complexity of the issues.]

(d) [(f)] A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(e) [(g)] If a hearing request is denied, the procedures contained in §80.272 [§80.271] of this title (relating to Motion for Rehearing) apply. A motion for rehearing in such a case must be filed no earlier than, and no more than 20 days after, the date the person or his attorney of record is notified of the commission's final decision or order on the application. If the motion is denied under §80.272 of this title [§80.271] and §80.273 of this title (relating to [Motion for Rehearing and] Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.



## **SUBCHAPTER D: APPLICABILITY AND DEFINITIONS**

### **§55.101**

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§55.101. Applicability.**

(a) This subchapter and Subchapters E - G [Subchapters D - G] of this chapter (relating to [Applicability and Definitions;] Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.

(b) This subchapter and Subchapters E - G [Subchapters D - G] of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.

(c) This subchapter and Subchapters E and F [Subchapters D - F] of this chapter apply only to applications filed under Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under TWC [Texas Water Code], Chapters 26, 27, and 32 and THSC [Texas Health and Safety Code], Chapters 361 and 382.

(e) This subchapter and Subchapters E and F [Subchapters D - F] of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Processing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(f) This subchapter and Subchapters E - G [Subchapters D - G] of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by [By] Rule) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project;

(4) applications for Class I injection well permits used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under TWC [Texas Water Code], §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(5) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under TWC, §27.025 [Texas Water Code, §27.023], concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals; and

(6) applications where the opportunity for a contested case hearing does not exist under other laws.

(g) This subchapter and Subchapters E - G [Subchapters D - G] of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations) [that chapter];

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under TWC [Texas Water Code, Chapter 13 and Texas Water Code], [§§11.036[,] or §11.041[, or 12.013. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of

hearing requests under standards specified by law, and may refer the application to the chief clerk for hearing processing]. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings (SOAH) under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a SOAH [State Office of Administrative Hearings] hearing on an application subject to this provision are all those issues that are material and relevant under the law;

(6) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(7) applications for initial issuance of voluntary emissions reduction permits under THSC [Texas Health and Safety Code], §382.0519;

(8) applications for initial issuance of permits for electric generating facility permits under Texas Utilities Code, §39.264;

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under THSC [Texas Health and Safety Code], §382.05194;

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-Injection Units Registration); and

(12) applications where the opportunity for a contested case hearing does not exist under other laws.

**SUBCHAPTER G: REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT  
ON CERTAIN APPLICATIONS**

**§55.250**

**Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**§55.250. Applicability.**

This subchapter applies to applications filed with the commission except applications filed under Texas Water Code (TWC), Chapter 26 or 27, Texas Health and Safety Code, Chapter 361 or 382, [Texas Water Code, Chapter 13,] or TWC, [Texas Water Code, §]§11.036[,] or §11.041[, or 12.013]. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§80.3, 80.17, 80.105, and 80.109, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4651) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule



language to current Texas Register style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections and paragraphs were removed, subsequent subsections and paragraphs were re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

*§80.3, Judges*

The commission adopts amended §80.3(c) to remove paragraph (15), because the paragraph pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

*§80.17, Burden of Proof*

The commission adopts amended §80.17 to remove subsection (b), because the subsection pertains to the burden of proof in reviewing rates charged pursuant to a contract. The setting of rates pursuant to Texas Water Code (TWC), Chapter 11 was transferred from the commission to the PUC on September 1, 2014.

*§80.105, Preliminary Hearings*

The commission adopts amended §80.105(b)(2)(B) to remove the reference to TWC, §12.013. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

*§80.109, Designation of Parties*

The commission adopts amended §80.109(b)(1)(A) to remove the reference to TWC, §12.013. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

**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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific

intent of the adopted rulemaking is to amend TCEQ rules in Chapter 80 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules 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 rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or

representative of the federal government to implement a state and federal program; or  
4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed a preliminary

assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 80 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the

economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules would not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are 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. No comments were received regarding consistency with the CMP.

### **Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 80.

## SUBCHAPTER A: GENERAL RULES

### §80.3, §80.17

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§80.3. Judges.**

(a) Applicability and delegation.

(1) Any application that is declared administratively complete before September 1, 1999 is subject to this section.

(2) The commission delegates to the State Office of Administrative Hearings [SOAH] the authority to conduct hearings designated by the commission.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(c) Judges shall have authority to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the jurisdiction of the commission;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate and align parties and establish the order for presentation of evidence, except that the executive director and the public interest counsel shall not be aligned with any other party;



(6) examine and administer oaths to witnesses;

(7) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents;

(8) authorize the taking of depositions and compel other forms of discovery;

(9) set prehearing conferences and issue prehearing orders;

(10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(11) limit testimony to matters under the commission's jurisdiction;

(12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions; and

[(15) issue interim rate orders under Texas Water Code, Chapter 13;]

(15) [(16)] exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

**§80.17. Burden of Proof.**

(a) The burden of proof is on the moving party by a preponderance of the evidence, except as provided in subsection [subsections] (b) [- (d)] of this section.

[(b) Section 291.136 of this title (relating to Burden of Proof) governs the burden of proof in a proceeding related to a petition to review rates charged pursuant to a written contract for the sale of water for resale filed under Texas Water Code, Chapter 11.]

(b) [(c)] In an enforcement case, the executive director has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions. The respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. Any party submitting facts relevant to the factors

prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty has the burden of proving those facts by a preponderance of the evidence.

(c) [(d)] In contested cases regarding a permit application filed with the commission on or after September 1, 2015, and referred under Texas Water Code, §5.556 or §5.557:

(1) the filing of the administrative record as described in §80.118(c) of this title (relating to Administrative Record) establishes a prima facie demonstration that the executive director's draft permit meets all state and federal legal and technical requirements, and, if issued consistent with the executive director's draft permit, would protect human health and safety, the environment, and physical property;

(2) a party may rebut the presumption in paragraph (1) of this subsection by presenting evidence regarding the referred issues demonstrating that the draft permit violates a specifically applicable state or federal legal or technical requirement; and

(3) if a rebuttal case is presented by a party under paragraph (2) of this subsection, the applicant and executive director may present additional evidence to support the executive director's draft permit.

## **SUBCHAPTER C: HEARING PROCEDURES**

### **§80.105, §80.109**

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§80.105. Preliminary Hearings.**

(a) After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding. A preliminary hearing is not required in an enforcement matter, except in those under federally authorized underground injection control or Texas Pollutant Discharge Elimination System programs. A preliminary hearing is required for applications referred to the State Office of Administrative Hearings under §55.210 of this title (relating to Direct Referrals).

(b) If jurisdiction is established, the judge shall:

(1) name the parties;

(2) accept public comment in the following matters:

(A) enforcement hearings; and

(B) applications under Texas Water Code (TWC), §11.036 or §11.041 and TWC, Chapter 13 [and TWC, §§11.036, 11.041, or 12.013];

(3) establish a docket control order designed to complete the proceeding within the maximum expected duration set by the commission. The order should include a discovery and procedural schedule including a mechanism for the timely and expeditious resolution of discovery disputes; and

(4) allow the parties an opportunity for settlement negotiations.

(c) When agreed to by all parties in attendance at the preliminary hearing, the judge may proceed with the evidentiary hearing on the same date of the first preliminary hearing.

(d) One or more preliminary hearings may be held to discuss:

(1) formulating and simplifying issues;

(2) evaluating the necessity or desirability of amending pleadings;

(3) all pending motions;

(4) stipulations;

(5) the procedure at the hearing;

(6) specifying the number and identity of witnesses;

(7) filing and exchanging prepared testimony and exhibits;

(8) scheduling discovery;

(9) setting a schedule for filing, responding to, and hearing of dispositive motions; and

(10) other matters that may expedite or facilitate the hearing process.

(e) For applications directly referred under §55.210 of this title, a preliminary hearing may not be held until the executive director's response to public comment has been provided.

**§80.109. Designation of Parties.**

(a) Determination by judge. All parties to a proceeding shall be determined at the preliminary hearing or when the judge otherwise designates. To be admitted as a party, a person must have a justiciable interest in the matter being considered and must, unless the person is specifically named in the matter being considered, appear at the preliminary hearing in person or by representative and seek to be admitted as a party. After parties are designated, no person will be admitted as a party except upon a finding that good cause and extenuating circumstances exist and that the hearing in progress will not be unreasonably delayed.

(b) Parties.

(1) The executive director is a mandatory party to all commission proceedings concerning matters in which the executive director bears the burden of proof, and in the following commission proceedings:

(A) matters concerning Texas Water Code (TWC), [§§11.036[,] and §11.041[, and 12.013]; TWC, Chapters 13, 35, 36, and 49 - 66; and Texas Local Government Code, Chapters 375 and 395;

(B) matters arising under Texas Government Code, Chapter 2260 and Chapter 11, Subchapter D of this title (relating to Resolution of Contract Claims); and

(C) matters under TWC, Chapter 26, Subchapter I, and Chapter 334, Subchapters H and L of this title (relating to Reimbursement Program and Overpayment Prevention).

(2) In addition to paragraph (1) of this subsection [(b)(1) of this section], the executive director is always a party in contested case hearings concerning permitting matters, pursuant to, and in accordance with, the provisions of §80.108 of this title (relating to Executive Director Party Status in Permit Hearings).

(3) The public interest counsel of the commission is a party to all commission proceedings.

(4) The applicant is a party in a hearing on its application.



(5) Affected persons shall be parties to hearings on permit applications, based upon the standards set forth in §55.29 and §55.203 of this title (relating to Determination of Affected Person). Regardless of [Notwithstanding] any other law, a state agency, except a river authority, may not be a party to a hearing on an application received by the commission on or after September 1, 2011 unless the state agency is the applicant.

(6) The parties to a contested enforcement case include:

(A) the respondent(s);

(B) any other parties authorized by statute; and

(C) in proceedings alleging a violation of or failure to obtain an underground injection control or Texas Pollutant Discharge Elimination System permit, or a state permit for the same discharge covered by a National Pollutant Discharge Elimination System (NPDES) permit that has been assumed by the state under NPDES authorization, any other party granted permissive intervention by the judge. In exercising discretion whether to permit intervention, the judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(7) The parties to a hearing upon a challenge to commission rules include the person(s) challenging the rule and any other parties authorized by statute.

(8) The parties to a permit revocation action initiated by a person other than the executive director shall include the respondent and the petitioner.

(9) The parties to a post-closure order contested case are limited to:

(A) the executive director;

(B) the applicant(s); and

(C) the Public Interest Counsel.

(c) Alignment of participants. Participants (both party and non-party) may be aligned according to the nature of the proceeding and their relationship to it. The judge may require participants of an aligned class to select one or more persons to represent them in the proceeding. Unless otherwise ordered by the judge, each group of aligned participants shall be considered to be one party for the purposes of §80.115 of this title (relating to Rights of Parties) for all purposes except settlement.

(d) Effect of postponement. If a hearing is postponed for any reason, any person already designated as a party retains party status.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §281.2 and §281.17; and the repeal of §281.16 *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4655) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes included

appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs were removed, subsequent paragraphs were renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

*§281.2, Applicability*

The commission adopts amended §281.2 to remove paragraph (8), because the paragraph pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

*§281.16, Applications for Certificates of Convenience and Necessity*

The commission adopts the repeal of §281.16. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§281.17, Notice of Receipt of Application and Declaration of Administrative Completeness*

The commission adopts amended §281.17(d) to remove the reference to §281.16. With the transfer of this function from the commission to the PUC in HB 1600 and SB 567, this reference is no longer required.

**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 Texas Government Code, §2001.0225. Texas Government

Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 281 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend and repeal the rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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 rules 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, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major

environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

#### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending and repealing obsolete TCEQ rules in Chapter 281 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas



Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules 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 rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend and repeal obsolete TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and

policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

#### **Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 281.

**SUBCHAPTER A: APPLICATIONS PROCESSING**

**§281.2, §281.17**

**Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**§281.2. Applicability.**

This subchapter is [These sections are] applicable to the processing of:

(1) applications for new, amended, or renewed water use permits, certificates of adjudication and certified filings, and extensions of time to commence and/or complete construction of water use facilities;

(2) applications for new, amended, or renewed wastewater discharge permits, including subsurface area drip dispersal systems;

(3) applications for new, amended, or renewed injection well permits;

(4) applications for new, amended, or modified or renewed industrial solid and/or municipal hazardous waste permits filed under §335.2 and §335.43 of this title (relating to Permit Required) [and §335.43 of this title (relating to Permit Required)] or for new or amended compliance plans filed under §305.401 of this title (relating to Compliance Plan);

(5) applications for plan approval of reclamation projects (levees, etc.);

(6) applications for creation of water districts;

(7) water district applications and petitions requiring commission approval;

[(8) applications for new or amended certificates of convenience and necessity;]

(8) [(9)] applications for new, amended, or renewed municipal solid waste permits; and

(9) [(10)] applications for new, amended, or renewed radioactive material licenses.

**§281.17. Notice of Receipt of Application and Declaration of Administrative Completeness.**

(a) Applications for use of state water. If an application for the use of state water, other than for a permit under §297.13 of this title (relating to Temporary Permit under [Under] the Texas Water Code, [§]§11.138 [and 11.153 - 11.155]) or §297.17 of this title (relating to Emergency Authorization (Texas Water Code, §11.139)), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness. The executive director shall forward a copy of the statement to the chief clerk, along with a copy of the application.

(b) Applications for temporary permits to use state water. If an application for a temporary permit, other than a provisional temporary permit under §295.181 of this title (relating to Provisional Disposition of Application for Temporary Permit), for the use of state water is received containing the required information and attachments required by §281.4 of this title [as set forth therein], the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness, and shall forward a copy of the statement to the chief clerk.

(c) Applications for provisional temporary permits to use state water. When an application for a provisional temporary permit for the use of state water under §295.181 of this title, is received containing the information and attachments required by §281.4 of this title, the chief clerk shall cause notice of the receipt of the application and declaration of administrative completeness to be published in the *Texas Register*. The chief clerk may include in the notice other information concerning the disposition of the application.

(d) Other applications. Upon receipt of an application described in §281.2(2) or (5) - (9) [(11)] of this title (relating to Applicability), which contains the information and attachments required by [§]§281.5[,] and §281.6[, and 281.16] of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits; and Applications for Plan Approval of Reclamation Projects[; and Applications for Certificates of Convenience and Necessity]), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed injection well permit, for a new, amended, or renewed industrial solid waste permit, or for a new or amended compliance plan as described in §281.2(3) and (4) of this title, the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable for publishing or

mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed radioactive material license as described in Chapter 336 of this title (relating to Radioactive Substance Rules), the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable for mailing and shall forward that statement to the chief clerk prior to the expiration of the administrative review periods established in §281.3(d) of this title (relating to Initial Review). The chief clerk shall notify every person entitled to notification of a particular application under the rules of the commission.

(e) Notice requirements. The notice of receipt of the application and declaration of administrative completeness, or for applications for a new, amended, or renewed injection well permit, or for a new or amended compliance plan as described in §281.2(3) and (4) of this title, the notice of receipt of the application, shall contain the following information:

- (1) the identifying number given the application by the executive director;
- (2) the type of permit or license sought under the application;
- (3) the name and address of the applicant and, if different, the location of the proposed facility;

(4) the date on which the application was submitted; and

(5) a brief summary of the information included in the application.

(f) Notice of application and draft permit. Nothing in this section shall be construed so as to waive the requirement of notice of the application and draft permit in accordance with Chapter 39 of this title (relating to Public Notice) for applications for radioactive material licenses, and for wastewater discharge, underground injection, hazardous waste, municipal solid waste, and industrial solid waste management permits.



**SUBCHAPTER A: APPLICATIONS PROCESSING**

**[§281.16]**

**Statutory Authority**

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**[§281.16. Applications for Certificates of Convenience and Necessity.]**

[Applications for certificates of convenience and necessity must include:]

[(1) three copies of the appropriate application form prescribed by the executive director, completed as instructed, and properly executed;]

[(2) territorial maps filed in support of such application for initial or amended certificates that fulfill the following requirements:]

[(A) for water and sewer utilities, the area to be served shall be shown on a state highway county map, scale one inch equals two miles. It shall clearly define the proposed location of the applicant and each neighboring water or sewer utility within five miles of applicant's present location, and service boundaries shall conform to verifiable landmarks such as roads, creeks, railroads, etc. Facilities shall be shown on United States Geological Survey 7 1/2-minute series maps, subdivision plats, engineering planning maps, or other large scale maps;]

[(B) three copies of each map shall be filed;]

[(C) separate maps shall be filed for each county in which the reporting utility operates;]

[(D) if applicable, the map shall separately indicate the production facilities, transmission facilities, and distribution facilities as located within the territory claimed. A color code may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facility can be located on the ground from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location;]

[(3) three copies of any evidence as required by the commission to show that the applicant has received the required consent or permit of any other public authority having jurisdiction, for example, municipalities;]

[(4) any other information as the executive director or the commission may reasonably require.]

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §290.38 and §290.39 *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4659) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The adopted rules are intended to implement statutory changes made by House Bill (HB) 1600 and Senate Bill (SB) 567 of the 83rd Texas Legislature, 2013, and SB 1842 of the 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 290 resulting from the adopted repeal of rules in 30 TAC Chapter 291.

SB 1842 amended Texas Health and Safety Code (THSC), §341.035(d) to include a Class A utility, as defined by Texas Water Code (TWC), §13.002, among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a certificate of convenience and necessity (CCN) under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs were added, subsequent paragraphs were renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

#### *§290.38, Definitions*

The commission adopts amended §290.38(1) to update the cross-reference to exempt utility in adopted §291.103.

#### *§290.39, General Provisions*

The commission adopts §290.39(g)(4) to include a Class A utility, as defined by TWC, §13.002, among the entities exempt from the requirement to file a business plan for a

public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate.

### **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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. SB 1842 amends THSC, §341.035(d) to exempt a Class A utility, as defined by TWC, §13.258 from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate. The specific

intent of the adopted rulemaking is to amend Chapter 290 relating to the economic regulation of water and wastewater utilities and to include certain Class A utilities among the entities exempt from the requirement to file a business plan for a public drinking water system with the TCEQ. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC and to exempt certain Class A utilities from the requirement to file a business plan with the TCEQ.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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 rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically

required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities or THSC, Chapter 341 relating to the minimum standards of sanitation and health protection measures; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed a preliminary



assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts these rules for the following purposes: 1) to amend TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; and 2) to exempt certain Class A utilities from the requirement to file a business plan for a public drinking water system with the TCEQ.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment in Chapter 290 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5) provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendments of TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this portion of the adopted rulemaking.

Further, the commission determined that amending TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities and exempting certain Class A utilities from the requirement to file a business plan with the TCEQ for a public drinking water system 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 rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The specific intent of the adopted rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities and to exempt certain Class A utilities from the requirement to file a business plan for a public drinking water system with the TCEQ. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are 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. No comments were received regarding consistency with the CMP.

**Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 290.

## SUBCHAPTER D: RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

### §290.38, §290.39

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013. Additionally, the adopted amendments implement Senate Bill 1842 passed by the 85th Texas Legislature, 2017.

#### **§290.38. Definitions.**

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Water Dictionary: A Comprehensive Reference of Water Terminology*, prepared by the American Water Works Association.

(1) Affected utility--A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103[(d)(1)] of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer:

(A) in a county with a population of 3.3 million or more; or

(B) in a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more.

(2) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

(3) American National Standards Institute (ANSI) standards--The standards of the American National Standards Institute, Inc.

(4) American Society of Mechanical Engineers (ASME) standards--The standards of the ASME.

(5) American Water Works Association (AWWA) standards--The latest edition of the applicable standards as approved and published by the AWWA.

(6) Approved laboratory--A laboratory approved by the executive director to analyze water samples to determine their compliance with certain maximum or minimum allowable constituent levels.

(7) ASTM International standards--The standards of ASTM International (formerly known as the American Society for Testing and Materials).

(8) Auxiliary power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(9) Bag filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(10) Baseline performance--In reference to a membrane treatment facility, the detailed assessment of observed operational conditions at the time the membrane facility is

placed in service for the purpose of tracking changes over time and determining when maintenance or service is required. Examples of parameters where baseline performance data is collected include: net driving pressure, normalized permeate flow, salt rejection, and salt passage.

(11) Cartridge filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(12) Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels. After June 30, 2008, laboratories must be accredited, not certified, in order to perform sample analyses previously performed by certified laboratories.

(13) Challenge test--A study conducted to determine the removal efficiency (log removal value) of a device for a particular organism, particulate, or surrogate.

(14) Chemical disinfectant--Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(15) Community water system--A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(16) Connection--A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

(A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption);

(B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or



(C) the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(17) Contamination--The presence of any foreign substance (organic, inorganic, radiological, or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

(18) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(19) Direct integrity test--A physical test applied to a membrane unit in order to identify and isolate integrity breaches/leaks that could result in contamination of the filtrate.

(20) Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water.

(21) Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(22) Distribution system--A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

(23) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "drinking water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(24) Drinking water standards--The commission rules covering drinking water standards in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(25) Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(26) Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 35 pounds per square inch.

(27) Emergency power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

(28) Extended power outage--A power outage lasting for more than 24 hours.

(29) Filtrate--The water produced from a filtration process; typically used to describe the water produced by filter processes such as membranes.

(30) Flux--The throughput of a pressure-driven membrane filtration system expressed as flow per unit of membrane area. For example, gallons per square foot per day or liters per hour per square meter.

(31) Grantee--For purposes of this chapter, any person receiving an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(32) Grantor--For purposes of this chapter, any person who conveys an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(33) Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(34) Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*;

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions; or

(C) site-specific characteristics including measurements of water quality parameters, well construction details, existing geological attributes, and other features that are similar to groundwater sources that have been identified by the executive director as being under the direct influence of surface water.

(35) Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(36) Human consumption--Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(37) Indirect integrity monitoring--The monitoring of some aspect of filtrate water quality, such as turbidity, that is indicative of the removal of particulate matter.

(38) Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a) - (f) of this title (relating to Water Treatment).

(39) Interconnection--A physical connection between two public water supply systems.

(40) International Fire Code (IFC)--The standards of the International Code Council.

(41) Intruder-resistant fence--A fence six feet or greater in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle with the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(42) L/d ratio--The dimensionless value that is obtained by dividing the length (depth) of a granular media filter bed by the weighted effective diameter "d" of the filter media. The weighted effective diameter of the media is calculated based on the percentage of the total bed depth contributed by each media layer.

(43) Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(44) Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as  $\log_{10}$  (i.e.,  $\log_{10}$  (feed concentration) -  $\log_{10}$  (filtrate concentration)).

[(45) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.]

(45) [(46)] Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

(46) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the

past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(47) Membrane filtration--A pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test; includes the following common membrane classifications microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO), as well as any "membrane cartridge filtration" (MCF) device that satisfies this definition.

(48) Membrane  $LRV_{C-Test}$ --The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of log removal values (LRVs) obtained during challenge testing, with one representative LRV established per module tested.

(49) Membrane module--The smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(50) Membrane sensitivity--The maximum log removal value that can be reliably verified by a direct integrity test.

(51) Membrane unit--A group of membrane modules that share common valving, which allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(52) Milligrams per liter (mg/L)--A measure of concentration, equivalent to and replacing parts per million in the case of dilute solutions.

(53) Monthly reports of water works operations--The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(54) National Fire Protection Association (NFPA) standards--The standards of the NFPA.

(55) NSF International--The organization and the standards, certifications, and listings developed by NSF International (formerly known as the National Sanitation Foundation) related to drinking water.

(56) Noncommunity water system--Any public water system which is not a community system.

(57) Nonhealth hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will



constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

(58) Nontransient, noncommunity water system--A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(59) Pass--In reference to a reverse osmosis or nanofiltration membrane system, stages of pressure vessels in series in which the permeate from one stage is further processed in a following stage.

(60) Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(61) Plumbing inspector--Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(62) Plumbing ordinance--A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) the International Plumbing Code; or

(B) the Uniform Plumbing Code.

(63) Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

[(64) Potable water service line--The section of pipe between the potable water main and the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.]

(64) [(65)] Potable water main--A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

(65) Potable water service line--The section of pipe between the potable water main and the customer's side of the water meter. In cases where no customer water meter

exists, it is the section of pipe that is under the ownership and control of the public water system.

(66) Potential contamination hazard--A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

(A) bypass arrangements;

(B) jumper connections;

(C) removable sections or spools; and

(D) swivel or changeover assemblies.

(67) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems,

filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(68) psi--Pounds per square inch.

(69) Public drinking water program--Agency staff designated by the executive director to administer the Safe Drinking Water Act and state statutes related to the regulation of public drinking water. Any report required to be submitted in this chapter to the executive director must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(70) Public health engineering practices--Requirements in this chapter or guidelines promulgated by the executive director.

(71) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person,

firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(72) Quality Control Release Value (QCRV)--A minimum quality standard of a non-destructive performance test established by the manufacturer for membrane module production that ensures that the module will attain the targeted log removal value demonstrated during challenge testing.

(73) Reactor Validation Testing--A process by which a full-scale ultraviolet (UV) reactor's disinfection performance is determined relative to operating parameters that can be monitored. These parameters include flow rate, UV intensity as measured by a UV sensor and the UV lamp status.

(74) Resolution--The size of the smallest integrity breach that contributes to a response from a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water.

(75) Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding. For an example, see commission Form 20698.

(76) Sanitary survey--An onsite review of a public water system's adequacy for producing and distributing safe drinking water by evaluating the following elements: water source; treatment; distribution system; finished water storage; pump, pump facilities, and controls; monitoring, reporting, and data verification; system management, operation and maintenance; and operator compliance.

(77) Sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water; also applies to some continuous indirect integrity monitoring methods.

(78) Service line--A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(79) Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(80) Significant deficiency--Significant deficiencies cause, or have the potential to cause, the introduction of contamination into water delivered to customers. This may include defects in design, operation, or maintenance of the source, treatment, storage, or distribution systems.

(81) Stage--In reference to a reverse osmosis or nanofiltration membrane system, a set of pressure vessels installed in parallel.

(82) System--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

(83) Transfer pump--Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(84) Transient, noncommunity water system--A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient, noncommunity water system.

(85) Vessel--In reference to a reverse osmosis or nanofiltration membrane system, a cylindrical housing unit where membrane modules are placed in a series to form one unit.

(86) Wastewater lateral--Any pipe or constructed conveyance carrying wastewater, running laterally down a street, alley, or easement, and receiving flow only from the abutting properties.

(87) Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

(88) Water system--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

### **§290.39. General Provisions.**

(a) Authority for requirements. Texas Health and Safety Code (THSC), Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulation and control of public drinking water systems in the state. The statute requires that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems not exempted by THSC, §341.035(d). The statute also



requires the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. Texas Water Code (TWC), §13.1395, prescribes the duties of the commission relating to standards for emergency operations of affected utilities. The statute requires that the commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster.

(b) Reason for this subchapter and minimum criteria. This subchapter has been adopted to ensure regionalization and area-wide options are fully considered, the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical, and operating practices must be specified to ensure that facilities are properly operated to produce and distribute safe, potable water.

(c) Required actions and approvals prior to construction. A person may not begin construction of a public drinking water supply system unless the executive director determines the following requirements have been satisfied and approves construction of the proposed system.

(1) A person proposing to install a public drinking water system within the extraterritorial jurisdiction of a municipality; or within 1/2-mile of the corporate boundaries of a district, or other political subdivision providing the same service; or within 1/2-mile of a certificated service area boundary of any other water service provider shall provide to the executive director evidence that:

(A) written application for service was made to that provider; and

(B) all application requirements of the service provider were satisfied, including the payment of related fees.

(2) A person may submit a request for an exception to the requirements of paragraph (1) of this subsection if the application fees will create a hardship on the person. The request must be accompanied by evidence documenting the financial hardship.

(3) A person who is not required to complete the steps in paragraph (1) of this subsection, or who completes the steps in paragraph (1) of this subsection and is denied service or determines that the existing provider's cost estimate is not feasible for the development to be served, shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.

(4) Emergency Preparedness Plan for Public Water Systems that are Affected Utilities.

(A) Each public water system that is also an affected utility, as defined by §290.38 of this title (relating to Definitions), is required to submit to the executive director, receive approval for, and adopt an emergency preparedness plan in accordance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) using either the template in Appendix G of §290.47 of this title (relating to Appendices) or another emergency preparedness plan that meets the requirements of this section. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(B) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under subparagraph (A) of this paragraph provision for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(C) The executive director shall review an emergency preparedness plan submitted under subparagraph (A) of this paragraph. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(D) Each affected utility shall install any required equipment to implement the emergency preparedness plan approved by the executive director immediately upon operation.

(E) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(d) Submission of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed professional engineer. All

engineering documents must have engineering seals, signatures, and dates affixed in accordance with the rules of the Texas Board of Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's public drinking water program furnishes consultation services as a reviewing body only, and its licensed professional engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by this subchapter will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the executive director in writing upon completion of all work. Planning materials shall be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 159, P.O. Box 13087, Austin, Texas 78711-3087.

(e) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) The location of all abandoned or inactive wells within 1/4-mile of a proposed well site shall be shown or reported.

(C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the executive director may give limited approval. In such a case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided to the owner and shall also specify those conditions under which the bond will be forfeited. Such a bond will be transferable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) A copy of each fully executed sanitary control easement and any other documentation demonstrating compliance with §290.41(c)(1)(F) of this title (relating to Water Sources) shall be provided to the executive director prior to placing the well into service. Each original easement document, if obtained, must be recorded in the deed records at the county courthouse. For an example, see commission Form 20698.

(5) Construction features and siting of all facilities for new water systems and for major improvements to existing water systems must be in conformity with applicable commission rules.

(6) For public water systems using reverse osmosis or nanofiltration membranes, the engineering report must include the requirements specified in paragraph (1)(A) - (H) of this subsection, and additionally must provide sufficient information to ensure effective treatment. Specifically:



(A) Provide a clear identification of the proposed raw water source.

(i) If the well has been constructed, a copy of the State of Texas Well Report according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), a cementing certificate (as required by §290.41(c)(3)(A) of this title), and a copy of the complete physical and chemical analysis of the raw water from the well as required by §290.41(c)(3)(G) of this title; or

(ii) If the well has not been constructed, the approximate longitude and latitude for the new well and the projected water quality.

(B) Provide a description of the pretreatment process that includes:

(i) target water quality of the proposed pretreatment process;

(ii) constituent(s) to be removed or treated;

(iii) method(s) or technologies used; and

(iv) operating parameters, such as chemical dosages, filter loading rates, and empty bed contact times.

(C) The design of a reverse osmosis or nanofiltration membrane system shall be based on the standard modeling tools of the manufacturer. The model must be run for both new membranes and end-of-life membranes. All design parameters required by the membrane manufacturer's modeling tool must be included in the modeled analysis. At a minimum, the model shall provide:

(i) system flow rate;

(ii) system recovery;

(iii) number of stages;

(iv) number of passes;

(v) feed pressure;

(vi) system configuration with the number of vessels per stage, the number of passes (if applicable), and the number of elements per vessel;

(vii) flux (in gallons per square foot per day) for the overall system;

(viii) selected fouling factor for new and end-of-life membranes;

and

(ix) ion concentrations in the feed water for all constituents required by the manufacturer's model and the projected ion concentrations for the permeate water and concentrate water.

(D) In lieu of the modeling requirements as detailed in subparagraph (C) of this paragraph, the licensed professional engineer may provide either a pilot study or similar full-scale data in accordance with §290.42(g) of this title (relating to Water Treatment). Alternatively, for reverse osmosis or nanofiltration units rated for flow rates less than 300 gallons per minute, the design specifications can be based on the allowable operating parameters of the manufacturer.

(E) Provide documentation that the components and chemicals for the proposed treatment process conform to American National Standards Institute/NSF International (ANSI/NSF) Standard 60 for Drinking Water Treatment Chemicals and ANSI/NSF Standard 61 for Drinking Water System Components.

(F) Provide the details for post-treatment and re-mineralization to reduce the corrosion potential of the finished water. If carbon dioxide and/or hydrogen sulfide is present in the reverse osmosis permeate, include the details for a degasifier for post-treatment.

(G) For compliance with applicable drinking water quality requirements in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), provide the projected water quality at the entry point to the distribution system and the method(s) used to make the water quality projections.

(H) When blending is proposed, provide the blending ratio, source of the water to be blended, and the calculations showing the concentrations of regulated constituents in the finished water.

(I) Provide a description of the disinfection byproduct formation potential based on total organic carbon and other precursor sample results.

(J) Provide the process control details to ensure the integrity of the membrane system. The engineering report shall identify specific parameters and set points that indicate when membrane cleaning, replacement, and/or inspection is necessary.

(i) The parameters shall be based on one, or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(ii) Define the allowable change from baseline performance.

(7) Before reverse osmosis or nanofiltration membrane systems can be used to produce drinking water, but after the reverse osmosis or nanofiltration membrane system has been constructed at the water system, the licensed professional engineer must submit an addendum to the engineering report required by paragraph (6) of this subsection to the executive director for review and approval. The addendum shall include the following verification data of the full-scale treatment process:

(A) Provide the initial baseline performance of the plant. The baseline net driving pressure, normalized permeate flow, and salt rejection (or salt passage) must be documented when the reverse osmosis or nanofiltration membrane systems are placed online.

(B) Provide the frequency of cleaning or membrane replacement. The frequency must be based on a set time interval or at a set point relative to baseline performance of the unit(s).

(C) If modeling is used as the basis for the design, provide verification of the model's accuracy. If the baseline performance evaluation shows that the modeling projection in the engineering report were inaccurate, the licensed professional engineer shall determine if the deviation from the modeled projections resulted from incorrect water quality assumptions or from other incorrect data in the model. The model shall be considered inaccurate if the overall salt passage or the required feed pressure is 10% greater

than the model projection. For any inaccurate model, provide a corrected model with the addendum to the engineering report.

(D) Provide verification of plant capacity. The capacity of the reverse osmosis and nanofiltration membrane facility shall be based on the as-built configuration of the system and the design parameters in the engineering report with adjustments as indicated by the baseline performance. Refer to paragraph (6)(C) of this subsection and §290.45(a)(6) of this title for specific considerations.

(E) Provide a complete physical and chemical analysis of the water. The analyses shall be in accordance with §290.41(c)(3)(G) of this title for the raw water (before any treatment), the water produced from the membrane systems, and the water after any post-treatment. Samples must be submitted to an accredited laboratory for chemical analyses.

(8) The calculations for sizing feed pump(s) and chemical storage tank(s) must be submitted to demonstrate that a project meets chemical feed and storage capacity requirements.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the system has available the financial, managerial, and technical capability to ensure future operation of the system

in accordance with applicable laws and rules. The executive director may order the prospective owner or operator to demonstrate financial assurance to operate the system in accordance with applicable laws and rules as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems [and Utilities]), or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at a minimum, the following elements:

- (1) description of areas and population to be served by the potential system;
- (2) description of drinking water supply systems within a two-mile radius of the proposed system, copies of written requests seeking to obtain service from each of those drinking water supply systems, and copies of the responses to the written requests;
- (3) time line for construction of the system and commencement of operations;
- (4) identification of and costs of alternative sources of supply;
- (5) selection of the alternative to be used and the basis for that selection;
- (6) identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) an operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) for retail public utilities as defined by TWC, §13.002:

(A) projected rate revenue from residential, commercial, and industrial customers; and

(B) pro forma income, expense, and cash flow statements;

(11) identification of any appropriate financial assurance, including those being offered to capital providers;



(12) a notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information; and

(13) other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) Business plans not required. A person is not required to file a business plan if the person:

(1) is a county;

(2) is a retail public utility as defined by TWC, §13.002, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; [or]

(4) is a Class A utility, as defined by TWC, §13.002, that has applied for or been granted an amendment of a certificate of convenience and necessity under TWC, §13.258, for the area in which the construction of the public drinking water supply system will operate; or

(5) [(4)] is a noncommunity nontransient water system and the person has demonstrated financial assurance under THSC, Chapter 361 or Chapter 382 or TWC, Chapter 26.

(h) Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) The executive director shall be notified in writing by the design engineer or the owner before construction is started.

(3) Upon completion of the water works project, the engineer or owner shall notify the executive director in writing as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) Changes in previously approved plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment

units, and storage tanks, shall be submitted to the executive director for review and approval.

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Significant changes in existing systems or supplies shall not be instituted without the prior approval of the executive director.

(1) Public water systems shall submit plans and specifications to the executive director for the following significant changes:

(A) proposed changes to existing systems which result in an increase or decrease in production, treatment, storage, or pressure maintenance capacity;

(B) proposed changes to the disinfection process used at plants that treat surface water or groundwater that is under the direct influence of surface water including changes involving the disinfectants used, the disinfectant application points, or the disinfectant monitoring points;

(C) proposed changes to the type of disinfectant used to maintain a disinfectant residual in the distribution system;

(D) proposed changes in existing distribution systems when the change is greater than 10% of the number of connections, results in the water system's inability to comply with any of the applicable capacity requirements of §290.45 of this title, or involves interconnection with another public water system; and

(E) any other material changes specified by the executive director.

(2) Public water systems shall notify the executive director in writing of the addition of treatment chemicals, including long-term treatment changes, that will impact the corrosivity of the water. These are considered to be significant changes that require written approval from the executive director.

(A) Examples of long-term treatment changes that could impact the corrosivity of the water include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants, and switching corrosion inhibitor products. Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(B) After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the

executive director, the water system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section.

(3) Plans and specifications may not be required for changes that are specifically addressed in paragraph (1)(D) of this subsection in the following situations:

(A) Unless plans and specifications are required by Chapter 293 of this title (relating to Water Districts), the executive director will not require another state agency or a political subdivision to submit planning material on distribution line improvements if the entity has its own internal review staff and complies with all of the following criteria:

(i) the internal review staff includes one or more licensed professional engineers that are employed by the political subdivision and must be separate from, and not subject to the review or supervision of, the engineering staff or firm charged with the design of the distribution extension under review;

(ii) a licensed professional engineer on the internal review staff determines and certifies in writing that the proposed distribution system changes comply with the requirements of §290.44 of this title (relating to Water Distribution) and will not result in a violation of any provision of §290.45 of this title;

(iii) the state agency or political subdivision includes a copy of the written certification described in this subparagraph with the initial notice that is submitted to the executive director.

(B) Unless plans and specifications are required by Chapter 293 of this title, the executive director will not require planning material on distribution line improvements from any public water system that is required to submit planning material to another state agency or political subdivision that complies with the requirements of subparagraph (A) of this paragraph. The notice to the executive director must include a statement that a state statute or local ordinance requires the planning materials to be submitted to the other state agency or political subdivision and a copy of the written certification that is required in subparagraph (A) of this paragraph.

(4) Public water systems shall notify the executive director in writing of proposed replacement or change of membrane modules, which may be a significant change. After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section. In its notification to the executive director, the system shall include the following information:

(A) The membrane module make/type, model, and manufacturer;

(B) The membrane plant's water source (groundwater, surface water, groundwater under the direct influence of surface water, or other);

(C) Whether the membrane modules are used for pathogen treatment or not;

(D) Total number of membrane modules per membrane unit; and

(E) The number of membrane modules being replaced or changed for each membrane unit.

(k) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of this subchapter will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) Exceptions. Requests for exceptions to one or more of the requirements in this subchapter shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception shall precede the submission of engineering plans and specifications for a proposed project for which an exception is being requested.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(4) The executive director may establish site-specific requirements for systems that have been granted an exception. The requirements may include, but are not limited to: site-specific design, operation, maintenance, and reporting requirements.

(5) Water systems that are granted an exception shall comply with the requirements established by the executive director under paragraph (4) of this subsection.

(m) Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title.



(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by THSC, §341.035, that has a history of noncompliance with THSC, Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section;

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director.

(A) The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director.

(B) The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title and will be as specified by the executive director.

(C) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in Chapter 37, Subchapter O of this title and released only with the approval of the executive director.

(o) Emergency Preparedness Plans for Affected Utilities.

(1) Each public water system that is also an affected utility and that exists as of November 1, 2011 is required to adopt and submit to the executive director an emergency preparedness plan in accordance with §290.45 of this title and using the template in Appendix G of §290.47 of this title or another emergency preparedness plan that meets the requirements of this subchapter no later than February 1, 2012. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under this subsection provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water

treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(3) The executive director shall review an emergency preparedness plan submitted under this subsection. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with the commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(4) Not later than June 1, 2012, each affected utility shall implement the emergency preparedness plan approved by the executive director.

(5) An affected utility may file with the executive director a written request for an extension not to exceed 90 days, of the date by which the affected utility is required under this subsection to submit the affected utility's emergency preparedness plan or of the date by which the affected utility is required under this subsection to implement the affected utility's emergency preparedness plan. The executive director may approve the requested extension for good cause shown.

(6) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines

that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§291.1, 291.14, 291.76, 291.92, 291.103, 291.110, 291.114, 291.128, 291.131, 291.142, and 291.143; the repeal of §§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12, 291.21 - 291.32, 291.34, 291.35, 291.41 - 291.45, 291.71 - 291.75, 291.80 - 291.91, 291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113, 291.115 - 291.125, 291.127, 291.129, 291.130, 291.132 - 291.138, 291.141, 291.146, 291.147, and 291.150 - 291.153; and new §291.129, *without changes* to the proposal as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4671) and, therefore, will not be republished. The amendment to §291.3 and new §291.130 are adopted *with changes* to the proposed text as published and, therefore, will be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

This rulemaking is adopted to implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013; and HB 294, 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities.

HB 294 adds additional criteria to Texas Water Code (TWC), §13.412(a) that will allow the commission to request the attorney general appoint a receiver to a water or sewer utility

that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or Texas Health and Safety Code (THSC), Chapter 341.

The adopted amendment to §291.76 facilitates the ability to convert the regulatory assessment fee (RAF) to an efficient, on-line reporting, invoicing, and payment structure within the confines of the commission's existing SUNSS, Basis2, and ePay applications. This conversion from a self-report, self-pay to a billed fee allows for the collection of delinquent fees, late fees, and penalty fees as directed by 30 TAC Chapter 12, Payment of Fees.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 293, Water Districts.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes included

appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections, paragraphs, or subparagraphs were removed, subsequent subsections, paragraphs, or subparagraphs were re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

*Subchapter A: General Provisions*

*§291.1, Purpose and Scope of This Chapter*

The commission adopts amended §291.1 to remove all reference to rates and consumer protection and clarify that Chapter 291 applies to commission proceedings under TWC, §§11.036 - 11.041 and Chapter 13.

*§291.2, Severability Clause*

The commission adopts the repeal of §291.2 to conform with current commission's rule writing practices.

*§291.3, Definitions of Terms*

The commission adopts amended §291.3 to remove all paragraphs, with the exception of §291.3(2), (5), (10), (13) - (15), (23), (28), (29), (32), (34) - (36), (40), (42), (43), (52), (53), and (55). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also adopts amended §291.3(3) to add "Public Utility Commission of Texas" to the definition of "Certificate of Convenience and Necessity" to clarify that the PUC is the agency that grants certificates

of convenience and necessity.

*§291.4, Cooperative Corporation Rebates*

The commission adopts the repeal of §291.4. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.5, Submission of Documents*

The commission adopts the repeal of §291.5. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.6, Signatories of Applications*

The commission adopts the repeal of §291.6. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.8, Administrative Completeness*

The commission adopts the repeal of §291.8. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.9, Agreements To Be in Writing*

The commission adopts the repeal of §291.9 to conform with current commission's rule writing practices.

*§291.11, Informal Proceedings*



The commission adopts the repeal of §291.11. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.12, Burden of Proof*

The commission adopts the repeal of §291.12. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.14, Emergency Orders*

The commission adopts amended §291.14 to remove all language, with the exception of §291.14(b), (b)(1), and (c). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also adopts to combine existing §291.14(b) and (b)(1) to form one sentence in adopted §291.14(a).

*Subchapter B: Rates, Rate-Making, And Rates/Tariff Changes*

The commission adopts the repeal of Subchapter B, §§291.21 - 291.32, 291.34, and 291.35. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

*Subchapter C: Rate-Making Appeals*

The commission adopts the repeal of Subchapter C, §§291.41 - 291.45. The language in repealed §291.44 is adopted as §291.130 with the removal of references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600

and SB 567. The purpose of moving the language in repealed §291.44 to Subchapter I is to combine all rules related to petitions for the sale or use of water under one subchapter.

*Subchapter D: Records and Reports*

*§291.71, General Reports*

The commission adopts the repeal of §291.71. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.72, Financial Records and Reports--Uniform System of Accounts*

The commission adopts the repeal of §291.72. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.73, Water and Sewer Utilities Annual Reports*

The commission adopts the repeal of §291.73. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.74, Maintenance and Location of Records*

The commission adopts the repeal of §291.74. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.75, Management Audits*

The commission adopts the repeal of §291.75. With the transfer of these functions from

the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.76, Regulatory Assessment*

The commission adopts amended §291.76(d) to provide clarification between the amount of RAF payable to the commission versus the amounts payable to the utility service provider by their customers for water and sewer invoices. The RAF rule does not apply to ancillary fees (e.g., late fees, tap fees, reclaimed water, etc.), the clarification in this revision should ensure proper calculation, reporting, and remittance of fees.

The commission adopts amended §291.76(e) to clarify the payment period as the previous calendar year.

The commission adopts amended §291.76(h) to clarify that retail water and sewer applies to both charges and the assessment collection.

The commission adopts amended §291.76(i) to specify the utility service provider must ensure retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's on-line portal.

The commission adopts §291.76(i)(1) to allow the commission to issue an invoice based on previously reported revenues and adjustment based on available information if the utility service provider does not report charges for water and sewer services to the commission by January 30th of each year.

The commission adopts §291.76(i)(2) to allow the commission to issue an invoice in an amount up to \$100 if the utility service provider has not previously reported charges for water and sewer services to the commission.

The commission adopts §291.76(i)(3) to clarify that utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline are not relieved of the requirement to ensure retail water and sewer charges are reported through the on-line portal. Once the utility service provider reports charges for water and sewer services to the commission through the on-line portal, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

The commission adopts amended §291.76(k) to clarify that assessment shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal.

#### *Subchapter E: Customer Service and Protection*

The commission adopts the repeal of Subchapter E, §§291.80 - 291.90. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required. Additionally, the requirements for each utility to maintain a current copy of Chapter 290, Subchapter D and Chapter 291 at each office location is no longer necessary because up-to-date versions of Chapters 290 and 291 are

readily available online.

*Subchapter F: Quality of Service*

*§291.91, Applicability*

The commission adopts the repeal of §291.91. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.92, Requirements by Others*

The commission adopts amended §291.92 to remove subsection (b), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

*Subchapter G: Certificates of Convenience and Necessity*

*§291.101, Certificate Required*

The commission adopts the repeal of §291.101. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

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

The commission adopts the repeal of §291.102. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.103, Certificates Not Required*

The commission adopts amended §291.103 to remove all language, with the exception of

§291.103(d)(1) and (1)(A) - (D). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

*§291.104, Applicant*

The commission adopts the repeal of §291.104. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.105, Contents of Certificate of Convenience and Necessity Applications*

The commission adopts the repeal of §291.105. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.106, Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications*

The commission adopts the repeal of §291.106. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.107, Action on Applications*

The commission adopts the repeal of §291.107. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.109, Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction*

The commission adopts the repeal of §291.109. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.110, Foreclosure and Bankruptcy*

The commission adopts amended §291.110 to remove all language, with the exception of §291.110(a), (c), and (e). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. Additionally, the commission adopts amended §291.110(b) to remove "is not required to provide the 120-day notice prescribed by §13.301 of the code" which also pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

*§291.111, Purchase of Voting Stock in Another Utility*

The commission adopts the repeal of §291.111. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

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

The commission adopts the repeal of §291.112. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.113, Revocation or Amendment of Certificate*

The commission adopts the repeal of §291.113. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.114, Requirement To Provide Continuous and Adequate Service*

The commission adopts amended §291.114 to remove all language, with the exception of

§291.114(b) and (b)(1) - (3). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The language in §291.114(b)(4) is removed to be consistent with TWC, §13.041. Additionally, the commission adopts amended §291.114(b)(1)(B) to replace "commission" with "Public Utility Commission of Texas" and remove the requirement that a retail public utility provide financial assurance in accordance with TCEQ's rules in Chapter 37, Subchapter O.

*§291.115, Cessation of Operations by a Retail Public Utility*

The commission adopts the repeal of §291.115. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.116, Exclusiveness of Certificates*

The commission adopts the repeal of §291.116. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.117, Contracts Valid and Enforceable*

The commission adopts the repeal of §291.117. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.118, Contents of Request for Commission Order under the Texas Water Code,  
§13.252*

The commission adopts the repeal of §291.118. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.



*§291.119, Filing of Maps*

The commission adopts the repeal of §291.119. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.120, Single Certification in Incorporated or Annexed Areas*

The commission adopts the repeal of §291.120. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*Subchapter H: Utility Submetering and Allocation*

The commission adopts the repeal of Subchapter H, §§291.121 - 291.125 and §291.127. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

*Subchapter I: Wholesale Water Petitions*

The commission amends the title of Subchapter I to "Wholesale Water Petitions" to more closely reflect the subchapter's contents.

*§291.128, Petition Concerning Wholesale Water*

The commission adopts amended §291.128(1) to clarify the applicable sections in TWC, Chapter 11 and remove the reference to TWC, Chapter 12. The commission removes §291.128(2) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567; and renames the section to more closely reflect the

section's purpose.

*§291.129, Definitions*

The commission adopts the repeal of §291.129. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.129, Petition*

The commission adopts §291.129. The language in adopted §291.129 is from repealed §291.130, with the exception of existing §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

*§291.130, Petition or Appeal*

The commission adopts the repeal of §291.130. The language in §291.130 is adopted as §291.129, with the exception of §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The purpose of moving the language in §291.130 to adopted §291.129 is so the general language in repealed §291.130 comes before the language in adopted §291.130 pertaining to specific petitions under TWC, §§11.036 - 11.041.

*§291.130, Contents of Petition under Texas Water Code, §§11.036 - 11.041*

The commission adopts §291.130. The language in adopted §291.130 is from repealed §291.44 with the following changes: removed the references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600 and SB

567; changed the reference from ratepayer to person, changed the reference from water supplier to entity, and removed the references to supply service in order to conform to TWC, §§11.036 - 11.041; included language to clarify that the petition includes the applicable requirements depending on which statutory provision is being invoked; and removed redundant language found in adopted §291.129. The purpose of moving the language from repealed §291.44 to adopted §291.130 is to combine all rules related to petitions for the sale or use of water under one subchapter. At adoption, clarifying language was added to §291.130(d) in response to comment.

*§291.131, Executive Director's Review of Petition*

The commission adopts amended §291.131 to remove all language, with the exception of §291.131(a). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission removes the reference to appeal and adds language to clarify TCEQ's authority under TWC, §§11.036 - 11.041. The commission also updates the references from §291.130 to adopted §291.129.

*§291.132, Evidentiary Hearing on Public Interest*

The commission adopts the repeal of §291.132. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 with the exception of TWC, §11.036 transferred from the commission to the PUC on September 1, 2014.

*§291.133, Determination of Public Interest*

The commission adopts the repeal of §291.133. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.134, Commission Action to Protect Public Interest, Set Rate*

The commission adopts the repeal of §291.134. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.135, Determination of Cost of Service*

The commission adopts the repeal of §291.135. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.136, Burden of Proof*

The commission adopts the repeal of §291.136. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.137, Commission Order To Discourage Succession of Rate Disputes*

The commission adopts the repeal of §291.137. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.138, Filing of Rate Data*

The commission adopts the repeal of §291.138. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*Subchapter J: Enforcement, Supervision, and Receivership*

*§291.141, Supervision of Certain Utilities*

The commission adopts the repeal of §291.141. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.142, Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver*

The commission adopts §291.142(a)(2)(D) to include additional criteria that allows the commission or the executive director to request the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or THSC, Chapter 341.

*§291.143, Operation of a Utility by a Temporary Manager*

The commission adopts amended §291.143(d) to change the term of the temporary manager from "one year" to "180 days" to be consistent with TWC, §5.505.

*§291.146, Municipal Rates for Certain Recreational Vehicle Parks*

The commission adopts the repeal of §291.146. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.147, Temporary Rates for Services Provided for a Nonfunctioning System*

The commission adopts the repeal of §291.147. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*Subchapter K: Provisions Regarding Municipalities*

The commission adopts the repeal of Subchapter K, §§291.150 - 291.153. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

**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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas

Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567 (2013), transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The intent of the adopted rulemaking associated with HB 1600 and SB 567 is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities. HB 294 (2017) adds additional criteria to TWC, §13.412(a) that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341. The intent of the adopted rulemaking associated with HB 294 is to incorporate the additional criteria listed in TWC, §13.142(a) into §291.142. The intent of the adopted changes to §291.76 is to convert the RAF from a self-report, self-pay fee to a billed fee. The conversion from a self-report, self-pay fee to a billed fee will allow for the collection of delinquent fees, late fees, and penalty fees as directed by Chapter 12. The intent of these rules is not to protect the environment or reduce risks to human health from

environmental exposure, but instead to amend and repeal the rules relating to economic regulation of water and wastewater utilities; incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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 rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to



implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any express requirements of TWC, Chapter 5, 11, 12, or 13, which relate to the collection of fees, economic regulation of water and wastewater utilities, and the appointment of a receiver for water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government

Code, Chapter 2007.

The commission adopts these rules for the following purposes: 1) to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; 2) to incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) the conversion of the RAF from a self-report, self-pay fee to a billed fee.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5) provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities falls within an exception under

Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this portion of the adopted rulemaking.

Further, the commission determined that amending and repealing obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities; incorporating additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee 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 rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The specific intent of the adopted rulemaking is to: 1) transfer functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567; 2) incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) to convert the RAF from a self-report, self-pay fee to a billed fee. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are 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. No comments were received regarding consistency with the CMP.

### **Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission received comments on Chapter 291 from Bickerstaff Heath Delgado Acosta LLP (Bickerstaff). Bickerstaff suggested changes to the rules.

### **Response to Comments**

#### *Comment*

Bickerstaff commented that the last sentence of §291.130(d), which states, "*in the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction*" be deleted or revised as it is unclear what the commission considers to be "within the

commission's jurisdiction" or outside of the commission's jurisdiction as it relates to a petition filed under TWC, §11.041.

*Response*

The commission disagrees with the recommendation to delete the sentence, "in the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction." The amendment of TWC, §12.013 transferred the authority to "fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 {of the TWC}" from the commission to the PUC; therefore, the executive director does not have the authority to present evidence to fix a reasonable rate nor does the executive director have the authority to answer the related question regarding whether a rate is reasonable. Fixing a reasonable rate and determining whether a rate is reasonable, although not the same question, requires an investigation into how and what the rate should be. TWC, §12.013(c) authorizes the PUC to use any appropriate, reasonable basis for reviewing and fixing rates. TWC, §11.041(f) also authorizes the PUC to participate in a commission hearing to present evidence on the price or rental demanded for the available water. Under TWC, §12.013, PUC is the agency authorized to "fix reasonable rates for the furnishing of raw or treated water" under TWC, Chapters 11 and 12; therefore, whether the rate is just and reasonable and whether the price demanded for the available water is reasonable and just or is discriminatory fall within PUC's jurisdiction. No changes were made to the rules in response to this comment.

Comment

Bickerstaff commented that TWC, §11.041(b) requires the commission to hold a hearing, and on completion of that hearing, "render a written decision" regarding the complaint. Bickerstaff commented that all of the items listed in TWC, §11.041 are within the commission's jurisdiction to decide, and the commission is obligated to consider and render a decision on each of the elements, even if the executive director does not provide testimony or evidence on each element.

*Response*

**The commission disagrees with these comments. The commission will issue a final decision on each of the elements in TWC, §11.041(a) within its jurisdiction; however, the commission will not decide or consider the elements which fall under the jurisdiction of the PUC. Specifically, the commission will decide the following elements of TWC, §11.041: 1) whether the petitioner is entitled to receive or use the water; 2) whether the petitioner is willing and able to pay a just and reasonable price for the water, where the just and reasonable price is determined by the PUC; 3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and 4) whether the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner. The PUC must decide a just and reasonable price for the water and whether the price or rental demanded for the available water is reasonable and just or is discriminatory. No changes were made to the rules in response to this comment.**

*Comment*

Bickerstaff commented that what is outside the commission's authority or jurisdiction is the ability to set a rate for the water should the commission determine the petitioner is entitled to the water, is willing and able to pay a just and reasonable rate, the water supplier has available water not contracted to others, and the water supplier either refused or failed to supply the water, or the price or rental demanded by the water supplier is not reasonable and just or is discriminatory. Bickerstaff commented that the PUC has the jurisdiction to fix a reasonable rate or price for the water as provided by TWC, §12.013, and although PUC may participate under TWC, §11.041, it does not limit TCEQ's jurisdiction over the four elements listed in TWC, §11.041.

*Response*

**The commission agrees with the portion of Bickerstaff's comment stating that the ability to set a rate is outside the commission's jurisdiction. The authority to set a just and reasonable rate for a petition under TWC, §11.041 lies with the PUC. The commission is required to hold a hearing and render a written decision under TWC, §11.041. The commission's executive director is unable to provide evidence and testimony on what a just and reasonable rate is and whether the price or rental demanded for the available water is reasonable and just or is discriminatory. The issues of what is a just and reasonable price for the water and whether the price and or rental demanded for the available water is reasonable and just or is discriminatory should be addressed by the PUC. TWC, §11.041(f) authorizes PUC to participate in a**

**commission hearing to present evidence on the price or rental demanded for the available water. PUC is the agency required to "fix reasonable rates" under TWC, §12.013(a); therefore, the issue regarding what is a just and reasonable rate and whether the price demanded for the available water is reasonable and just or is discriminatory fall within PUC's jurisdiction. No changes were made to the rules in response to this comment.**

#### Comment

Bickerstaff comments that alternatively, the sentence should be clarified to state that the executive director will not provide evidence or testimony to fix the rate for the water, which is reserved for the PUC.

#### Response

**The commission agrees that the sentence can be clarified to explain the commission's jurisdiction but disagrees with Bickerstaff's recommended changes to the last sentence in §291.130(d). In order to clarify which elements in TWC, §11.041(a) the commission has jurisdiction over, the commission adds the following language after the last sentence in §291.130(d): "In a petition filed under TWC, §11.041, the commission's jurisdiction is limited to: (1) whether the petitioner is entitled to receive or use the water; (2) whether the petitioner is willing and able to pay a just and reasonable price for the water, where a just and reasonable price is determined by the Public Utility Commission of Texas; (3) whether the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use;**



**and (4) whether the party owning or controlling the water supply fails or refuses to supply available water to the petitioner."**

## SUBCHAPTER A: GENERAL PROVISIONS

### §§291.1, 291.3, 291.14

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§291.1. Purpose and Scope of This Chapter.**

This chapter is intended to govern the procedure for the institution, conduct and determination of commission proceedings under Texas Water Code (TWC), §§11.036 - 11.041 and Chapter 13. This chapter 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. 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. [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.]

**§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.]

(1) [(2)] Affected county--A county to which Texas 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.]

(2) [(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 Texas Department of Insurance, Division of 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.]

(3) [(10)] Certificate of Convenience and Necessity--A permit issued by the Public Utility Commission of Texas [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.]

(4) [(13)] Code--The Texas Water Code.

(5) [(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.

(6) [(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.]

(7) [(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.]

(8) [(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).

(9) [(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.]

(10) (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.]

(11) (34) Public utility--The definition of public utility is that definition given to "Water [water] and sewer utility" in this section [subchapter].

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

(13) (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.]

(14) [(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.]

(15) [(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.

(16) [(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.]

(17) [(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.

(18) [(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.]

(19) [(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.

**§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 paragraph (2) of this subsection and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.]

(a) [(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.]

(b) [(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.

**SUBCHAPTER A: GENERAL PROVISIONS**

**[§§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**[§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.]

**[§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.]

**[§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.]

**[§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.]

**[\$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.]

**[§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 be 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.]

**[\$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.]

**[\$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.]

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

**[§§291.21 - 291.32, 291.34, 291.35]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as noted in this subsection. A utility may charge the rates proposed under Texas Water Code (TWC), §13.187(a) (relating to Statement of Intent to Change Rates) after the proposed effective date, unless the rates are suspended or the commission or a judge sets interim rates. The regulatory assessment required in TWC, §5.235(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at

the earliest opportunity. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service that enters into an agreement in accordance with TWC, §13.250(b)(2), may collect charges for wastewater services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement. A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.]

[ (b) Requirements as to size, form, identification, minor changes, and filing of tariffs.]

[ (1) Tariffs filed with applications for certificates of convenience and necessity.]

[ (A) Every public utility shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. The tariff must be on the form the commission prescribes or another form acceptable to the commission.]

[(B) Every water supply or sewer service corporation shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a retail public utility.]

[(2) Minor tariff changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county may change rates for water or wastewater service without commission approval but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.]

[(A) The executive director may approve the following minor changes to tariffs:]

[(i) service rules and policies;]

[(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by the applicable sections;]

[(iii) implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water

use imposed by a court, government agency, or other authority, or water use fee provision previously approved by the commission;]

[iv) surcharges over a time period determined by the executive director to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or at the discretion of the executive director, other governmental requirements beyond the utility's control;]

[v) addition of the regulatory assessment as a separate item or to be included in the currently authorized rate;]

[vi) addition of a provision allowing a utility to collect wastewater charges in accordance with TWC, §13.250(b)(2) or §13.147(d);]

[vii) rate adjustments to implement authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs;]

[viii) addition of a production fee charged by a groundwater conservation district as a separate item calculated by multiplying the customer's total consumption, including the number of gallons in the base bill, by the actual production fee per thousand gallons; or]

[ix) implementation of an energy cost adjustment clause.]

[B) The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.]

[(3) Tariff revisions and tariffs filed with rate changes. The utility shall file three copies of each revision or in the case of a rate change, the number required in the application form. Each revision must be accompanied by a cover page that contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.]

[(4) Rate schedule. Each rate schedule must clearly state the territory, subdivision, city, or county in which the schedule is applicable.]

[(5) Tariff sheets. Tariff sheets must be numbered consecutively. Each sheet must show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers must be the same.]

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

[(1) a table of contents;]

[(2) a list of the cities and counties, and subdivisions or systems, in which service is provided;]

[(3) the certificate of convenience and necessity number under which service is provided;]

[(4) the rate schedules;]

[(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 Drinking Water Systems) if the form used deviates from that specified in §290.47(d) of this title (relating to Appendices);]

[(6) the extension policy;]

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

[(8) the form of payment to be accepted for utility services.]

[(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the application number, date of the order, a list of tariff sheets filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's model tariff or any modifications of a rule in the model tariff must be clearly noted. All tariff sheets must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariffs must comply with the provisions of the order.]

[(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.]



[(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section must be so marked and returned to the utility with a brief explanation of the reasons for rejection.]

[(g) Change by other regulatory authorities. Tariffs must be filed to reflect changes in rates or regulations set by other regulatory authorities and must include a copy of the order or ordinance authorizing the change. Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the commission a copy of its current tariff that has been authorized by the municipality.]

[(h) Purchased water or sewage treatment provision.]

[(1) A utility that purchases water or sewage treatment may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated and affects customer billings.]

[(2) This provision must be approved by the commission in a rate proceeding. A proposed change in the method of calculation of the provision must be approved in a rate proceeding.]

[(3) Once the provision is approved, any revision of a utility's billings to its customers to allow for the recovery of additional costs under the provision may be made only upon issuing notice as required by paragraph (4) of this subsection. The executive

director's review of a proposed revision is an informal proceeding. Only the commission, the executive director, or the utility may request a hearing on the proposed revision. The recovery of additional costs is defined as an increase in water use fees or in costs of purchased water or sewage treatment.]

[(4) A utility that wishes to revise utility billings to its customers pursuant to an approved purchased water or sewer treatment or water use fee provision to allow for the recovery of additional costs shall take the following actions prior to the beginning of the billing period in which the revision takes effect:]

[(A) submit a written notice to the executive director; and]

[(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the change, the present calculation of customer billings, the new calculation of customer billings, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water) (purchased sewer) (water use fee) adjustment clause to recognize (increases) (decreases) in the (water use fee) (cost of purchased) (water) (sewage treatment). The cost of these charges to customers will not exceed the (increased) (decreased) cost of (the water use fee) (purchased) (water) (sewage treatment)."]

[(5) Notice to the commission must include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.]

[(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.]

[(i) Effective date. The effective date of a tariff change is the date of approval by the executive director unless otherwise stated in the letter transmitting the approval or the date of approval by the commission, unless otherwise specified in a commission order or rule. The effective date of a proposed rate increase under TWC, §13.187 is the proposed date on the notice to customers and the commission, unless suspended and must comply with the requirements of §291.8(b) of this title (relating to Administrative Completeness).]

[(j) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, one copy of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rules and regulations relating to or affecting the rates, utility service or extension of service or product, or commodity furnished and shall specify the certificate of convenience and necessity number and in which counties or cities it is effective.]

[(k) Surcharge.]

[(1) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.]

[(2) If specifically authorized for the utility in writing by the executive director or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:]

[(A) sampling fees not already included in rates;]

[(B) inspection fees not already included in rates;]

[(C) production fees or connection fees not already included in rates charged by a groundwater conservation district; or]

[(D) other governmental requirements beyond the control of the utility.]

[(3) A utility shall use the revenues collected pursuant to a surcharge only for the purposes noted and handle the funds in the manner specified according to the

notice or application submitted by the utility to the commission, unless otherwise directed by the executive director. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the executive director.]

[ (l) Temporary water rate.]

[(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that affect the utility customer' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover from customers revenues that the utility would otherwise have lost due to mandatory water use reductions in accordance with the temporary water rate provision approved by the commission. If a utility obtains a portion of its water supply from another unrestricted water source or water supplier during the time the temporary water rate is in effect, the rate resulting from implementation of the temporary water rate provision must be adjusted to account for the supplemental water supply and to limit over-recovery of revenues from customers. A temporary water rate provision may not be implemented by a utility if there exists an available, unrestricted, alternative water supply that the utility can use to immediately replace, without additional cost, the water made unavailable because of the action requiring a mandatory reduction of use of the affected water supply.]

[(2) The temporary water rate provision must be approved by the commission in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.]

[(3) A utility may request a temporary water rate provision using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions through a limited rate proceeding. The formula for a temporary water rate provision under this paragraph is:]

[Figure: 30 TAC §291.21(l)(3)]

[TGC	=	temporary gallonage charge]
[cgc	=	current gallonage charge]
[r	=	water use reduction expressed as a decimal fraction (the pumping restriction)]
[pr	=	percentage of revenues to be recovered expressed as a decimal fraction (i.e. 50% = 0.5)]

[ $TGC = cgc + [(pr)(cgc)(r)/(1.0-r)]$ ]

[(A) The utility shall file a temporary water rate application prescribed by the executive director and provide customer notice as required in the application, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the classes of customers affected, the rates affected, information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, the time frame for protests, and any other information that is required by the executive director in the temporary water rate application. The utility's existing rates are not subject to review in the proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §291.23 of this title (relating to Time between Filings).]

[(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.]

[(4) A utility may request a temporary water rate provision using the formula in paragraph (3) of this subsection or any other method acceptable to the commission to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.]

[A] If the utility requests authorization to recover more than 50% of lost revenues, it shall submit financial data to support its existing rates as well as the temporary water rate provision even if no other rates are proposed to be changed. The utility shall complete a rate application and provide notice in accordance with the requirements of §291.22 of this title (relating to Notice of Intent To Change Rates). The utility's existing rates are subject to review in addition to the temporary water rate provision.]

[B] The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the commission in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.]

[(5) The utility may place the temporary water rate into effect only after:]

[A] the temporary water provision has been approved by the commission and included in the utility's approved tariff in a prior rate proceeding;]



[(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and]

[(C) issuing notice as required by paragraph (7) of this subsection.]

[(6) The utility may readjust its rates using the temporary water rate provision as necessary to respond to modifications or changes to the original order requiring mandatory water use reductions by reissuing notice as required by paragraph (7) of this subsection. The executive director's review of the proposed implementation of an approved temporary water rate provision is an informal proceeding. Only the commission, the executive director, or the utility may request a hearing on the proposed implementation.]

[(7) A utility that wishes to place a temporary water rate into effect shall take the following actions prior to the beginning of the billing period in which the temporary water rate takes effect:]

[(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the executive director; and]

[(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate is implemented. The notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Texas Commission on Environmental Quality to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from (\$ per 1,000 gallons to \$ per 1,000 gallons)."]

[(8) A utility shall stop charging a temporary water rate as soon as is practical after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall notify its customers of the date that the temporary water rate ends and that its rates will return to the level authorized before the temporary water rate was implemented.]

[(9) If the commission initiates an inquiry into the appropriateness or the continuation of a temporary water rate, it may establish the effective date of its decision on or after the date the inquiry is filed.]

[(m) Multiple system consolidation. Except as otherwise provided in subsection (o) of this section, a utility may consolidate its tariff and rate design for more than one system if:]

[(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and]

[(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.]

[(n) Regional rates. The commission, where practicable, shall consolidate the rates by region for applications submitted with a consolidated tariff and rate design for more than one system.]

[(o) Exemption. Subsection (m) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.]

[(p) Energy cost adjustment clause.]

[(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.]

[(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff shall file an application with the executive director. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was mailed to affected customers and stating the dates of such mailing shall be filed with the commission by the applicant utility as part of the application. Notice must be provided on the notice form included in the commission's application package and must contain the following information:]

[(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the classes of utility customers affected. The effective date of the proposed energy cost adjustment clause 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 clause may not apply to service received before the effective date of the clause;]

[(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and]

[(C) any other information that is required by the executive director in the application form.]

[(3) The executive director's review of the utility's application is an uncontested matter not subject to a contested case hearing. However, the executive director shall hold an uncontested public meeting on the application if requested by a member of the legislature who represents the area served by the utility or if the executive director determines that there is substantial public interest in the matter.]

[(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass through, whether an increase or decrease, shall be implemented on at least an annual basis, unless the executive director determines a special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection.]

[(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility shall take the following

actions prior to the beginning of the billing period in which the implementation takes effect:]

[ (A) submit written notice to the executive director, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and]

[ (B) mail either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs." ]

[ (6) The executive director may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly complete the application or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the executive director may suspend the adoption or implementation of the clause until the utility provides additional

documentation requested by the executive director. If the executive director suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the executive director.]

[(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.]

[(8) A proceeding under this subsection is not a rate case, and TWC, §13.187 does not apply.]

**[\$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;]

[(5) disclosure of an ongoing proceeding under §291.113 of this title (relating to Revocation or Amendment of Certificate), if any;]

[(6) the reason or reasons for the proposed rate change;]

[(7) any bill payment assistance program available to low-income ratepayers;  
and]



[(8) 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 (TWC), §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 TWC, §13.4132; or]

[(2) for which a receiver has been appointed under TWC, §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.]

**[§291.23. Time between Filings.]**

[Unless the commission requires it to deliver a corrected statement of intent, a utility or two or more utilities under common control or ownership may not file a notice of intent to increase rates more than once in a 12-month period except:]

[(1) to implement an approved purchase water pass through provision;]

[(2) to adjust the rates of a newly acquired utility system; or]

[(3) to comply with a commission order;]

[(4) to adjust rates authorized by §291.21(b)(2) of this title (relating to Form and Filing of Tariffs); or]

[(5) unless the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:]

[(A) cover reasonable and necessary operating expenses; or]

[(B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements.]

**[§291.24. Jurisdiction over Affiliated Interests.]**

[(a) The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but not limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.]

[(b) The owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless:]

[(1) the wholesale service is provided for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; or]

[(2) the executive director determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.]

**[§291.25. Rate Change Applications, Testimony and Exhibits.]**

[(a) A change in rates under the Texas Water Code, §13.187, is initiated by the submission of a rate filing package which consists of a rate/tariff change application form, or such other forms as prescribed by the commission, a statement of intent to

change rates, and a copy of the notice the applicant has provided to customers and other affected parties.]

[(b) A utility filing for a change in rates under the Texas Water Code, §13.187, shall be prepared to go forward at a hearing on the data which has been submitted under subsection (a) of this section and sustain the burden of proof of establishing that its proposed changes are just and reasonable.]

[(c) An original of the completed rate filing package and the number of copies specified in the application form shall be submitted and filed with the commission. In the event that the proposed rate change becomes the subject of a hearing, the commission may require or allow, in addition to copies of the rate filing package, prefiled testimony and exhibits in support of the rate change request.]

[(d) The book data included in the schedules and information prepared and submitted as part of the filing shall be reported in a separate column or columns. All adjustments to book amounts shall also be shown in a separate column or columns so that books amounts, adjustments thereto, and adjusted amounts will be clearly disclosed, and any separation and allocation between interstate and intrastate operations shall be fully disclosed and clearly explained.]

[(e) All intervenors or protestants shall file the specified number of copies of their prepared testimony, if required, and exhibits within the time period specified by the judge assigned to the application.]

[(f) If required to prefile testimony, the executive director shall prefile, except for good cause, the prepared testimony and exhibits of its witnesses eight days prior to the final hearing but shall not otherwise be required to present its case prior to that time, except upon the granting of motions for discovery.]

[(g) The items in the rate filing package may be modified on a showing of good cause.]

**[§291.26. Suspension of Rates.]**

[(a) The executive director or the commission may suspend the rate change if the utility has failed 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. The utility may 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) The effective date of any rate change may be suspended by the commission or the executive director if the utility does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity.]

[(c) If the commission receives the required number of protests that would require a contested case hearing, the commission may, pending the hearing and a final decision from the commission, suspend the date the rate change would be effective. The proposed rate may not be suspended for more than 150 days.]

**[\$291.27. Request for a Review of a Rate Change by Ratepayers Pursuant to the Texas Water Code, §13.187(b).]**

[(a) Petitions for review of rate actions filed by ratepayers pursuant to the Texas Water Code, §13.187(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:]

[(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action; and]



[(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer (the petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer).]

[(b) Ratepayers may initiate a review of a rate change application by filing individual complaints rather than joint petitions. Each complaint should contain the information required in subsection (a) of this section.]

[(c) In order for a review to be initiated under subsection (a) or (b) of this section, complaints must be received from a total of 1,000 or 10% of the affected ratepayers, whichever is less.]

**[§291.28. Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b).]**

[The commission may conduct a public hearing on any application.]

[(1) If, before the 91st day after the effective date of the rate change, the commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing. If after hearing, the commission finds the rates currently being charged or those proposed

to be charged are unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.]

[ (2) If a hearing is scheduled, the commission may require the utility to provide notice of the time and place of the hearing to its customers through a billing insert or separate mailing.]

[ (3) If the commission does not receive sufficient customer complaints or if the executive director does not request a hearing within 120 days after the effective date, the utility's proposed tariff will be reviewed for compliance with the Texas Water Code and the provisions of this chapter. If the proposed tariff complies with the Texas Water Code and the provisions of this chapter, it shall be stamped approved by the executive director or his designated representative and a copy returned to the utility. The executive director may require the utility to notify its customers that sufficient complaints were not received to schedule a hearing and the proposed rates were approved without hearing.]

[ (4) The executive director or commission may request additional information from any utility in the course of evaluating the rate/tariff change request, and the utility shall provide that information within 20 days of receipt of the request, unless a different time is agreed to. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the commission may disallow the unsupported costs or expenses.]

[(5) If the commission sets a rate different from that proposed by the utility in its notice of intent, the utility shall include in its first billing at the new rate a notice to the customers of the rate set by the commission including the following statement: "The Texas Commission on Environmental Quality, after public hearing, has established the following rates for utility service:".]

[(6) If the commission conducts a hearing, it may establish rates different from those currently being charged or proposed to be charged by the utility, but the total annual revenue increase resulting from the commission's rates may not exceed the greater of the annual revenue increase provided in the customer notice or revenue increase that would have been produced by the proposed rates except for the inclusion of reasonable rate case expenses. The commission may reclassify a portion of a utility's proposed rates as a capital improvement surcharge if the revenues are to be used for capital improvements or are to service debt on capital items.]

[(7) A utility may recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest.]

[(8) A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a

contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.]

[(9) A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.]

**[\$291.29. Interim Rates.]**

[(a) The commission or judge may on a motion by the executive director or by the appellant under Texas Water Code, §13.043(a), (b), or (f), as amended, establish interim rates to remain in effect until a final decision is made.]

[(b) At any time after the filing of a statement of intent to change rates under Texas Water Code, §13.187, as amended, the executive director may petition the commission or judge to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates.]

[(c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was

suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.]

[(d) Interim rates may be established by the commission or judge in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.]

[(e) In making a determination under subsection (d) of this section, the commission or judge may limit its consideration of the matter to oral arguments of the affected parties and may:]

[(1) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;]

[(2) deny interim rate relief; and]

[(3) require that all or part of the requested rate increase be deposited in an escrow account in accordance with §291.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).]

[(f) The commission may also remand the request for interim rates to the State Office of Administrative Hearings for an evidentiary hearing on interim rates. The presiding judge shall issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.]

[(g) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.]

[(h) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments.]

[(i) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.]

[(j) The retail public utility shall provide a notice to its customers including the interim rates set by the commission or judge with the first billing at the interim rates with the following wording: "The commission (or judge) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established."]

**[\$291.30. Escrow of Proceeds Received under Rate Increase.]**

[(a) Rates received during the pendency of a rate proceeding.]

[(1) During the pendency of its rate proceeding, a utility may be required to deposit all or part of the rate increase into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.]

[(2) The utility shall file an original and three copies of a completed escrow agreement between the utility and the financial institution with the commission for review and approval by the executive director.]

[(3) If necessary to meet the utility's current operating expenses, or for other good cause shown, the executive director may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.]

[(4) The executive director, except for good cause shown, shall give all parties-of-record at least 10 days notice of an intent to release funds from an escrow account. Any party may file a motion with the commission to enjoin the executive director's proposed release of escrow funds or to establish different terms and conditions for the release of escrowed funds.]

[(5) Upon the commission's establishment of final rates, all funds remaining in the escrow account shall be released to the utility or ratepayers in accordance with the terms of the commission's order.]

[(b) Surcharge revenues granted by commission order at the conclusion of a rate proceeding.]

[(1) A utility may be required to deposit all or part of surcharge funds authorized by the commission into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.]

[(2) Prior to collecting any surcharge revenues that are required to be escrowed, the utility shall submit for executive director approval an original and three copies of a completed escrow agreement between the utility and the financial institution. If the utility fails to promptly remedy any deficiencies in the agreement noted by the executive director, the executive director may suspend the collection of surcharge revenues until the agreement is properly amended.]

[(3) In order to allow the utility to complete the improvements for which surcharge funds were granted, the executive director may authorize the release of funds



to the utility from the escrow account after receiving a written request including appropriate documentation.]

**[\$291.31. Cost of Service.]**

[(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.]

[(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes may be considered.]

[(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:]

[(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in Texas Water Code (TWC), §13.185(e));]

[B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation is allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property is allowed in the cost of service. On all applications declared administratively complete after the effective date of these rules, the depreciation accrual for all assets must account for expected net salvage value in the calculation of the depreciation rate and actual net salvage value related to retired plant. The depreciation rate and expense must be calculated on a straight line basis over the expected or remaining life of the asset. Utilities must calculate depreciation on a straight line basis, but are not required to use the remaining life method if salvage value is zero. When submitting an application that includes salvage value in depreciation calculations, the utility must submit sufficient evidence with the application establishing that the estimated salvage value, including removal costs, is reasonable. Such evidence will be included for the asset group in deprecation studies for those utilities practicing group accounting while such evidence will relate to specific assets for those utilities practicing itemized accounting;]

[(C) assessments and taxes other than income taxes;]

[(D) federal income taxes on a normalized basis (federal income taxes must be computed according to the provisions of TWC, §13.185(f), if applicable);]

[(E) reasonable expenditures for ordinary advertising, contributions, and donations; and]

[(F) funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.]

[(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:]

[(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;]

[(B) funds expended in support of political candidates;]

[(C) funds expended in support of any political movement;]

[(D) funds expended in promotion of political or religious causes;]

[(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;]

[(F) funds promoting increased consumption of water;]

[(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A) - (F) of this paragraph;]

[(H) costs, including, but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission;]

[(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and]

[(J) the costs of purchasing groundwater from any source if:]

[(i) the source of the groundwater is located in a priority groundwater management area; and]

[(ii) a wholesale supply of surface water is available.]

[(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.]

[(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.]

[(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.]

[(B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.]

[(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.]

[i] Debt capital. The cost of debt capital is the actual cost of debt.]

[ii] Equity capital. The cost of equity capital must be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.]

[I] Common stock capital. The cost of common stock capital must be based upon a fair return on its value.]

[II] Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.]

[(2) Invested capital, also referred to as rate base. The rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:]

[(A) original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service;]

[ (B) original cost, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the utility; and]

[ (i) original cost under subparagraph (A) of this paragraph or this subparagraph is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor. Assets may be booked in itemized or group accounting, but all accounting for assets and their retirements must be supported by an approved accounting system. On all assets retired from service after June 19, 2009, the original cost of an asset must be the book cost less net salvage value. If a utility calculates annual depreciation expense for an asset with allowance for salvage value, then it must account for the actual salvage amounts when the asset is actually retired. The utility must include the actual salvage calculation(s) in its net plant calculation(s) in the first full rate change application (excluding alternative rate method applications as described in §291.34 of this title (relating to Alternative Rate Methods)) it files after the date on which the asset was removed from service, even if it was not retired during the test year. Recovery of investment on assets retired from service before the estimated useful life or remaining life of the asset shall be combined with over accrual of depreciation expense for those assets retired after the estimated useful life or remaining life, and the net amount shall be amortized over a reasonable period of time taking into account prudent regulatory principles. The following list shall govern the manner by which depreciation will be accounted for.]

[I] Accelerated depreciation is not allowed.]

[II] For those utilities that elect a group accounting approach, all mortality characteristics, both life and net salvage, must be supported by an engineering or economic based depreciation study for which the test year for the depreciation is no more than five years old in comparison to the rate case test year. The engineering or economic based depreciation study must include:]

[(-a-) investment by homogenous category;]

[(-b-) expected level of gross salvage by category;]

[(-c-) expected cost of removal by category;]

[(-d-) the accumulated provision for depreciation as appropriately reflected on the company's books by category;]

[(-e-) the average service life by category;]

[(-f-) the remaining life by category;]



and] [(-g-) the Iowa Dispersion Pattern by category;

[(-h-) a detailed narrative identifying the specific factors, data, criteria and assumptions that were employed to arrive at the specific mortality proposal for each homogenous group of property.]

[ii] reserve for depreciation under subparagraph (A) of this paragraph or this subparagraph is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life or remaining life of the asset. If individual accounting is used, a utility must continue booking depreciation expense until the asset is actually retired, and the reserve for depreciation shall include any additional depreciation expense accrued past the estimated useful or remaining life of the asset. If salvage value is zero, depreciation must be computed on a straight line basis over the expected useful life or remaining life of the item or facility. If salvage value is not zero, depreciation must also be computed on a straight line basis over the expected useful life or the remaining life. For an asset removed from service after June 19, 2009, accumulated depreciation will be calculated on book cost less net salvage of the asset. The retirement of a plant asset from service is accounted for by crediting the book cost to the utility plant account in which it is included. Accumulated depreciation must also be debited with the original cost and the cost of removal and credited with the salvage value and any other amounts recovered. Return is allowed for assets removed from service after June 19, 2009, that result in an

increased rate base through recognition in the reserve for depreciation if the utility proves that the decision to retire the asset was financially prudent, unavoidable, necessary because of technological obsolescence, or otherwise reasonable. The utility must also provide evidence establishing the original cost of the asset, the cost of removal, salvage value, any other amounts recovered, the useful life of the asset (or remaining life as may be appropriate), the date the asset was taken out of service, and the accumulated depreciation up to the date it was taken out of service. Additionally, the utility must show that it used due diligence in recovering maximum salvage value of a retired asset. The requirements relating to the accounting for the reasonableness of retirement decisions for individual assets and the net salvage value calculations for individual assets only apply to those utilities using itemized accounting. For those utilities practicing group accounting, the depreciation study will provide similar information by category. TWC, §13.185(e) relating to dealings with affiliated interests, will apply to business dealings with any entity involved in the retirement, removal, or recovery of assets. Assets retired subsequent to June 19, 2009, will be included in a utility's application for a rate change if the application is the first application for a rate change filed by the utility after the date the asset was retired and specifically identified if the utility uses itemized accounting. Retired assets will be reported for the asset group in depreciation studies for those utilities practicing group accounting, while retired assets will be specifically identified for those utilities practicing itemized accounting;]

[iii] the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC, §13.185(e);]

[iv] utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital; and]

[(C) working capital allowance to be composed of, but not limited to, the following:]

[i] reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service;]

[ii] reasonable prepayments for operating expenses (prepayments to affiliated interests) are subject to the standards set forth in TWC, §13.185(e); and]

[iii] a reasonable allowance up to one-eighth of total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and

maintenance expense does not include depreciation, other taxes, or federal income taxes).]

[(3) Terms not included in rate base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base.]

[(A) Miscellaneous items. Certain items that include, but are not limited to, the following:]

[(i) accumulated reserve for deferred federal income taxes;]

[(ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;]

[(iii) contingency and/or property insurance reserves;]

[(iv) contributions in aid of construction; and]

[(v) other sources of cost-free capital, as determined by the commission.]

[(B) Construction work in progress. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:]

[(i) the inclusion is necessary to the financial integrity of the utility; and]

[(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress may not be allowed for any portion of a major project that the utility has failed to prove was efficiently and prudently planned and managed.]

[(d) Recovery of positive acquisition adjustments.]

[(1) For utility plant, property, and equipment acquired by a utility from another retail public utility as a sale, merger, etc. of utility service area for which an application for approval of sale has been filed with the commission on or after September 1, 1997, and that sale application closed thereafter, a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:]

[(A) the property is used and useful in providing water or sewer service at the time of the acquisition or as a result of the acquisition;]

[(B) reasonable, prudent, and timely investments will be made if required to bring the system into compliance with all applicable rules and regulations;]

[(C) as a result of the sale, merger, etc.:]

[(i) the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable water or sewer service;]

[(ii) regionalization of retail public utilities (meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service) was achieved; or]

[(iii) the acquiring system will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;]

[(D) any and all transactions between the buyer and the seller entered into as a part or condition of the sale are fully disclosed to the executive director and were conducted at arm's length;]

[(E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and the amount of contributions in aid of construction in the system being acquired;]

[(F) in a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is where a stock transaction is followed by a transfer of assets in what is essentially a single sales transaction. A positive acquisition adjustment is allowed only in those cases where the multi-stage transaction was fully disclosed to the executive director in the application for approval of the initial stock sale. Any multi-stage sale occurring between September 1, 1997 and February 4, 1999 is exempt from the requirement for executive director notification at the time of the approval of the initial sale, but must provide such notification by April 5, 1999; and]

[(G) the rates charged by the acquiring utility to its preacquisition customers will not increase unreasonably because of the acquisition.]

[(2) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this

section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.]

[(3) The authorization for and the amount of an acquisition adjustment can only be determined as a part of a rate change application.]

[(4) The acquisition adjustment can only be included in rates as a part of a rate change application.]

**[\$291.32. Rate Design.]**

[(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses (unless an alternative rate method is used as set forth in §291.34 of this title (relating to Alternative Rate Methods), and preserve the financial integrity of the utility.]

[(b) Conservation.]

[(1) In order to encourage the prudent use of water or promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage within any customer class.]



[(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) comply with mandatory reductions directed by a wholesale supplier or underground water district; or]

[(ii) conserve water supplies, maintain acceptable pressure or storage, or other reasons identified in its approved drought contingency plan;]

[(B) to generate additional revenues necessary to provide facilities for maintaining or increasing water supply, treatment, production, or distribution capacity.]

[(3) All additional revenues over and above the utility's usual cost of service collected under paragraph (2) of this subsection:]

[(A) must be accounted for separately and reported to the executive director, as requested;]

[(B) are considered customer contributed capital unless otherwise specified in a commission order; and]

[(C) may only be used in a manner approved by the executive director for applications not subject to hearing under Texas Water Code, §13.187(b).]

[(c) Volume charges. Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.]

[(d) Surcharges.]

[(1) Capital improvements. In a rate proceeding, the commission may authorize collection of additional revenues from the customers to provide funds for

capital improvements necessary to provide facilities capable of providing adequate and continuous utility service, and for the preparation of design and planning documents.]

[(2) Debt repayments. In a rate proceeding, the commission may authorize collection of additional revenues from customers to provide funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all of the requirements of the Texas Water Development Board in regard to financial assistance from the Safe Drinking Water Revolving Fund.]

**[\$291.34. Alternative Rate Methods.]**

[(a) Alternative rate methods. To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The executive director may prescribe modified rate filing packages for these alternate methods of establishing rates.]

[(b) Single issue rate change. Unless a utility is using the cash needs method, it may request approval to increase rates to reflect a change in any one specific cost component. The following conditions apply to this type of request.]

[(1) The proposed effective date of the single issue rate change request must be within 24 months of the effective date of the last rate change request in which a complete rate change application was filed.]

[(2) The change in rates is limited to those amounts necessary to recover the increase in the specific cost component and the increase will be allocated to the rate structure in the same manner as in the previous rate change.]

[(3) The scope of a single issue rate proceeding is limited to the single issue prompting a change in rates. For capital items this includes depreciation and return determined using the rate of return established in the prior rate change proceeding.]

[(4) The utility shall provide notice as described in §291.22(a) - (e) of this title (relating to Notice of Intent To Change Rates), and the notice must describe the cost component and reason for the increased cost.]

[(5) A utility exercising this option shall submit a complete rate change application within three years following the effective date of the single issue rate change request.]

[(c) Phased and multi-step rate changes. In a rate proceeding, the commission may authorize a phased, stepped, or multi-year approach to setting and implementing rates to eliminate the requirement that a utility file another rate application.]

[(1) A utility may request to use the phased or multi-step rate method:]

[(A) to include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with commission regulations in the utility's rate base and operating expenses in the revenue requirement when facilities are placed in service;]

[(B) to provide additional construction funds after major milestones are met;]

[(C) to provide assurance to a lender that rates will be immediately increased when facilities are placed in service;]

[(D) to allow a utility to move to metered rates from unmetered rates as soon as meters can be installed at all service connections;]

[(E) to phase in increased rates when a utility has been acquired by another utility with higher rates;]

[(F) to phase in rates when a utility with multiple rate schedules is making the transition to a system-wide rate structure; or]

[(G) when requested by the utility.]

[(2) Construction schedules and cost estimates for new facilities that are the basis for the phased or multi-step rate increase must be prepared by a licensed professional engineer.]

[(3) Unless otherwise specified in the commission order, the next phase or step cannot be implemented without verification of completion of each step by a licensed professional engineer, agency inspector, or agency subcontractor.]

[(4) At the time each rate step is implemented, the utility shall review actual costs of construction versus the estimates upon which the phase-in rates were based. If the revenues received from the phased or multi-step rates are higher than what the actual costs indicate, the excess amount must be reported to the executive director prior to implementing the next phase or step. Unless otherwise specified in a commission order or directed by the executive director, the utility may:]

[(A) refund or credit the overage to the customers in a lump sum; or]

[(B) retain the excess to cover shortages on later phases of the project. Any revenues retained but not needed for later phases must be proportioned and refunded to the customers at the end of the project with interest paid at the rate on deposits.]

[(5) The original notice to customers must include the proposed phased or multi-step rate change and informational notice must be provided to customers and the executive director 30 days prior to the implementation of each step.]

[(6) A utility that requests and receives a phased or multi-step rate increase cannot apply for another rate increase during the period of the phase-in rate intervals unless:]

[(A) the utility can prove financial hardship; or]

[(B) the utility is willing to void the next steps of the phase-in rate structure and undergo a full cost of service analysis.]

[(d) Cash needs method. The cash needs method of establishing rates allows a utility to recover reasonable and prudently incurred debt service, a reasonable cash reserve account, and other expenses not allowed under standard methods of establishing rates.]

[(1) A utility may request to use the cash needs method of setting rates if:]

[(A) the utility is a nonprofit corporation controlled by individuals who are customers and who represent a majority of the customers; or]

[(B) the utility can demonstrate that use of the cash needs basis:]

[(i) is necessary to preserve the financial integrity of the utility;]

[(ii) will enable it to develop the necessary financial, managerial, and technical capacity of the utility; and]

[(iii) will result in higher quality and more reliable utility service for customers.]

[(2) Under the cash needs method, the allowable components of cost of service are: allowable operating and maintenance expenses; depreciation expense; reasonable and prudently incurred debt service costs; recurring capital improvements, replacements, and extensions that are not debt-financed; and a reasonable cash reserve account.]



[(A) Allowable operating and maintenance expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable operations and maintenance expenses and they must be based on the utility's historical test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.]

[(B) Depreciation expense. Depreciation expense may be included on any used and useful depreciable plant, property, or equipment that was paid for by the utility and that has a positive net book value on the effective date of the rate change in the same manner as described in §291.31(b)(1)(B) of this title (relating to Cost of Service).]

[(C) Debt service costs. Debt service costs are cash outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve account in escrow or as required by the commission, Texas Water Development Board, or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:]

[(i) self-financed major capital asset purchases where the useful life of the asset is ten years or more. Hypothetical debt service costs may include the debt repayments using an amortization schedule with the same term as the estimated service life of the asset using the prime interest rate at the time the application is filed; and]

[ii] prospective loans to be executed after the new rates are effective. Any pre-commitments, amortization schedules, or other documentation from the financial institution pertaining to the prospective loan must be presented for consideration.]

[D] Recurring capital improvements, replacements, and extensions that are not debt-financed. Capital assets, repairs, or extensions that are a part of the normal business of the utility may be included as allowable expenses. This does not include routine capital expenses that are specifically debt-financed.]

[E] Cash reserve account. A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, must be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the executive director. The utility shall account for these funds separately and report to the commission as required by the executive director. Unless the utility requests an exception in writing and the exception is explicitly allowed by the executive director in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund accompanied by a written explanation that explains the method used to calculate the amounts to be refunded. Each customer must receive the same refund amount. These

reserves are not for the personal use of the management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the executive director.]

[ (3) If the revenues collected exceed the actual cost of service, defined in paragraph (2) of this subsection, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in paragraph (2)(D) of this subsection and are subject to the same restrictions.]

[ (4) If the utility demonstrates to the executive director that it has reduced expenses through its efforts, and has improved its financial, managerial, and technical capability, the executive director may allow the utility to retain 50% of the savings that result for the personal use of the management or ownership of the utility rather than pass on the full amount of the savings through lower rates or refund all of the amounts saved to the customers.]

[ (5) If a utility elects to use the cash needs method, it may not elect to use the utility method for any rate change application initiated within five years after beginning to use the cash needs method. If after the five-year period, the utility does elect to use the utility method, it may not include in rate base, or recover the depreciation expense, for the portion of any capital assets paid for by customers as a result of including debt service costs in rates. It may, however, include in rate base, and recover

through rates, the depreciation expense for capital assets that were not paid for by customers as a result of including debt service costs in rates. The net book value of these assets may be recovered over the remaining useful life of the asset.]

**[\$291.35. Jurisdiction of Commission over Certain Water or Sewer Supply Corporations.]**

[(a) Notwithstanding any other law, the commission has the same jurisdiction over a water supply or sewer service corporation that the commission has under this chapter over a water and sewer utility if the commission finds, after notice and opportunity for hearing, that the water supply or sewer service corporation:]

[(1) is failing to conduct annual or special meetings in compliance with Texas Water Code (TWC), §67.007; or]

[(2) is operating in a manner that does not comply with the requirements for classification as a nonprofit water supply or sewer service corporation prescribed by TWC, §13.002(11) and (24).]

[(b) The commission's jurisdiction provided by this section ends if:]

[(1) the water supply or sewer service corporation voluntarily converts to a special utility district operating under TWC, Chapter 65;]

[(2) the time period specified in the commission order expires; or]

[(3) the water supply or sewer service corporation demonstrates that for the past 24 consecutive months it has conducted annual meetings as required by TWC, §67.007 and has operated in a manner that complies with the requirements for membership and nonprofit organizations as outlined in TWC, §13.002(11) and (24).]

**[SUBCHAPTER C: RATE-MAKING APPEALS]**

**[§§291.41 - 291.45]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**[§291.41. Appeal of Rate-making Pursuant to the Texas Water Code, §13.043.]**

[(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and accompanied by the filing fee as required by Texas Water Code, §5.235 and by serving a copy of the petition on all parties to the original proceeding. The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body.]

[(b) An appeal under Texas Water Code, §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing an original and four copies of a petition for review with the commission and by filing a copy of the petition with the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.]

[(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:]

[(1) a nonprofit water supply or sewer service corporation created and operating under Texas Water Code, Chapter 67;]

[(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;]

[(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;]

[(4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users; and]

[(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries; and]

[(6) in an appeal under this subsection, the retail public utility shall provide written notice of hearing to all affected customers in a form prescribed by the executive director.]

[(d) In an appeal under Texas Water Code, §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.]

[(e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:]



[(1) in an appeal under the Texas Water Code, §13.043(a), include reasonable expenses incurred in the appeal proceedings;]

[(2) in an appeal under the Texas Water Code, §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;]

[(3) establish the effective date;]

[(4) order refunds or allow surcharges to recover lost revenues;]

[(5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or]

[(6) establish interim rates to be in effect until a final decision is made.]

[(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility and accompanied by the filing fee as required by Texas Water Code, §5.235.]

[(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under Texas Water Code, §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service. The appeal must be accompanied by a \$100 filing fee as required by Texas Water Code, §5.235.]

[(1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amounts due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount determined in the commission's order shall be repaid to the applicant with interest at a rate determined by the commission within 30 days of the signing of the order.]

[(2) In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent

with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.]

[3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.]

[(h) The commission may, on a motion by the executive director or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.]

[(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and Texas Water Code, §49.2122, Texas Water Code, §49.2122 prevails.]

[(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer shall initiate an appeal under Texas Water Code, §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The appeal must be accompanied by a \$100 filing fee as required by Texas Water Code, §5.235. The commission shall approve the water supply corporation's water conservation penalty if:]

[(1) the penalty is clearly stated in the tariff;]

[(2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and]

[(3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.]

**[\$291.42. Contents of Petition Seeking Review of Rates Pursuant to the Texas Water Code, §13.043(b).]**

[(a) Petitions for review of rate actions filed pursuant to the Texas Water Code, §13.043(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:]

[(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;]

[(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;]

[(3) the effective date of the decision being appealed;]

[(4) the basis of the request for review of rates; and]

[(5) any other information the commission may require.]

[(b) A petition must be received from a total of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal, whichever is less.]

[(c) A filing fee is not required for appeals or complaints filed under the Texas Water Code, §13.043(b).]

**[§291.43. Refunds during Pendency of Appeal.]**

[A utility which is appealing the action of the governing body of a municipality under the Texas Water Code, §13.043, shall not be required to make refunds of any over-collections during the pendency of the appeal.]

**[\$291.44. Contents of Pleadings Seeking Review of Rates for Sales of Water under the Texas Water Code, §§11.036 - 11.041 and 12.013]**

[(a) Ratepayers seeking relief under the Texas Water Code, §§11.036-11.041 and 12.013, should include in a written petition to the commission, the following information:]

[(1) the petitioner's name;]

[(2) the name of the water supplier from which water supply service is received or sought;]

[(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to receive or use the water;]

[(4) that the petitioner is willing and able to pay a just and reasonable price for the water;]

[(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and]

[(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.]

[(b) Water suppliers seeking relief under the Texas Water Code, §§11.036-11.041 and 12.013, should include in a written petition for relief to the commission, the following information:]

[(1) petitioner's name;]

[(2) the name of the ratepayers to whom water supply service is rendered;]

[(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to the relief requested;]

[(4) that the petitioner is willing and able to supply water at a just and reasonable price; and]

[(5) that the price demanded by petitioner for the water is just and reasonable and is not discriminatory.]

[(c) If the petition for relief is accompanied by the deposit stipulated in the code, the executive director shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.]

[(d) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition.]

**[\$291.45. Rates Charged by a Municipality to a District.]**

[(a) A district created pursuant to the Texas Constitution, Article XVI, §59, which district is located within the corporate limits or the extraterritorial jurisdiction of a municipality and which receives water or sewer service or whose residents receive water or sewer service from the municipality may by filing a petition with the commission appeal the rates charged by the municipality if the resolution, ordinance, or agreement of the municipality consenting to the creation of the district required the district to purchase water or sewer service from the municipality.]



[(b) The commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable.]

[(c) After the commission establishes just and reasonable rates, the municipality may not increase those rates without approval of the commission. A municipality desiring to increase rates must provide the commission with updated information in a format specified in the current rate data package developed by the rates section.]

**SUBCHAPTER D: RECORDS AND REPORTS**

**[§§291.71 - 291.75]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

**[§291.71. General Reports.]**

[a] Who shall file. The recordkeeping, reporting, and filing requirements listed in this section shall apply only to water and sewer utilities, unless otherwise noted in this subchapter of this chapter.]

[b] Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.]

[(c) Due dates of reports. All reports must be received by the commission on or before the dates specified by the executive director.]

[(d) Information omitted from reports. The commission or the executive director may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission or the executive director, a written explanation of the omission must be stated in the report.]

[(e) Special and additional reports. Each utility shall report on forms prescribed by the commission or the executive director special and additional information as requested which relates to the operation of the business of the utility.]

[(f) Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission or the executive director.]

[(g) Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.]

**[\$291.72. Financial Records and Reports--Uniform System of Accounts.]**

[Every public utility, except a utility operated by an affected county, shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the executive director.]

[(1) Classification. For the purposes of accounting and reporting to the commission, each public water and/or sewer utility shall be classified with respect to its annual operating revenues as follows:]

[(A) Class A--annual operating revenues exceeding \$750,000;]

[(B) Class B--annual operating revenues exceeding \$150,000 but not more than \$750,000;]

[(C) Class C--annual operating revenues not exceeding \$150,000.]

[(2) System of accounts. For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:]

[(A) Class A--system of accounts approved by the executive director which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class A utilities;]

[(B) Class B--system of accounts approved by the executive director which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class B utilities;]

[(C) Class C--system of accounts approved by the executive director which will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class C utilities.]

[(3) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.]

**[§291.73. Water and Sewer Utilities Annual Reports.]**

[(a) Each utility, except a utility operated by an affected county, shall file a service and financial report by April 1 of each year unless otherwise specified in a form prescribed by the executive director.]

[(b) Contents of report. The annual report shall disclose the information required on the forms and may include:]

[(1) the rates that are subject to the original or appellate jurisdiction of the commission for any service, product, or commodity offered by the utility;]

[(2) rules and regulations relating to or affecting the rates, utility service, product or commodity furnished by the utility;]

[(3) all ownership and management relationships among the utility and other entities, including individuals, with which the utility has had financial transactions during the reporting period;]

[(4) all transactions with affiliates, including, but not limited to, payments for costs of any services, interest expense, or for any property, right, or thing;]

[(5) information on receipts and disbursements of revenues;]

[(6) all payments of compensation (other than salary or wages subject to the withholding of federal income tax) for legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body; and]

[(7) a verified or certified copy of the appropriate permit, issued by the conservation, reclamation, or subsidence district, for each utility which withdraws groundwater from conservation, reclamation, or subsidence districts.]

**[\$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. The executive director may consider alternate hours of inspection if the utility provides a written request 72 hours in advance of any scheduled inspection.]

**[\$291.75. Management Audits.]**

[The commission may inquire into the management and affairs of all utilities and the affiliated interests of those utilities in order to keep itself informed as to the manner and method in which they are conducted and may obtain all information to enable it to

perform management audits. The utility and, if applicable, the affiliated interest shall report to the executive director on the status of the implementation of the recommendations of the audit and shall file subsequent reports at the times the executive director considers appropriate.]



## SUBCHAPTER D: RECORDS AND REPORTS

### §291.76

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.701, concerning Fees, which the commission is authorized to collect.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.701.

#### **§291.76. Regulatory Assessment.**

(a) For the purpose of this section, utility service provider means a public utility, water supply or sewer service corporation as defined in Texas [the] Water Code (TWC), §13.002, or a district as defined in TWC [the Water Code], §49.001.

(b) Except as otherwise provided, a utility service provider which provides potable water or sewer utility service shall collect a regulatory assessment from each retail customer and remit such fee to the commission under the provisions of this section.

(c) A utility service provider is prohibited from collecting a regulatory assessment from the state or a state agency or institution.

(d) The regulatory assessment amount [Amounts] payable to the commission shall be based on the following:

(1) for a public utility as defined in TWC [the Water Code], §13.002, 1.0% of the charge for retail water and sewer service;

(2) for a water supply or sewer service corporation as defined in TWC [the Water Code], §13.002, 0.5% of the charge for retail water and sewer service;

(3) for a district as defined in TWC [the Water Code], §49.001, 0.5% of the charge for retail water and sewer service.

(e) The amount payable to the commission shall be based on the amounts actually collected by the utility service provider during the previous calendar year [payment period].

(f) The amount payable shall be based on water and sewer service charges to retail customers only, and shall not be based on:

(1) associated delinquent, penalty, or interest charges;

(2) tap fees, standby fees, impact fees, extension fees, capital improvement surcharges, itemized solid waste collection fees, or other unrelated charges; or

(3) wholesale charges from one utility service provider to another.

(g) The utility service provider may include the assessment as a separate line item on a customer's bill or include it in the retail charge.

(h) The utility service provider shall be responsible for keeping proper records of the annual retail water and sewer charges and assessment collections [for retail water and sewer service] and provide such records to the commission upon request.

(i) By January 30th of each year, the utility service provider must ensure the retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's designated format. [The full amount payable for the 12 calendar months of each year must be remitted to the commission by January 30th of the following year.]

(1) If the utility service provider does not report charges for water and sewer services to the commission by January 30th of each year, the commission may issue an invoice based on previously reported revenues and adjustment based on available information.

(2) If the utility service provider has not previously reported charges for water and sewer services to the commission, the commission may issue an invoice in an amount up to \$100.

(3) Utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline, and who pay an invoice generated by paragraph (1) or (2) of this subsection, are not relieved of the requirement to ensure retail water and sewer charges are reported through the designated format. Once the utility service provider reports charges for water and sewer services to the commission through the designated format, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

(j) The utility service provider shall pursue collection of the assessment from the customer in the same manner and with the same diligence that it pursues collection of other service charges.

(k) Assessments [If assessments] collected in the 12 months prior to January 1st [1] of each year shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. If assessments are not received by the invoice due date, penalties and interest for the late payment of fees shall be assessed [are not received by the commission by January 30th of that year, the utility service provider shall be assessed

penalties and interest] in accordance with Chapter 12 of this title (relating to Payment of Fees).

(l) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(m) A utility service provider is exempt from the provisions of this section if the [such] provider:

(1) does not own and has no responsibility for operation and maintenance of the facilities necessary in providing water and sewer utility service, including distribution and collection systems;

(2) does not maintain a security interest in the facilities necessary in providing water and sewer utility service;

(3) has no authority to set the retail customer's rates; and

(4) does not make policy decisions regarding water and sewer services.

(n) If it appears that utility service provider has violated this section, the commission may request a civil suit to be brought in a court of competent jurisdiction for injunctive or other appropriate relief.

(1) At the request of the commission, the attorney general shall bring and conduct the suit in the name of the state.

(2) The suit may be brought in Travis County or in the county in which the defendant resides.

**[SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION]**

**[§§291.80 - 291.90]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**[§291.80. Applicability.]**

[Unless otherwise noted, this subchapter is applicable only to "water and sewer utilities" as defined under Subchapter A of this chapter (relating to General Provisions) and includes affected counties.]

**[§291.81. Customer Relations.]**

[(a) Information to customers.]

[(1) Upon receipt of a request for service or service transfer, the utility shall fully inform the service applicant or customer of the cost of initiating or transferring service. The utility shall clearly inform the service applicant which service initiation costs will be borne by the utility and which costs are to be paid by the service applicant. The utility shall inform the service applicant if any cost information is estimated. Also see §291.85 of this title (relating to Response to Requests for Service by a Retail Public Utility Within Its Certificated Area).]

[(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 shall 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 that may be created if a backflow prevention assembly or device is installed.]

[(3) 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 must be available at its local office for review by a customer or service applicant upon request.]



[(4) 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.) must be labeled to indicate the size, design capacity, and any pertinent information that 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 must be available for commission inspection during normal working hours.]

[(5) Each utility shall maintain a current copy of the commission's substantive rules of this chapter at each office location and make them available for customer inspection during normal working hours.]

[(6) Each water utility shall maintain a current copy of Chapter 290, Subchapter D 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) Customer complaints. Customer complaints are also addressed in §291.82 of this title (relating to Resolution of Disputes).]

[(1) Upon receipt of a complaint from a customer or service applicant, either in person, by letter or by telephone, the utility shall promptly conduct an investigation and report its finding(s) to the complainant.]

[(2) In the event the complainant is dissatisfied with the utility's report, the utility shall advise the complainant of recourse through the Texas Commission on Environmental Quality complaint process, and that such process can be initiated by contacting the Consumer Assistance Coordinator, Water Supply Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. The commission encourages all complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.]

[(3) Each utility shall make an initial response to the executive director within 15 days of receipt of a complaint from the commission on behalf of a customer or service applicant. The commission or the executive director may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission or the executive director may require continuation or restoration of service.]

[(4) The utility shall keep a record of all complaints for a period of two years following the final settlement of each complaint. The record of complaint must include the name and address of the complainant, the date the complaint was received by the utility, a description of the nature of the complaint, and the adjustment or disposition of the complaint.]

[(c) Telephone number. For each of the systems it operates, the utility shall maintain and note on the customer's monthly bill either a local or toll free telephone number (or numbers) to which a customer can direct questions about their utility service.]

[(d) Local office.]

[(1) Unless otherwise authorized by the executive director in response to a written request, each utility shall have an office in the county or immediate area (within 20 miles) of a portion of its utility service area in which it keeps all books, records, tariffs, and memoranda required by the commission.]

[(2) Unless otherwise authorized by the executive director in response to a written request, each utility shall make available and notify customers of a business location where applications for service can be submitted and payments can be made to prevent disconnection of service or to restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title (relating to Discontinuance of Service). The business location must be located:]

[(A) in each county where utility service is provided; or]

[(B) not more than 20 miles from any residential customer if there is no location to receive payments in that county.]

[(3) Upon request by the utility, the requirement for a local office may be waived by the executive director if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers. Unless otherwise authorized by the executive director in response to a written request, such utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title.]

**[§291.82. Resolution of Disputes.]**

[(a) Any customer or service applicant requesting the opportunity to dispute any action or determination of a utility under the utility's customer service rules shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer's request, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. The commission may require continuation or restoration of service pending resolution of a complaint. If the customer will not allow an inspection or chooses not to participate in such review or not to make arrangements for such review to take place within five working days after requesting it, the utility may disconnect service for the reasons listed in §291.88 of this title (relating to Discontinuance of Service), provided notice has been given in accordance with that section.]

[(b) In regards to a customer complaint arising out of a charge made by a public utility, if the executive director finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the commission, the commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 working days of receiving the order is a violation for which the commission may impose an administrative penalty under Texas Water Code, §13.4151.]

**[\$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) the service applicant is not in compliance with state or municipal regulations applicable to the type of service requested;]

[(2) the service applicant is not in compliance with the rules and regulations of the utility governing the type of service requested which are in its approved tariff on file with the commission;]

[(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) the service applicant's primary point of use is outside the certificated area;]

[ (5) standby fees authorized under §291.87(o) of this title (relating to Billing) have not been paid for the specific property or lot on which service is being requested; or]

[ (6) the utility is prohibited from providing service under Vernon's Texas Civil Statutes, Local Government Code, §212.012 or §232.029.]

[(b) Service Applicant's recourse. In the event the utility refuses to serve a service applicant under the provisions of these sections, the utility shall inform the service applicant in writing of the basis of its refusal and that the service applicant may file a complaint with the commission thereon.]

[(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) delinquency in payment for service by a previous occupant of the premises to be served;]

[(2) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules;]

[(3) failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;]

[(4) failure to pay the bill of another customer at the same address except where a change of customer identity is made to avoid or evade payment of a utility bill;]

[(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;]

[(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) 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.]

**[§291.84. Applicant and Customer Deposit.]**

[(a) Deposit on Tariff. Deposits may only be charged if listed on the utility's approved tariff.]

[(1) Residential service applicants. If a residential service applicant does not establish credit to the satisfaction of the utility, the residential service applicant may be required to pay a deposit that does not exceed \$50 for water service and \$50 for sewer service.]

[(2) Commercial and Nonresidential service applicants. If a commercial or nonresidential service applicant does not establish credit to the satisfaction of the utility, the service applicant may be required to make a deposit. The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings.]

[(3) Commercial and Nonresidential Customers. If actual monthly billings of a commercial or nonresidential customer are more than twice the amount of the estimated billings at the time service was established, a new deposit amount may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.]



[(b) Customers not disconnected. Current customers who have not been disconnected for nonpayment or other similar reasons in §291.88 of this title (relating to Discontinuance of Service) shall not be required to pay a deposit.]

[(c) Applicants 65 years of age or older. No deposit may be required of a residential service applicant who is 65 years of age or older if the applicant does not have a delinquent account balance with the utility or another water or sewer utility.]

[(d) Interest on deposits. Each utility shall pay a minimum interest on all customer deposits at an annual rate at least equal to a rate set each calendar year by the Public Utility Commission of Texas in accordance with the provisions of Texas Civil Statutes, Article 1440a. Payment of the interest to the customer shall be made annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account. Inquiries about the appropriate interest rate to be paid each year a deposit is held may be directed to the Water Utilities Division of the commission.]

[(e) Landlords/tenants. In cases of landlord/tenant relationships, the utility may require both parties to sign an agreement specifying which party is responsible for bills and deposits. This agreement may be included as a provision of the utility's approved service application form. The utility shall not require the landlord to guarantee the tenant's customer deposit or monthly service bill as a condition of service. The utility may require the landlord to guarantee the payment of service extension fees under the utility's approved tariff if these facilities will remain in public service after the tenant

vacates the leased premises. If the landlord signs a guarantee of payment for deposits or monthly service bills, the guarantee shall remain in full force and effect until the guarantee is withdrawn in writing and copies are provided to both the utility and the tenant.]

[f) Reestablishment of credit or deposit. Every service applicant who has previously been a customer of the utility and whose service has been discontinued for nonpayment of bills, meter tampering, bypassing of meter or failure to comply with applicable state and municipal regulations or regulations of the utility shall be required, before service is resumed, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and may be required to pay a deposit if the utility does not currently have a deposit from the customer. The burden shall be on the utility to prove the amount of utility service received but not paid for and the reasonableness of any charges for such unpaid service, as well as all other elements of any bill required to be paid as a condition of service restoration.]

[g) Records of deposits.]

[(1) The utility shall keep records to show:]

[(A) the name and address of each depositor;]

[(B) the amount and date of the deposit;]

[(C) each transaction concerning the deposit; and]

[(D) the amount of interest earned on customer deposit funds].

[(2) The utility shall issue a receipt of deposit to each service applicant or customer from whom a deposit is received.]

[(3) A record of each unclaimed deposit shall be maintained for at least seven years, during which time the utility shall make a reasonable effort to return the deposit or may transfer the unclaimed deposit to the State Treasurer. If not already transferred, after seven years, unclaimed deposits shall be transferred to the State Treasurer.]

[(h) Refund of deposit.]

[(1) If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the service applicant's or customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. The utility may refund deposits plus accumulated interest at any time prior to termination of utility service. The utility's policy for refunds to current customers must be consistent and non-discriminatory.]

[(2) When a residential customer has paid bills for service for 18 consecutive billings without being delinquent, the utility shall promptly refund the deposit with interest to the customer either by payment or credit to the customer's bill. Deposits from customers who do not meet this criteria may be retained until service is terminated.]

[(i) Transfer of service. A transfer of service from one service location to another within the service area of the utility shall not be deemed a disconnection within the meaning of this section, and no additional deposit may be demanded unless permitted by this subchapter.]

**[§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 service connection inspection certificates required by 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.]

[(2) Upon request for service by a service applicant, the retail public utility shall make available and accept a completed written application for service.]

[(3) Except for good cause, at a location where service has previously been provided the utility must reconnect service within one working day 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 five working days after a completed service application has been accepted.]

[(5) If construction is required to fill the order and if it cannot be completed within 30 days, the retail public utility shall provide a written explanation of the construction required and an expected date of service.]

[(b) Except for good cause shown, the failure to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from a qualified applicant may constitute refusal to serve, and may result in the assessment of administrative penalties or revocation of the certificate of convenience and necessity or the granting of a certificate to another retail public utility to serve the applicant.]

[(c) The cost of extension and any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be provided to the customer in writing upon assessment of the costs of necessary line work, but before construction begins. Also see §291.81(a)(1) of this title (relating to Customer Relations).]

[(d) Easements.]

[(1) Where recorded public utility easements on the service applicant's property do not exist or public road right-of-way easements are not available to access the property of a service applicant, the public utility may require the service applicant or land owner to grant a permanent recorded public utility easement dedicated to the public utility which will provide a reasonable right of access and use to allow the public utility to construct, install, maintain, inspect and test water and/or sewer facilities necessary to serve that applicant.]

[(2) As a condition of service to a new subdivision, public utilities may require developers to provide permanent recorded public utility easements to and throughout the subdivision sufficient to construct, install, maintain, inspect, and test water and/or sewer facilities necessary to serve the subdivision's anticipated service demands upon full occupancy.]

[(3) A district or water supply corporation may require an applicant for service to grant an easement as allowed under applicable law.]

[(e) Service Extensions by a Water Supply or Sewer Service Corporation or Special Utility District.]

[(1) A water supply or sewer service corporation or a special utility district organized under Chapter 65 of the code is not required to extend retail water or sewer utility service to a service applicant in a subdivision within its certificated area if it documents that:]

[(A) the developer of the subdivision has failed to comply with the subdivision service extension policy as set forth in the tariff of the corporation or the policies of the special utility district; and]

[(B) the service applicant purchased the property after the corporation or special utility district gave notice of its rules which are applicable to service to subdivisions in accordance with the notice requirements in this subsection.]

[(2) Publication of notice, in substantial compliance with the form notice in Appendix A, in a newspaper of general circulation in each county in which the corporation or special utility district is certificated for utility service of the requirement to comply with the subdivision service extension policy constitutes notice under this

subsection. The notice must be published once a week for two consecutive weeks on a biennial basis and must contain information describing the subdivision service extension policy of the corporation or special utility district. The corporation or special utility district must be able to provide proof of publication through an affidavit of the publisher of the newspaper that specifies each county in which the newspaper is generally circulated:]

[Figure: 30 TAC §291.85(e)(2)]

[Appendix A]

[NOTICE OF REQUIREMENT TO COMPLY WITH THE SUBDIVISION SERVICE EXTENSION POLICY OF {name of water supply corporation/special utility district}]

[Pursuant to Texas Water Code, §13.2502, \_\_\_\_\_ Water Supply Corporation/Special Utility District hereby gives notice that any person who subdivides land by dividing any lot, tract, or parcel of land, within the service area of \_\_\_\_\_ Water Supply Corporation/Special Utility District, Certificate of Convenience and Necessity No. \_\_\_\_\_, in \_\_\_\_\_ County, into two or more lots or sites for the purpose of sale or development, whether immediate or future, including re-subdivision of land for which a plat has been filed and recorded or requests more than two water or sewer service connections on a single contiguous tract of land must comply with {title of subdivision service extension policy stated in the tariff/policy} (the "Subdivision Policy") contained in \_\_\_\_\_ Water Supply Corporation's tariff/Special Utility District's policy.]

[\_\_\_\_\_ Water Supply Corporation/Special Utility District is not required to extend retail water or sewer utility service to a service applicant in a subdivision where the developer of the subdivision has failed to comply with the Subdivision Policy.]

[Applicable elements of the Subdivision Policy include:]



[Evaluation by \_\_\_\_\_ Water Supply Corporation/Special Utility District of the impact a proposed subdivision service extension will make on \_\_\_\_\_ Water Supply Corporation's/ Special Utility District's water supply/sewer service system and payment of the costs for this evaluation;]

[Payment of reasonable costs or fees by the developer for providing water supply/sewer service capacity;]

[Payment of fees for reserving water supply/sewer service capacity;]

[Forfeiture of reserved water supply/sewer service capacity for failure to pay applicable fees;]

[Payment of costs of any improvements to \_\_\_\_\_ Water Supply Corporation's/Special Utility District's system that are necessary to provide the water/sewer service;]

[Construction according to design approved by \_\_\_\_\_ Water Supply Corporation/Special Utility District and dedication by the developer of water/sewer facilities within the subdivision following inspection.]

[\_\_\_\_\_ Water Supply Corporation's/Special Utility District's tariff and a map showing \_\_\_\_\_ Water Supply Corporation's/Special Utility District's service area may be reviewed at \_\_\_\_\_ Water Supply Corporation's/ Special Utility District's offices, at {address of the water supply corporation/special utility district}; the tariff/policy and service area map also are filed of record at the Texas Commission on Environmental Quality and may be reviewed by contacting the TCEQ, c/o Utility Rates and Services Section, Water Supply Division, P.O. Box 13087, Austin, Texas 78711.]

[(3) As an alternative to publication of notice, a corporation or special utility district may demonstrate by any reasonable means that a developer has been notified of the requirement to comply with the subdivision service extension policy, including:]

[(A) an agreement executed by the developer;]

[(B) correspondence with the developer that sets forth the subdivision service extension policy; or]

[(C) any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.]

[(4) For purposes of this subsection:]

[(A) "Developer" means a person who subdivides land or requests more than two water or sewer service connections on a single contiguous tract of land.]

[(B) "Service applicant" means a person, other than a developer, who applies for retail water or sewer utility service.]

**[§291.86. Service Connections.]**

[(a) Water Service Connections.]

[(1) Tap Fees. The fees for initiation of service, where no service previously existed, shall be in accordance with the following:]

[(A) The fee charged by a utility for connecting a residential service applicant's premises to the system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and administrative costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.]

[(B) Whether listed on the utility's approved tariff or not, the tap fee charged for all service connections requiring meters larger than 3/4 inch shall be limited to the actual cost of materials, labor and administrative costs for making the individual service connection and road construction or impact fees charged by authorities with control of road use and a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.]

[(C) An additional fee may be charged to a residential service applicant, if stated on the approved tariff, for a tap expense not normally incurred; for example, a road bore for customers outside of subdivisions or residential areas.]

[(2) Installation and Service Connection.]

[(A) The utility shall furnish and install, for the purpose of connecting its distribution system to the service applicant's property, the service pipe from its main

to the meter location on the service applicant's property. See also §291.86(a)(3) of this title (relating to Service Connections). For all new installations, a utility-owned cut-off valve shall be provided on the utility side of the meter. Utilities without customer meters shall provide and maintain a cut-off valve on the customer's property as near the property line as possible. This does not relieve the utility of the obligation to comply with §291.89 of this title (relating to Meters).]

[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) Location of meters. Meters shall be located on the customer's property, readily accessible for maintenance and reading and, so far as practicable, the meter shall be at a location mutually acceptable to the customer and the utility. The meter shall be

installed so as to be unaffected by climatic conditions and reasonably secure from damage.]

[(4) Relocation and conversion of meters. If an existing meter is moved to a location designated by the customer for the customer's convenience, the utility may not be responsible except for negligence. The customer may be charged the actual cost of relocating the meter. If the customer requests that an existing meter be replaced with a meter of another size or capacity, the customer may be charged the actual cost of converting the meter including enlarging the line from the main to the meter if necessary.]

[(b) Sewer Service Connections.]

[(1) Tap Fees. The fees for initiation of sewer service, where no service previously existed, shall be in accordance with the following:]

[(A) The fee charged by a utility for connecting a residential service applicant's premises to the sewer system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and administrative costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.]

[(B) The fee charged for all commercial or nonstandard service connections shall be set at the actual cost of materials, labor and administrative costs for making the service connection and road construction or impact fees charged by authorities with control of road use and may include a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.]

[(C) A fee in addition to the standard tap fee may be charged for a new residential service connection which requires expenses not normally incurred if clearly identified on the approved tariff; for example, a road bore for service applicants outside of subdivisions or residential areas.]

[(D) Tap fees for sewer systems designed to receive effluent from a receiving tank located on the customer's property, whether fed by gravity or pressure into the utility's sewer main, may include charges to install a receiving tank and appurtenances on the customer's property and service line from the tank to the utility's main which meets the minimum standards set by the utility and authorized by the commission. The tank may include grinder pumps, etc. to pump the effluent into the utility's main. Ownership of and maintenance responsibilities for the receiving tank and appurtenances shall be specified in the utility's approved tariff.]

[(2) Installation and Service Connections.]

[(A) The utility shall furnish and install, for the purpose of connecting its collection system to the service applicant's service line, the service pipe from its main to a point on the customer's property.]

[(B) The customer shall be responsible for furnishing and laying the necessary customer service line from the utility's line to the residence.]

[(3) Maintenance By Customer.]

[(A) The customer service line and appurtenances installed by the customer shall be constructed in accordance with the laws and regulations of the State of Texas governing plumbing practices which must be at least as stringent and comprehensive as one of the following nationally recognized codes: the Southern Standard Plumbing Code, the Uniform Plumbing Code, and/or the National Standard Plumbing Code, or other standards as prescribed by the commission.]

[(B) It shall be the customer's responsibility to maintain the customer service line and any appurtenances which are the customer's responsibility in good operating condition, such as, clear of obstruction, defects, leaks or blockage. If the utility can provide evidence of excessive infiltration or inflow into the customer's service line or failure to provide proper pretreatment, the utility may, with the written approval of the executive director, require that the customer repair the line or eliminate the infiltration or inflow or take such actions necessary to correct the problem. If the customer fails to

correct the problem within a reasonable time, the utility may disconnect the service after notice as required under §291.88 of this title (relating to Discontinuance of Service). Less than ten days notice may be given if authorized by the executive director.]

[C) If the customer retains ownership of receiving tanks and appurtenances located on the customer's property under the utility's tariff, routine maintenance and repairs are the customer's responsibility. The utility may require in its approved tariff that parts and equipment meet the minimum standards set by the utility to ensure proper and efficient operation of the sewer system but cannot require that the customer purchase parts or repair service from the utility.]

[(c) Line extension and construction charges. Each utility shall file its extension policy with the commission as part of its tariff. The policy shall be consistent and nondiscriminatory. No contribution in aid of construction may be required of any service applicant except as provided for in the approved extension policy.]

[(1) Contributions in aid of construction shall not be required of individual residential service applicants for production, storage, treatment, or transmission facilities unless that residential customer places unique, non-standard service demands upon the system, in which case, the customer may be charged the additional cost of extending service to and throughout his property, including the cost of all necessary collection or transmission facilities necessary to meet the service demands anticipated to be created by that property.]



[(2) Developers may be required to provide contributions in aid of construction in amounts sufficient to reimburse the utility for:]

[(A) existing uncommitted facilities at their original cost if the utility has not previously been reimbursed. A utility shall not be reimbursed for facilities in excess of the amount the utility paid for the facilities. A utility is not required to allocate existing uncommitted facilities to a developer for projected development beyond a reasonable planning period; or]

[(B) additional facilities compliant with the commission's minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water or the commission's minimum design criteria for wastewater collection and treatment facilities and to provide for reasonable local demand requirements. Income tax liabilities which may be incurred due to collection of contributions in aid of construction may be included in extension charges to developers. Additional tax liabilities due to collection of the original tax liability may not be collected unless they can be supported and are specifically noted in the approved extension policy.]

[(3) For purposes of this subsection, a developer is one who subdivides or requests more than two water service connections or sewer service connections on a single contiguous tract of land.]

[(d) Cost utilities and service applicants shall bear.]

[(1) Within its certificated area, a utility shall be required to bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential service applicant within a platted subdivision unless the utility can document:]

[(A) that the developer of the subdivision refused to provide facilities compatible with the utility's facilities in accordance with the utility's approved extension policy after receiving a written request from the utility; or]

[(B) that the developer of the subdivision defaulted on the terms and conditions of a written agreement or contract existing between the utility and the developer regarding payment for services, extensions, or other requirements; or in the event the developer declared bankruptcy and was therefore unable to meet obligations; and]

[(C) that the residential service applicant purchased the property from the developer after the developer was notified of the need to provide facilities to the utility.]

[(2) A residential service applicant may be charged the remaining costs of extending service to his property; provided, however, that the residential service

applicant may only be required to pay the cost equivalent to the cost of extending the nearest water main or wastewater collection line, whether or not that line has adequate capacity to serve that residential service applicant. The following criteria shall be considered to determine the residential service applicant's cost for extending service:]

[ (A) the residential service applicant shall not be required to pay for costs of main extensions greater than two inches in diameter for water distribution and pressure wastewater collection lines and six inches in diameter for gravity wastewater lines.]

[ (B) Exceptions may be granted by the executive director if:]

[ (i) adequate service cannot be provided to the applicant using the maximum line sizes listed due to distance or elevation, in which case, it shall be the utility's burden to justify that a larger diameter pipe is required for adequate service;]

[ (ii) larger minimum line sizes are required under subdivision platting requirements or building codes of municipalities within whose corporate limits or extraterritorial jurisdiction the point of use is located; or]

[ (iii) the residential service applicant is located outside the CCN service area.]

[(C) If an exception is granted, the utility must establish a proportional cost plan for the specific extension or a rebate plan which may be limited to seven years to return the portion of the applicant's costs for oversizing as new customers are added to ensure that future applicants for service on the line pay at least as much as the initial service applicant.]

[(3) The utility shall bear the cost of any oversizing of water distribution lines or wastewater collection lines necessary to serve other potential service applicants or customers in the immediate area or for fire flow requirements unless an exception is granted under paragraph (2)(B) of this subsection.]

[(4) For purposes of determining the costs that service applicants shall pay, commercial customers with service demands greater than residential customer demands in the certificated area, industrial, and wholesale customers may be treated as developers. A service applicant requesting a one inch meter for a lawn sprinkler system to service a residential lot is not considered nonstandard service.]

[(e) Other Fees for Service Applicants. Except for an affected county, utilities shall not charge membership fees or application fees.]

**[\$291.87. Billing.]**

[(a) Authorized rates. Bills must be calculated according to the rates approved by the regulatory authority 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) Due date.]

[(1) The due date of the bill for utility service may not be less than 16 days after issuance unless the customer is a state agency. If the customer is a state agency, the due date for the bill may not be less than 30 days after issuance unless otherwise agreed to by the state agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes is the next work day after the due date.]

[(2) If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.]

[(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either \$5.00 or 10% for all customers may be charged for delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that were not delinquent.]

[(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge that may not exceed

an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.]

[(e) Rendering and form of bills.]

[(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.]

[(2) The customer's bill must include the following information, if applicable, and must be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:]

[(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;]

[(B) the number and kind of units metered;]

[(C) the applicable rate class or code;]

[(D) the total amount due for water service;]

[(E) the amount deducted as a credit required by a commission order;]

[(F) the amount due as a surcharge;]

[(G) the total amount due on or before the due date of the bill;]

[(H) the due date of the bill;]

[(I) the date by which customers must pay the bill in order to avoid addition of a penalty;]

[(J) the total amount due as penalty for nonpayment within a designated period;]

[(K) a distinct marking to identify an estimated bill;]

[(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;]

[(M) the total amount due for sewer service;]



[(N) the gallonage used in determining sewer usage; and]

[(O) the local telephone number or toll free number where the utility can be reached.]

[(3) A retail public utility required to file a water loss audit with the Texas Water Development Board under the provisions of Texas Water Code (TWC), §16.0121, shall notify its customers of its water loss reported in the water loss audit by including the water loss information on or with the next bill sent to its customers following the filing of the water loss audit, unless the retail public utility elects to notify its customers of its water loss reported in the water loss audit by including the water loss information on or with its next consumer confidence report following the filing of the water loss audit in accordance with §290.272 of this title (relating to Content of the Report).]

[(4) Except for an affected county or for solid waste disposal fees collected under a contract with a county or other public agency, charges for nonutility services or any other fee or charge not specifically authorized by the TWC or these rules or specifically listed on the utility's approved tariff may not be included on the bill.]

[(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility that serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the

customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates that will accurately reflect the cost of service to each class of customer.]

[(g) Consolidated billing and collection contracts.]

[(1) This subsection applies to all retail public utilities.]

[(2) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.]

[(3) A contract or order under this subsection must provide procedures and deadlines for submitting filing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.]

[(4) A contract or order under this subsection may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:]

[(A) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and]

[(B) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.]

[(5) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.]

[(h) 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 must be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that was underbilled. The backbilling may not exceed 12

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.]

[i] Estimated bills. When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.]

[j] Prorated charges for partial-month bills. When a bill is issued for a period of less than one month, charges should be computed as follows.]

[1] Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.]

[2] Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.]

[3] Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.]

[(k) Prorated charges due to utility service outages. In the event that utility service is interrupted for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.]

[(l) 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 §291.88 of this title.]

[(2) Notwithstanding any other section of this chapter, the customer may not be required to pay the disputed portion of a bill that exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage will be the average of the customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage will be estimated on the basis of usage levels of similar customers under similar conditions.]

[(3) Notwithstanding any other section of this chapter, a utility customer's service may not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.88 of this title.]

[(m) Notification of alternative payment programs or payment assistance. Any time customers contact a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide information to the customers in English and in Spanish, if requested, of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.]

[(n) Adjusted bills. There is a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:]

[(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills must be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months. This

subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;]

[(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;]

[(3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or]

[(4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.]

[(o) Equipment damage charges. A utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes that the system cannot properly treat. The utility may charge for all

actual costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the executive director.]

[p) Fees. Except for an affected county, utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.]

[(1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:]

[A) under a contract and only in accordance with the terms of the contract;]

[B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change



application has been properly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission or executive director; or]

[(C) for purposes of this subsection, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.]

[(2) Except as provided in §291.88(h)(2) of this title and §291.89(c) of this title other fees listed on a utility's approved tariff may be charged when appropriate. Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.]

[(q) Payment with cash. When a customer pays any portion of a bill with cash, the utility shall issue a written receipt for the payment.]

[(r) Voluntary contributions for certain emergency services.]

[(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall

provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:]

[ (A) describing the procedure by which the customer may make a contribution with the customer's bill payment;]

[ (B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;]

[ (C) informing the customer that a contribution is voluntary;]

[ (D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and]

[ (E) describing the deductibility status of the contribution under federal income tax law.]

[(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.]

[(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:]

[(A) the utility's expenses in administering the contribution program;  
or]

[(B) 5.0% of the amount collected as contributions.]

[(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.]

**[\$291.88. Discontinuance of Service.]**

[(a) Disconnection with notice.]

[(1) Notice requirements. Proper notice shall consist of a separate written statement which a utility must mail or hand deliver to a customer before service may be disconnected. The notice must be provided in English and Spanish if necessary to adequately inform the customer and must include the following information:]

[(A) the words "termination notice" or similar language approved by the executive director written in a way to stand out from other information on the notice;]

[(B) the action required to avoid disconnection, such as paying past due service charges;]

[(C) the date by which the required action must be completed to avoid disconnection. This date must be at least ten days from the date the notice is provided unless a shorter time is authorized by the executive director;]

[(D) the intended date of disconnection;]

[(E) the office hours, telephone number, and address of the utility's local office;]

[(F) the total past due charges;]

[(G) all reconnect fees that will be required to restore water or sewer service if service is disconnected.]

[(H) if notice is provided by a sewer service provider under subsection (e) of this section, the notice must also state:]

[ (i) that failure to pay past due sewer charges will result in termination of water service; and]

[ (ii) that water service will not be reconnected until all past due and currently due sewer service charges and the sewer reconnect fee are paid.]

[(2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:]

[(A) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.]

[ (i) Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.]

[ (ii) Payment at a utility's office or authorized payment agency is considered payment to the utility.]

[ (iii) The utility is not obligated to accept payment of the bill when an employee is at the customer's location to disconnect service;]

[(B) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others;]

[(C) operation of non-standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;]

[(D) failure to comply with deposit or guarantee arrangements where required by §291.84 of this title (relating to Applicant and Customer Deposit);]

[(E) failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section; and]

[(F) failure to pay solid waste disposal fees collected under contract with a county or other public agency.]

[(b) Disconnection without notice. Utility service may be disconnected without prior notice for the following reasons:]

[(1) where a known and dangerous condition related to the type of service provided exists. Where reasonable, given the nature of the reason for disconnection, a written notice of the disconnection, explaining the reason service was disconnected, shall be posted at the entrance to the property, the place of common entry or upon the front

door of each affected residential unit as soon as possible after service has been disconnected;]

[(2) where service is connected without authority by a person who has not made application for service;]

[(3) where service has been reconnected without authority following termination of service for nonpayment under subsection (a) of this section;]

[(4) or in instances of tampering with the utility's meter or equipment, bypassing the same, or other instances of diversion as defined in §291.89 of this title (relating to Meters).]

[(c) Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:]

[(1) failure to pay for utility service provided to a previous occupant of the premises;]

[(2) failure to pay for merchandise, or charges for non-utility service provided by the utility;]

[(3) failure to pay for a different type or class of utility service unless the fee for such service is included on the same bill or unless such disconnection is in accordance with subsection (e) of this section;]

[(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;]

[(5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §291.89 of this title;]

[(6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control;]

[(7) failure to comply with regulations or rules regarding anything other than the type of service being provided including failure to comply with septic tank regulations or sewer hook-up requirements;]

[(8) refusal of a current customer to sign a service agreement; or,]

[(9) failure to pay standby fees.]



[(d) Disconnection due to utility abandonment. No public utility may abandon a customer or a certificated service area unless it has complied with the requirements of §291.114 of this title (relating to Requirement to Provide Continuous and Adequate Service) and obtained approval from the commission.]

[(e) Disconnection of water service due to nonpayment of sewer charges.]

[(1) Where sewer service is provided by one retail public utility and water service is provided by another retail public utility, the retail public utility that provides the water service shall disconnect water service to a customer who has not paid undisputed sewer charges if requested by the sewer service provider and if an agreement exists between the two retail public utilities regarding such disconnection or if an order has been issued by the commission specifying a process for such disconnections.]

[(A) Before water service may be terminated, proper notice of such termination must be given to the customer and the water service provider by the sewer service provider. Such notice must be in conformity with subsection (a) of this section.]

[(B) Water and sewer service shall be reconnected in accordance with subsection (h) of this section. The water service provider may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. The water service provider may require the customer to pay any water service charges which have been billed but remain unpaid

prior to reconnection. The water utility may require the sewer utility to reimburse it for the cost of disconnecting the water service in an amount not to exceed \$50. The sewer utility may charge the customer its approved reconnect fee for nonpayment in addition to any past due charges.]

[(C) If the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer charges, the commission may issue an order requiring disconnections under specified conditions.]

[(D) The commission will issue an order requiring termination of service by the retail public utility providing water service if either:]

[(i) the retail public utility providing sewer service has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service; or,]

[(ii) the commission finds that an order is necessary to effectuate the purposes of the Texas Water Code.]

[(2) A utility providing water service to customers who are provided sewer service by another retail public utility may enter into an agreement to provide billing services for the sewer service provider. In this instance, the customer may only be

charged the tariffed reconnect fee for nonpayment of a bill on the water service provider's tariff.]

[(3) This section outlines the duties of a water service provider to an area served by a sewer service provider of certain political subdivisions.]

[(A) This section applies only to an area:]

[(i) that is located in a county that has a population of more than 1.3 million; and]

[(ii) in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity.]

[(B) For each person the water service provider serves in an area to which this section applies, the water service provider shall provide the municipality or district with any relevant customer information so that the municipality or district may bill users of the sewer service directly and verify the water consumption of users. Relevant customer information provided under this section includes the name, address, and telephone number of the customer of the water service provider, the monthly meter readings of the customer, monthly consumption information, including any billing adjustments, and certain meter information, such as brand, model, age, and location.]

[(C) The municipality or district shall reimburse the water service provider for its reasonable and actual incremental costs for providing services to the municipality or district under this section. Incremental costs are limited to only those costs that are in addition to the water service provider's costs in providing its services to its customers, and those costs must be consistent with the costs incurred by other water utility providers. Only if requested by the wastewater provider, the water service provider must provide the municipality or district with documentation certified by a certified public accountant of the reasonable and actual incremental costs for providing services to the municipality or district under this section.]

[(D) A municipality or conservation and reclamation district may provide written notice to a person to whom the municipality's or district's sewer service system provides service if the person has failed to pay for the service for more than 90 days. The notice must state the past due amount owed and the deadline by which the past due amount must be paid or the person will lose water service. The notice may be sent by First Class mail or hand-delivered to the location at which the sewer service is provided.]

[(E) The municipality or district may notify the water service provider of a person who fails to make timely payment after the person receives notice under subparagraph (D) of this paragraph. The notice must indicate the number of days the

person has failed to pay for sewer service and the total amount past due. On receipt of the notice, the water service provider shall discontinue water service to the person.]

[F) This subsection does not apply to a nonprofit water supply or sewer service corporation created under Texas Water Code, Chapter 67, or a district created under Texas Water Code, Chapter 65.]

[f) Disconnection for ill customers. No utility may discontinue service to a delinquent residential customer when that customer establishes that some person residing at that residence will become seriously ill or more seriously ill if service is discontinued. To avoid disconnection under these circumstances, the customer must provide a written statement from a physician to the utility prior to the stated date of disconnection. Service may be disconnected in accordance with subsection (a) of this section if the next month's bill and the past due bill are not paid by the due date of the next month's bill, unless the customer enters into a deferred payment plan with the utility.]

[(g) Disconnection upon customer request. A utility shall disconnect service no later than the end of the next working day 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 hours.]

[(2) Reconnect Fees.]

[(A) A reconnect fee, or seasonal reconnect fee as appropriate, may be charged for restoring service if listed on the utility's approved tariff.]

[(B) A reconnect fee may not be charged where service was not disconnected, except in circumstances where a utility representative arrives at a customer's service location with the intent to disconnect service because of a delinquent bill, and the customer prevents the utility from disconnecting the service.]

[(C) Except as provided under §291.89(c) of this title when a customer prevents disconnection at the water meter or connecting point between the utility and customer sewer lines, a reconnect fee charged for restoring water or sewer service after disconnection for nonpayment of monthly charges shall not exceed \$25 provided the customer pays the delinquent charges and requests to have service restored within 45 days. If a request to have service reconnected is not made within 45 days of the date of

disconnection, the utility may charge its approved reconnect fee or seasonal reconnect fee.]

[ (D) A reconnect fee cannot be charged for reconnecting service after disconnection for failure to pay solid waste disposal fees collected under a contract with a county or other public agency.]

**[\$291.89. Meters.]**

[ (a) Meter requirements.]

[ (1) Use of meter. All charges for water service shall be based on meter measurements, except where otherwise authorized in the utility's approved tariff.]

[ (2) Installation by utility. Unless otherwise authorized by the commission, each utility shall provide, install, own and maintain all meters necessary for the measurement of water provided to its customers.]

[ (3) Standard type. No utility shall furnish, set up, or put in use any meter which is not reliable and of a standard type which meets industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation or experimental purposes.]

[(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) Meter readings.]

[(1) Meter unit indication. In general, each meter shall indicate clearly the gallons of water or other units of service for which charge is made to the customer.]

[(2) Reading of meters.]

[(A) Service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each month, but may be read at other than monthly intervals if authorized in the utility's approved tariff.]

[(B) The utility shall charge for volume usage at the lowest block charge on its approved tariff when the meter reading date varies by more than two days from the normal meter reading date.]



[(c) Access to meters and utility cutoff valves.]

[(1) At the customer's request, utility employees must present information identifying themselves as employees of the utility in order to establish the right of access.]

[(2) Utility employees shall be allowed access for the purpose of reading, testing, installing, maintaining and removing meters and using utility cutoff valves. Conditions that may hinder access include, but are not limited to, fences with locked gates, vehicles or objects placed on top of meters or meter boxes, and unrestrained animals.]

[(3) When access is hindered on an ongoing basis, utilities may, but are not required to, make alternative arrangements for obtaining meter readings as described in paragraphs (4) and (5) of this subsection. Alternative arrangements for obtaining meter readings shall be made in writing with a copy provided to the customer and a copy filed in the utility's records on that customer.]

[(4) If access to a meter is hindered and the customer agrees to read his own meter and provide readings to the utility, the utility may bill according to the customer's readings; provided the meter is read by the utility at regular intervals (not exceeding six months) and billing adjustments are made for any overcharges or undercharges.]

[(5) If access to a meter is hindered and the customer does not agree to read their own meter, the utility may bill according to estimated consumption; provided the meter is read by the utility at regular intervals (not exceeding three months) and billing adjustments are made for any overcharges or undercharges.]

[(6) If access to a meter is hindered and the customer will not arrange for access at regular intervals, the utility may relocate the meter to a more accessible location and may charge the customer for the actual cost of relocating the meter. Before relocating the meter, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of relocating the meter, an explanation of the condition hindering access and what the customer can do to correct that condition, and information on how to contact the utility. The notice shall give the customer a reasonable length of time to arrange for utility access so the customer may avoid incurring the relocation cost. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.]

[(7) If access to a meter, cutoff valve or sewer connection is hindered by the customer and the customer's service is subject to disconnection under §291.88 of this title (relating to Discontinuance of Service), the utility may disconnect service at the main and may charge the customer for the actual cost of disconnection and any subsequent reconnection. The utility shall document the condition preventing access by providing

photographic evidence or a sworn affidavit. Before disconnecting service at the main, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of disconnecting service at the main and reconnecting service and shall give the customer at least 72 hours to correct the condition preventing access and to pay any delinquent charges due the utility before disconnection at the main. The customer may also be required to pay the tariffed reconnect fee for nonpayment in addition to delinquent charges even if service is not physically disconnected. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.]

[(d) Meter tests on request of customer.]

[(1) Upon the request of a customer, each utility shall make, without charge a test of the accuracy of the customer's meter. If the customer asks to observe the test, the test shall be conducted in the customer's presence or in the presence of the customer's authorized representative. The test shall be made during the utility's normal working hours at a time convenient to the customer. Whenever possible, the test shall be made on the customer's premises, but may, at the utility's discretion, be made at the utility's testing facility.]

[(2) Following the completion of any requested test, the utility shall promptly advise the customer of the date of the test, the result of the test, who made the test and the date the meter was removed if applicable.]

[(3) If the meter has been tested by the utility or a testing facility at the customer's request, and within a period of two years the customer requests a new test, the utility shall make the test, but if the meter is found to be within the accuracy standards established by the American Water Works Association, the utility may charge the customer a fee which reflects the cost to test the meter, but this charge shall in no event be more than \$25 for a residential customer.]

[(e) Meter testing]

[(1) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial. The test shall be conducted in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association or other procedures approved by the executive director.]

[(2) The utility shall provide the necessary standard facilities, instruments, and other equipment for testing its meters in compliance with these sections. Any utility may be exempted from this requirement by the commission provided that satisfactory arrangements are made for testing its meters by another utility or testing facility equipped to test meters in compliance with these sections.]

(3) Measuring devices for testing meters may consist of a calibrated tank or container for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory as may be approved by the commission or executive director. The executive director can also authorize the use of a volumetric container for testing meters without a laboratory certification when it is in the best interest of the customer and utility to reduce the cost of testing. If a weight standard is used, the scales shall be tested and calibrated periodically by an approved laboratory and a record maintained of the results of the test.]

[(4) Standards used for meter testing shall be of a capacity sufficient to insure accurate determination of meter accuracy and shall be subject to the approval of the commission.]

[(5) A standard meter may be provided and used by a utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated at least once per year unless a longer period is approved by the executive director to insure its accuracy within the limits required by these sections. A record of such tests shall be kept by the utility for at least three years following the tests.]

[(f) Meter test prior to installation. No meter shall be placed in service unless its accuracy has been established. If any meter shall have been removed from service, it must be properly tested and adjusted before being placed in service again. No meter shall be

placed in service if its accuracy falls outside the limits as specified by the American Water Works Association.]

[(g) Bill adjustment due to meter error. If any meter is found to be outside of the accuracy standards established by the American Water Works Association, proper correction shall be made of previous readings for the period of six months immediately preceding the removal of such meter from service for the test, or from the time the meter was in service since last tested, but not exceeding six months, as the meter shall have been shown to be in error by such test, and adjusted bills shall be rendered. No refund is required from the utility except to the customer last served by the meter prior to the testing. If a meter is found not to register for any period, unless bypassed or tampered with, the utility shall make a charge for units used, but not metered, for a period not to exceed three months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.]

[(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, 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.]

**[\$291.90. Continuity of Service.]**

**[(a) Service interruptions.]**

[(1) Every utility or water supply or sewer service corporation shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.]

[(2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.]

[(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.]

[(b) Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.]



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

### **[\$291.91]**

#### **Statutory Authority**

The repeal of the section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the section implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **[\$291.91. Applicability.]**

[Except where otherwise noted, this chapter applies to retail public utilities as defined by §291.3 of this title (relating to Definitions of Terms) which possess or are required to possess a Certificate of Convenience and Necessity.]

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

### **§291.92**

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§291.92. Requirements by Others.**

[(a)] The application of commission rules shall not relieve the retail public utility from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

[(b)] The commission's rules in this chapter relating to rates, records and reporting, customer service and protection and quality of service shall apply to utilities operating within the corporate limits of a municipality exercising original rate jurisdiction, unless the municipality adopts its own rules.]

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

**[§§291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113,  
291.115 - 291.120]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

**[§291.101. Certificate Required.]**

[(a) Unless otherwise specified, a utility, a utility operated by an affected county except an affected county to which Local Government Code, §412.017 applies, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate that the present or future public convenience and necessity requires or will require that installation, operation, or extension. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available,

render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.]

[(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to the Texas Water Code, §13.242(c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.]

[(c) A district may not provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without the district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.]

[(d) A supplier of wholesale water or sewer service may not require a purchaser to obtain a certificate of public convenience and necessity if the purchaser is not otherwise required by this chapter to obtain the certificate.]

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

[(a) In determining whether to grant or amend a certificate of public convenience and necessity (CCN), 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 Texas 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 (TWC).]

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

[(2) 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) 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) 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) 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) 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) The commission may approve applications and grant or amend a certificate only after finding that the certificate or amendment 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) In considering whether to grant or amend a certificate, the commission shall also consider:]

[(1) the adequacy of service currently provided to the requested area;]

[(2) the need for additional service in the requested area, including, but not limited to:]

[(A) whether any landowners, prospective landowners, tenants, or residents have requested service;]

[(B) economic needs;]

[(C) environmental needs;]

[(D) written application or requests for service; or]

[(E) reports or market studies demonstrating existing or anticipated growth in the area;]

[(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;]

[(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;]

[(5) the feasibility of obtaining service from an adjacent retail public utility;]

[(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;]

[(7) environmental integrity;]

[(8) the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and]



[(9) the effect on the land to be included in the certificated area.]

[(e) The commission may require an applicant for a certificate or for an amendment to provide a bond or other 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) 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 TWC, §15.001.]

[(g) For two or more retail public utilities that apply for a CCN to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC, §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.]

[(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a CCN or for an amendment to an existing CCN. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a CCN that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.]

[(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.]

**[§291.104. Applicant.]**

[(a) It is the responsibility of the owner of the utility or the president of the board of directors or designated representative of the water supply or sewer service corporation, affected county, district, or municipality to submit an application for a certificate of convenience and necessity.]

[(b) The applicant shall have the continuing duty to submit information regarding any material change in the applicant's financial, managerial, or technical status that arises during the application review process.]

**[\S291.105. Contents of Certificate of Convenience and Necessity Applications.]**

[(a) Application. To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment as provided by this section. Applications for CCNs or for an amendment to a certificate must contain an original and three copies of the following materials, unless otherwise specified in the application:]

[(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;]

[(2) a map and description of only the proposed service area by:]

[(A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;]

[(B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;]

[(C) verifiable landmarks, including a road, creek, or railroad line; or]

[(D) a copy of the recorded plat of the area, if it exists, with lot and block number; and]

[(E) maps as described in §291.119 of this title (relating to Filing of Maps);]

[(F) a general location map; and]

[(G) other maps as requested by the executive director or required by §281.16 of this title (relating to Applications for Certificates of Convenience and Necessity);]

[(3) a description of any requests for service in the proposed service area;]

[(4) any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;]

[(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;]

[(6) a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to maps showing where such facilities will be located to provide service;]

[(7) a description of the sources of funding for all facilities;]

[(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;]

[(9) disclosure of all affiliated interests as defined by §291.3 of this title  
(relating to Definitions of Terms);]

[(10) to the extent known, a description of current and projected land uses,  
including densities;]

[(11) a current financial statement of the applicant;]

[(12) according to the tax roll of the central appraisal district for each  
county in which the proposed service area is located, a list of the owners of each tract of  
land that is:]

[(A) at least 25 acres; and]

[(B) wholly or partially located within the proposed service area;]

[(13) if dual certification is being requested, and an agreement between the  
affected utilities exists, a copy of the agreement;]

[(14) for a water CCN for a new or existing system, a copy of:]

[(A) the approval letter for the commission-approved plans and  
specifications for the system or proof that the applicant has submitted either a

preliminary engineering report or plans and specification for the first phase of the system unless §290.39(j)(1)(D) of this title (relating to General Provisions) applies;]

[(B) other information that indicates the applicant is in compliance with §291.93 of this title (relating to Adequacy of Water Utility Service) for the system; or]

[(C) a contract with a wholesale provider that meets the requirements in §291.93 of this title;]

[(15) for a sewer CCN for a new or existing facility, a copy of:]

[(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the commission;]

[(B) other information that indicates that the applicant is in compliance with §291.94 of this title (relating to Adequacy of Sewer Service) for the facility; or]

[(C) a contract with a wholesale provider that meets the requirements in §291.94 of this title; and]

[(16) any other item required by the commission or executive director.]



[(b) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.]

[(1) This subsection applies only to a municipality with a population of 500,000 or more.]

[(2) Except as provided by paragraphs (3) - (7) of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.]

[(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:]

[(A) does not have the ability to provide service; or]

[(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.]

[(4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by Texas Water Code (TWC), §13.244(d)(3) or a subdivision plat, the commission may grant the CCN without the consent of the municipality if:]

[ (A) the commission makes the findings required by paragraph (3) of this subsection;]

[ (B) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and]

[ (C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:]

[ (i) comply with the municipality's service extension and development process; or]

[ (ii) enter into a contract for water or sewer services with the municipality.]

[(5) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.]

[(6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.]

[(7) Paragraphs (4) - (6) of this subsection do not apply in the following counties: Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson.]

[(8) A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.]

[(9) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the

municipality or the retail public utility may appeal the decision to the appropriate state district court.]

[(c) Extension beyond extraterritorial jurisdiction.]

[(1) Except as provided by paragraph (2) of this subsection, if a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.]

[(2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC, §13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission.]

[(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.]

[(4) To the extent of a conflict between this subsection and TWC, §13.245, TWC, §13.245 prevails.]

[(d) Area within municipality.]

[(1) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area under the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by TWC, §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the commission a CCN that includes the areas to be served.]

[(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.]

[(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system

that is not in compliance with the municipality's standards for water and wastewater service.]

[A] A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.]

[B] With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action upon notification of acquisition of the system.]

**[§291.106. Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications.]**

[(a) If an application for issuance or amendment of a certificate of public convenience and necessity (CCN) is filed, the applicant will prepare a notice or notices, as prescribed in the commission's application form, which will include the following:]

[(1) all information outlined in the Administrative Procedure Act, Texas Government Code, Chapter 2001;]

[(2) all information stipulated in the commission's instructions for completing an application for a CCN; and]

[(3) a statement that persons who wish to intervene or comment upon the action sought should contact the Utilities and Districts Section, Water Supply Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.]

[(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 CCN, 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 extraterritorial jurisdiction that overlaps the proposed service area boundaries. Applicants are also required to provide notice to the county judge of each county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified.]

[(2) For applications for an amendment of a CCN, 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 that overlaps the proposed service area boundaries. If decertification or dual certification is being requested, the applicant shall provide notice by certified mail to the current CCN holder. Applicants are also required to provide notice to the county judge of each county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified.]

[3) Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant shall mail notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:]

[(A) Texas Water Code, §13.248 or §13.255; or]

[(B) Texas Water Code, Chapter 65.]



[(4) Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.]

[(5) Utilities that are required to possess a certificate but that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date those rates were instituted, and any other information required in the application.]

[(6) Within 30 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.]

[(c) The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.]

[(d) The commission may require the applicant to deliver notice to other affected persons or agencies.]

[(e) In this section, utility service provider means a retail public utility other than a district subject to Texas Water Code, §49.452.]

[(f) A utility service provider shall:]

[(1) record in the real property records of each county in which the service area, or a portion of the service area is located, a certified copy of the map of the CCN and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area by:]

[(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;]

[(B) the Texas State Plane Coordinate System;]

[(C) verifiable landmarks, including a road, creek, or railroad line; or]

[(D) if a recorded plat of the area exists, lot and block number; and]

[(2) submit to the executive director evidence of the recording.]

[(g) The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the

commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.]

[(h) The recording required by this section for holders of certificates of public convenience and necessity already in existence as of September 1, 2005 must be completed not later than January 1, 2007.]

**[\$291.107. Action on Applications.]**

[(a) The commission may conduct a public hearing on any application.]

[(b) The commission may take action on an application at a regular meeting without holding a public hearing if 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing has been requested.]

[(c) The executive director may take action on an application which is uncontested at the end of the 30 day protest period following mailed or published notice or for which all protests are subsequently withdrawn in accordance with Chapter 50 of this title (relating to Action on Applications).]

[(d) If a hearing is requested, the application will be processed in accordance with Chapter 55 Subchapter B of this title (relating to Hearing Requests, Public Comment).]

**[§291.109. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.]**

[(a) On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action. The notification shall be on the form required by the commission and the comment period will not be less than 30 days. Public notice may be waived by the executive director for good cause shown. The 120-day period begins on the last date of whichever of the following events occur:]

[(1) the date the applicant files an application under this section;]

[(2) if mailed notice is required, the last date the applicant mailed the required notices as stated in the applicant's affidavit of notice; or]

[(3) if newspaper notice is required, the last date of the publication of the notice in the newspaper as stated in the affidavit of publication.]

[(b) A person purchasing or acquiring the water or sewer system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.]

[(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the commission may require that the person provide financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).]

[(d) The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger or consolidation to determine whether the transaction will serve the public interest.]

[(e) Prior to the expiration of the 120-day notification period, the executive director shall notify all known parties to the transaction of the decision to either approve the sale administratively or to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:]

[(1) the application filed with the commission or the public notice was improper;]

[(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing

continuous and adequate service to the service area being acquired and to any areas currently certificated to that person;]

[(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:]

[(A) noncompliance with the requirements of the commission or the Department of State Health Services; or]

[(B) continuing mismanagement or misuse of revenues as a utility service provider;]

[(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system;]

[(5) it is in the public interest to investigate the following factors:]

[(A) whether the seller has failed to comply with a commission order;]

[(B) the adequacy of service currently provided to the area;]

[(C) the need for additional service in the requested area;]

[(D) the effect of approving the transaction on the utility or water supply or sewer service corporation, the person purchasing or acquiring the water or sewer system, and on any retail public utility of the same kind already serving the proximate area;]

[(E) the ability of the person purchasing or acquiring the water or sewer system to provide adequate service;]

[(F) the feasibility of obtaining service from an adjacent retail public utility;]

[(G) the financial stability of the person purchasing or acquiring the water or sewer system, including, if applicable, the adequacy of the debt-equity ratio of the person purchasing or acquiring the water or sewer system if the transaction is approved;]

[(H) the environmental integrity; and]

[(I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.]

[(f) Unless the executive director requests that a public hearing be held, the sale, acquisition, lease, or rental or merger or consolidation may be completed as proposed:]

[(1) at the end of the 120-day period;]

[(2) or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.]

[(g) Within 30 days after the actual effective date of the transaction, the utility or water supply or sewer service corporation must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.]

[(h) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, merger, consolidation, or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.]

[(i) A sale, acquisition, lease, or rental of any water or sewer system, required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of the Texas Water Code, §13.301 is void.]



[(j) The requirements of the Texas Water Code, §13.301 do not apply to:]

[(1) the purchase of replacement property;]

[(2) a transaction under the Texas Water Code, §13.255; or]

[(3) foreclosure on the physical assets of a utility.]

[(k) If a utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its certificate of convenience and necessity or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.]

[(l) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the

requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.]

**[§291.111. Purchase of Voting Stock in Another Utility.]**

[(a) A utility may not purchase voting stock in and a person may not acquire a controlling interest in a utility doing business in this state unless the utility or person files a written application with the commission not later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as a person or a combination of a person and other family members possessing at least 50% of the voting stock of the utility; or a person that controls at least 30% of the stock and is the largest stockholder.]

[(b) A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.]

[(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require that the person provide financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be

as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).]

[(d) The executive director may request that the commission hold a public hearing on the transaction if the executive director believes that a criterion prescribed by §291.110 of this title (relating to Foreclosure and Bankruptcy) applies.]

[(e) Unless the executive director requests that a public hearing be held, the purchase or acquisition may be completed as proposed:]

[(1) at the end of the 60 day period; or]

[(2) at any time after the executive director notifies the person or utility that a hearing will not be requested.]

[(f) The utility or person must notify the commission within 30 days after the date that the transaction is completed.]

[(g) If a hearing is requested by the executive director or if the person or utility fails to make the application to the commission as required, the purchase or acquisition may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.]

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

[(a) Effective date of transfer. A certificate is issued in personam, continues in force until further order of the commission, and may be transferred only by the approval of the commission. Any attempted transfer is not effective for any purpose until actually approved by the commission.]

[(b) Sale, assignment, or lease of certificate of convenience and necessity. Except as provided by the Texas Water Code, §13.255, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the Texas Water Code, §13.246(c). The sale, assignment, or lease shall be on the conditions prescribed by the commission.]

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

[(1) Unless notice is waived by the executive director for good cause shown, mailed notice shall be given to customers of the water or sewer system to be sold, acquired, leased or rented or merged or consolidated and other affected parties as

determined by the executive director on the form prescribed by the executive director and shall include the following:]

[ (A) the name and business address of the currently certificated retail public utility and the retail public utility which will acquire the facilities or certificate;]

[ (B) a description of the service area of the retail public utility being transferred;]

[ (C) the anticipated effect of the acquisition or transfer on the operation or the rates and services provided to customers being transferred; and]

[ (D) a statement that persons who wish to comment upon the action sought should contact the designated representative of the executive director at the commission's mailing address within 30 days of mailing or publication of notice, whichever occurs later.]

[ (2) The commission may require the applicant to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the area in which the retail public utility being transferred is located and publication may be allowed in lieu of individual notice as required in this subsection.]

[(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) If the executive director does not request a hearing, the commission may approve the transfer by order at a regular meeting of the commission.]

[(5) 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) if notice has been properly given;]

[(B) if the retail public utility which will acquire the facilities or certificate is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors set forth in the Texas Water Code, §13.246(c). The commission may refuse to approve a sale, acquisition, lease, rental, merger, or consolidation and/or transfer where conditions of a judicial decree, compliance agreement or other enforcement order have not been substantially met;]

[(C) the experience of the person purchasing or acquiring the water or sewer system as a utility service provider;]

[(D) the history of the person or an affiliated interest of the person in complying with the requirements of the commission or the Texas Department of Health or of properly managing or using revenues as a utility service provider; or]

[(E) the ability of the person purchasing or acquiring the water or sewer system to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system.]

[(d) Reporting of customer deposits. Within 30 days after the sale or transfer of any utility or operating units thereof, the seller shall file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.]

[(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).]

**[§291.113. Revocation or Amendment of Certificate.]**

[(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity (CCN) with the written consent of the certificate holder or if it finds that:]

[(1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;]

[(2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;]



[(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate;]

[(4) the certificate holder has failed to file a cease and desist action under Texas Water Code (TWC), §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days; or]

[(5) in an area certificated to a municipality outside the municipality's extraterritorial jurisdiction, the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area, except that an area that was transferred to a municipality on approval of the commission or the executive director and in which the municipality has spent public funds may not be revoked or amended under this paragraph.]

[(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a CCN so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the

release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:]

[(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:]

[(A) the area for which service is sought shown on a map with descriptions according to §291.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);]

[(B) the time frame within which service is needed for current and projected service demands in the area;]

[(C) the level and manner of service needed for current and projected service demands in the area;]

[(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;]

[E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and]

[F) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;]

[(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;]

[(3) the certificate holder:]

[(A) has refused to provide the service;]

[(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or]

[(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and]

[(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide continuous and adequate service within the time frame, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:]

[(A) an existing retail public utility; or]

[(B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertificated under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.]

[(c) A landowner is not entitled to make the election described in subsections (b) or (r) of this section but is entitled to contest under subsection (a) of this section the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:]

[(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or]

[(2) in a platted subdivision actually receiving water or sewer service.]

[(d) Within 60 calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission or executive director shall grant the petition unless the commission or executive director makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission or executive director may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.]

[(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission or executive director

on the petition is final after any reconsideration authorized under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) and may not be appealed.]

[f) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a CCN under TWC, §13.242(c).]

[g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.]

[h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless the retail public utility, or a petitioner under subsection (r) of this section, provides compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.]

[i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.]

[(j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.]

[(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.]

[(2) After receiving the appraisals, the commission or executive director shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.]

[(k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to

the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.]

[(l) As a condition to decertification or single certification under TWC, §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:]

[(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and]

[(2) the transfer of the entire CCN of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.]



[(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.]

[(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:]

[(1) transferring debt and other contract obligations;]

[(2) transferring real and personal property;]

[(3) establishing interim service rates for affected customers during specified times; and]

[(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.]

[(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public

utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.]

[(p) The commission shall not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section.]

[(q) Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:]

[(1) submit to the executive director a written list with the names and addresses of the lienholders and the amount of debt; and]

[(2) notify the lienholders of the decertification process and request that the lienholder provide information to the executive director sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.]

[(r) As an alternative to decertification under subsection (a) of this section and expedited release under subsection (b) of this section, the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet,

Caldwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.]

[(s) On the same day the petitioner submits the petition to the commission, the petitioner shall send, via certified mail, a copy of the petition to the CCN holder. The CCN holder may submit a response to the commission. The commission or the executive director shall grant a petition received under subsection (r) of this section not later than the 60th calendar day after the date the landowner files the petition. The commission or the executive director may not deny a petition received under subsection (r) of this section based on the fact that a certificate holder is a borrower under a federal loan program. The commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under subsection (r) of this section as otherwise provided by this section. An award of compensation is governed by subsections (h) - (k) of this section.]

[(t) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under subsection (b) of this section, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.]

[(u) Subsection (t) of this section does not apply in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.]

[(v) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.]

**[§291.115. Cessation of Operations by a Retail Public Utility.]**

[(a) Any retail public utility which possesses or is required to possess a certificate of convenience and necessity desiring to discontinue, reduce or impair utility service, except under the conditions listed in the Texas Water Code, §13.250(b), must file a petition with the commission which sets out:]

[(1) the action proposed by the retail public utility;]

[(2) the proposed effective date of the actions which must be at least 120 days after the petition is filed with the commission;]

[(3) a concise statement of the reasons for proposing the action; and]

[(4) the area affected by the action, including maps as described by §291.106(2) and (3) of this title (relating to Notice for Applications for Certificates of Convenience and Necessity).]

[(b) The retail public utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following:]

[(1) the name and business address of the retail public utility which seeks to cease operations;]

[(2) a description of the service area of the retail public utility involved;]

[(3) the anticipated effect of the cessation of operations on the rates and services provided to the customers; and]

[(4) a statement that persons who wish to intervene or comment upon the action sought should contact the designated representative of the executive director at the commission's mailing address within 30 days of mailing or publication of notice, whichever occurs later.]

[(c) After review by the commission, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the petitioner's service area and any city whose extraterritorial jurisdiction overlaps

the applicant's service area, and to the customers of the applicant proposing to cease operations.]

[(d) The applicant may be required by the executive director or the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county of operation which shall include, in addition to the information specified in subsection (b) of this section:]

[(1) the sale price of the facilities;]

[(2) the name and mailing address of the owner of the retail public utility;  
and]

[(3) the business telephone of the retail public utility.]

[(e) The commission may require the applicant to deliver notice to other affected persons or agencies.]

[(f) If, 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing is requested, the commission may consider the application for final decision without further hearing.]

[(g) If a hearing is requested, the application will be processed in accordance with §55.101(g) of this title (relating to Applicability).]

[(h) In no circumstance may a retail public utility which possesses or is required to possess a certificate of convenience and necessity, a person who possesses facilities used to provide utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a certificate of convenience and necessity pursuant to §291.103(d) of this title (relating to Certificates Not Required) cease operations without commission authorization.]

[(i) In determining whether to grant authorization to the retail public utility for discontinuation, reduction, or impairment of utility service, the commission shall consider, but is not limited to, the following factors:]

[(1) the effect on the customers and landowners;]

[(2) the costs associated with bringing the system into compliance;]

[(3) the applicant's diligence in locating alternative sources of service;]

[(4) the applicant's efforts to sell the system, such as running advertisements, contacting similar adjacent retail public utilities, or discussing cooperative organization with the customers;]

[(5) the asking price for purchase of the system as it relates to the undepreciated original cost of the system for ratemaking purposes;]

[(6) the relationship between the applicant and the original developer of the area served;]

[(7) the availability of alternative sources of service, such as adjacent retail public utilities or groundwater; and]

[(8) the feasibility of customers and landowners obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.]

[(j) If a utility does abandon operation of its facilities without commission authorization, the commission may appoint a temporary manager to take over operations of the facilities to ensure continuous and adequate service.]

**[\$291.116. Exclusiveness of Certificates.]**

[Any certificate granted under this subchapter shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional



certification to another retail public utility or utilities, additional certification to any other retail public utility or utilities to all or any part of the area previously certificated pursuant to this chapter.]

**[\$291.117. Contracts Valid and Enforceable.]**

[(a) Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the certificates of public convenience and necessity. Nothing in this provision negates the requirements of Texas Water Code, §13.301.]

[(b) Retail public utilities may request approval of contracts by filing a written request with the commission including:]

[(1) maps of the area to be transferred;]

[(2) a copy of the executed contract or agreement;]

[(3) if applicable, an affidavit that notice has been provided under Texas Water Code, §13.301;]

[(4) the filing fee as prescribed by Texas Water Code, §5.701; and]

[(5) any other information requested by the executive director.]

**[\$291.118. Contents of Request for Commission Order under the Texas Water Code,  
§13.252.]**

[If a retail public utility in constructing or extending a line, plant or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following:]

[(1) the name and business address of the retail public utility making the request;]

[(2) the name and business address of the retail public utility which is to be the subject of the order;]

[(3) a description of the alleged interference;]

[(4) a map showing the service area of the requesting utility which clearly shows the location of the alleged interference;]

[(5) copies of any other information or documentation which would support the position of the requesting utility;]

[(6) the filing fee as prescribed by the Texas Water Code, §5.235; and]

[(7) other information as the executive director may require.]

**[\$291.119. Filing of Maps.]**

[With applications to obtain or amend a certificate of convenience and necessity, each public utility and water supply or sewer service corporation shall file with the commission a map or maps of the area or areas being requested in the application showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.]

**[\$291.120. Single Certification in Incorporated or Annexed Areas.]**

[(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area under a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase franchised utility means a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the commission, and the commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.]

[(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application

and hearing to the retail public utility. Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:]

[ (1) submit to the executive director a written list with the names and addresses of the lienholders and the amount of debt; and]

[ (2) notify the lienholders of the decertification process and request that the lienholder provide information to the executive director sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.]

[ (c) The commission shall grant single certification to the municipality. The commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the commission shall also determine in its order the adequate and just compensation to be paid for such property under the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the commission shall not be effective to transfer property. A transfer of

property may only be obtained under this section by a court judgment rendered under Texas Water Code, §13.255(d) or (e). The grant of single certification by the commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation in accordance with court order, or pays an amount into the registry of the court or to the retail public utility under Texas Water Code, §13.255(f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.]

[(d) In the event the final order of the commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the commission.]

[(e) Any party that is aggrieved by a final order of the commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final.]

[(f) Transfer of property shall be effective on the date the judgment becomes final. However, after the judgment of the court is entered, the municipality or franchised utility may take possession of condemned property pending appeal if the municipality or franchised utility pays the retail public utility or pays into the registry of the court, subject to withdrawal by the retail public utility, the amount, if any, established in the court's judgment as just and adequate compensation. To provide security in the event an appellate court, or the trial court in a new trial or on remand, awards compensation in excess of the original award, the municipality or franchised utility, as the case may be, shall deposit in the registry of the court an additional sum in the amount of the award, or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages in excess of the original award of the trial court. In the event the municipally owned utility or franchised utility takes possession of property or provides utility service in the singly certificated area pending appeal, and a court in a final judgment in an appeal under this section holds that the grant of single certification was in error, the retail public utility is entitled to seek compensation for any damages sustained by it in accordance with subsection (g) of this section.]

[(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards in Texas Property Code, Chapter 21, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just

and adequate shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; factors relevant to maintaining the current financial integrity of the retail public utility; and other relevant factors.]

[h) The total compensation to be paid to a retail public utility under subsections (g) and (m) of this section must be determined not later than the 90th calendar day after the date on which the commission determines that the municipality's application is administratively complete.]

[i) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right under Texas Water Code, §13.255(f).]



[(j) In the event that a municipality files an application for single certification on behalf of a franchised utility, the municipality shall be joined in such application by such franchised utility, and the franchised utility shall make all payments required in the court's judgment to adequately and justly compensate the retail public utility for any taking or damaging of property and for the transfer of property to such franchised utility.]

[(k) This section shall apply only in a case where:]

[(1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under Texas Water Code, Chapter 65, or a fresh water supply district under Texas Water Code, Chapter 53; or]

[(2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility, other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.]

[(l) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in subsection (k)(2) of this section:]

[(1) the commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;]

[(2) if the municipality abandons its application, the court or the commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding, including attorney fees; and]

[(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding under this section.]

[(m) For an area incorporated by a municipality, the compensation provided under subsection (g) of this section shall be determined by a qualified individual or firm to serve as independent appraiser, which shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under subsection (g) of this section shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and

municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the tenth business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the commission or a person the commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the commission.]

[(n) The commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.]

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

**§§291.103, 291.110, 291.114**

**Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**§291.103. Certificates Not Required.**

[a] Extension of Service.]

[1] Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of public convenience and necessity, a retail public utility is not required to secure a certificate of public convenience and necessity for:]

[(A) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one quarter mile of the boundary of its

certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or]

[ (B) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.]

[ (2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the certificated area clearly showing the extension, accompanied by a written explanation of the extension.]

[ (b) Construction of Facilities. A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.]

[ (c) Municipality Pursuant to the Texas Water Code, §13.255. A municipality which has given notice under the Texas Water Code, §13.255 that it intends to provide retail

water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:]

[ (1) a copy of the notice required pursuant to the Texas Water Code, §13.255; and]

[ (2) a map showing the area affected under the Texas Water Code, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.]

[(d) Utility or Water Supply Corporation With Less Than 15 Potential Connections.]

[(1)] A utility or water supply corporation is exempt from the requirement to possess a certificate of convenience and necessity in order to provide retail water service if it:

(1) [(A)] has less than 15 potential service connections;

(2) [(B)] is not owned by or affiliated with a retail public utility or any other provider of potable water service;

(3) [(C)] is not within the certificated area of another retail public utility; and

(4) [(D)] is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.

[(2) Utilities or water supply corporations with less than 15 potential connections currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.]

[(3) The executive director may revoke the current certificate of convenience and necessity upon written request by the exempt utility or water supply corporation.]

[(4) An exempted utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the executive director which shall not be more stringent than those in §§291.80-291.90 of this title.]

[(5) The exempted utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.]

[(6) Exempt Utility Tariff and Rate Change Requirements. An exempted utility operating with or without a certificate of convenience and necessity:]

[(A) must maintain a current copy of the exempt utility tariff form with its current rates at its business location; and]

[(B) may change its rates without following the requirements in §291.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of rate changes prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written protests may be submitted to the commission at that address. If the commission receives written protests to a proposed rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the executive director will review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments from customers or the exempt utility, the executive director will establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the executive director. The exempt utility shall refund any rates collected in excess of the rates established by the executive director in accordance with the time frames or other requirements established by the executive director.]

[(C) The exempt utility or water supply corporation, public interest counsel, or any affected customer may file a written request for reconsideration or



protest of the executive director's decision on rates with the chief clerk not later than the 20th day after the date on which the executive director mailed his decision to the exempt utility and customers. The rates determined by the executive director shall remain in effect while the commission considers the request or protest. If the request or protest is not acted on by the commission within 45 days after the date on which the executive director mailed his decision on rates to the exempt provider and customers, the request shall be deemed to be overruled.]

[D) A rate change application filed by an exempt utility that follows the rate change procedures in §291.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.]

[(7) Unless authorized in writing by the executive director, a utility or a water supply corporation operating under these requirements may not cease utility operations. A utility may not discontinue service to a customer with or without notice except in accordance with the Exempt Utility Tariff Form and a water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.]

[(8) A utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff specified by the executive director shall be

subject to any and all enforcement remedies provided by this chapter and the Texas Water Code, Chapter 13.]

[(e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under Texas Water Code, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by Texas Water Code, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by Texas Water Code, §13.255(b).]

**§291.110. Foreclosure and Bankruptcy.**

(a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the commission in writing of that fact not later than the tenth day after the date on which the utility receives the notice.

(b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing utility service unless the person has a completed application for a certificate of convenience and necessity or to transfer the current certificate of convenience and necessity on file with the commission within 30 days after the foreclosure is completed.]

(b) [(c)] A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service [is not required to provide the 120-day notice prescribed by §13.301 of the code, but] shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

(d) The financial institution may operate the utility for an interim period not to exceed 12 months before transferring or otherwise obtaining a certificate of convenience and necessity unless the executive director in writing extends the time period. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.]

(c) [(e)] Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the commission in writing.

**§291.114. Requirement To Provide Continuous and Adequate Service.**

[(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:]

[(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;]

[(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;]

[(3) nonuse; or]

[(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.]

[(b)] After notice and hearing, the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Texas Water Code, §16.341, to:

(A) provide specified improvements in its service in a defined area if:

(i) service in that area is inadequate as set forth in §291.93 and §291.94 of this title (relating to Adequacy of Water Utility Service; and Adequacy of Sewer Service); or

(ii) is substantially inferior to service in a comparable area; and

(iii) it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the Public Utility Commission of Texas [commission] to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules [as specified in Chapter 37, Subchapter O of this title

(relating to Financial Assurance for Public Drinking Water Systems and Utilities), or as specified by the commission];

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service; or

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider. [; or]

[(4) issue an emergency order, with or without a hearing, under §291.14 of this title (relating to Emergency Orders).]

[(c) If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Health and Safety Code, §341.0355, or under this chapter, the commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a commission meeting, may:]

[(1) immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the financial assurance in an amount determined by the commission not to exceed the amount of the financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting; and]

[(2) require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.]

**[SUBCHAPTER H: UTILITY SUBMETERING AND ALLOCATION]**

**[§§291.121 - 291.125, 291.127]**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**[§291.121. General Rules and Definitions.]**

[(a) Purpose and scope. The provisions of this subchapter are intended to establish a comprehensive regulatory system to assure that the practices involving submetered and allocated billing of dwelling units and multiple use facilities for water and sewer utility service are just and reasonable and include appropriate safeguards for tenants.]

[(b) Application. The provisions of this subchapter apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis.]



[(c) Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.]

[(1) Allocated utility service--Water or wastewater utility service that is master metered to an owner by a retail public utility and allocated to tenants by the owner.]

[(2) Apartment house--A building or buildings containing five or more dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rental paid at intervals of one month or longer.]

[(3) Customer service charge--A customer service charge is a rate that is not dependent on the amount of water used through the master meter.]

[(4) Dwelling unit--One or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; a unit in a multiple use facility; or a manufactured home in a manufactured home rental community.]

[(5) Dwelling unit base charge--A flat rate or fee charged by a retail public utility for each dwelling unit recorded by the retail public utility.]

[(6) Master meter--A meter used to measure, for billing purposes, all water usage of an apartment house, condominium, multiple use facility, or manufactured home rental community, including common areas, common facilities, and dwelling units.]

[(7) Manufactured home rental community--A property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.]

[(8) Multiple use facility--A commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use and are rented at intervals of one month or longer.]

[(9) Occupant--A tenant or other person authorized under a written agreement to occupy a dwelling.]

[(10) Owner--The legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; a condominium association; or any individual, firm, or corporation that purports to be the landlord of tenants in an apartment house, manufactured home rental community, or multiple use facility.]

[(11) Point-of-use submeter--A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.]

[(12) Submetered utility service--Water utility service that is master metered for the owner by the retail public utility and individually metered by the owner at each dwelling unit; wastewater utility service based on submetered water utility service; water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters.]

[(13) Tenant--A person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and, if rent is paid, who is obligated to pay for the occupancy under a written or oral rental agreement.]

[(14) Utility service--For purposes of this subchapter, utility service includes only drinking water and wastewater.]

**[\$291.122. Owner Registration and Records.]**

[(a) Registration. An owner who intends to bill tenants for submetered or allocated utility service or who changes the method used to bill tenants for utility service shall register with the executive director in a form prescribed by the executive director.]

[(b) Water quantity measurement. Except as provided by subsections (c) and (d) of this section, a manager of a condominium or the owner of an apartment house, manufactured home rental community, or multiple use facility, on which construction began after January 1, 2003, shall provide for the measurement of the quantity of water, if any, consumed by the occupants of each unit through the installation of:]

[(1) submeters, owned by the property owner or manager, for each dwelling unit or rental unit; or]

[(2) individual meters, owned by the retail public utility, for each dwelling unit or rental unit.]

[(c) Plumbing system requirement. An owner of an apartment house on which construction began after January 1, 2003, and that provides government assisted or subsidized rental housing to low or very low income residents shall install a plumbing system in the apartment house that is compatible with the installation of submeters for the measurement of the quantity of water, if any, consumed by the occupants of each unit.]

[(d) Installation of individual meters. On the request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or

condominium on which construction began after January 1, 2003, unless the retail public utility determines that installation of meters is not feasible. If the retail public utility determines that installation of meters is not feasible, the property owner or manager shall install a plumbing system that is compatible with the installation of submeters or individual meters. A retail public utility may charge reasonable costs to install individual meters.]

[(e) Records. The owner shall make the following records available for inspection by the tenant or the executive director at the on-site manager's office during normal business hours in accordance with subsection (g) of this section. The owner may require that the request by the tenant be in writing and include:]

[(1) a current and complete copy of Texas Water Code, Chapter 13, Subchapter M;]

[(2) a current and complete copy of this subchapter;]

[(3) a current copy of the retail public utility's rate structure applicable to the owner's bill;]

[(4) information or tips on how tenants can reduce water usage;]

[(5) the bills from the retail public utility to the owner;]

[(6) for allocated billing:]

[(A) the formula, occupancy factors, if any, and percentages used to calculate tenant bills;]

[(B) the total number of occupants or equivalent occupants if an equivalency factor is used under §291.124(e)(2) of this title (relating to Charges and Calculations); and]

[(C) the square footage of the tenant's dwelling unit or rental space and the total square footage of the apartment house, manufactured home rental community, or multiple use facility used for billing if dwelling unit size or rental space is used;]

[(7) for submetered billing:]

[(A) the calculation of the average cost per gallon, liter, or cubic foot;]

[(B) if the unit of measure of the submeters or point-of-use submeters differs from the unit of measure of the master meter, a chart for converting the tenant's submeter measurement to that used by the retail public utility;]

[(C) all submeter readings; and]

[(D) all submeter test results;]

[(8) the total amount billed to all tenants each month;]

[(9) total revenues collected from the tenants each month to pay for water and wastewater service; and]

[(10) any other information necessary for a tenant to calculate and verify a water and wastewater bill.]

[(f) Records retention. Each of the records required under subsection (e) of this section shall be maintained for the current year and the previous calendar year, except that all submeter test results shall be maintained until the submeter is permanently removed from service.]

[(g) Availability of records].

[(1) If the records required under subsection (e) of this section are maintained at the on-site manager's office, the owner shall make the records available for inspection at the on-site manager's office within three days after receiving a written request.]

[(2) If the records required under subsection (e) of this section are not routinely maintained at the on-site manager's office, the owner shall provide copies of the records to the on-site manager within 15 days of receiving a written request from a tenant or the executive director.]

[(3) If there is no on-site manager, the owner shall make copies of the records available at the tenant's dwelling unit at a time agreed upon by the tenant within 30 days of the owner receiving a written request from the tenant.]

[(4) Copies of the records may be provided by mail if postmarked by midnight of the last day specified in paragraph (1), (2), or (3) of this subsection.]

**[\$291.123. Rental Agreement.]**

[(a) Rental agreement content. The rental agreement between the owner and tenant shall clearly state in writing:]

[(1) the tenant will be billed by the owner for submetered or allocated utility services, whichever is applicable;]

[(2) which utility services will be included in the bill issued by the owner;]



[(3) any disputes relating to the computation of the tenant's bill or the accuracy of any submetering device will be between the tenant and the owner;]

[(4) the average monthly bill for all dwelling units in the previous calendar year and the highest and lowest month's bills for that period;]

[(5) if not submetered, a clear description of the formula used to allocate utility services;]

[(6) information regarding billing such as meter reading dates, billing dates, and due dates;]

[(7) the period of time by which owner will repair leaks in the tenant's unit and in common areas, if common areas are not submetered;]

[(8) the tenant has the right to receive information from the owner to verify the utility bill; and]

[(9) for manufactured home rental communities, the service charge percentage that will be billed to tenants.]

[(b) Requirement to provide rules or summary. At the time a rental agreement is discussed, the owner shall provide a copy of this subchapter or a copy of the executive

director's summary of the rules to the tenant to inform the tenant of his rights and the owner's responsibilities under this subchapter.]

[(c) Tenant agreement to billing method changes. An owner shall not change the method by which a tenant is billed unless the tenant has agreed to the change by signing a lease or other written agreement. The owner shall provide notice of the proposed change at least 35 days prior to implementing the new method.]

[(d) Change from submetered to allocated billing. An owner shall not change from submetered billing to allocated billing, except after receiving written approval from the executive director after a demonstration of good cause and if the rental agreement requirements under subsections (a), (b), and (c) of this section have been met. Good cause may include:]

[(1) equipment failures; or]

[(2) meter reading or billing problems that could not feasibly be corrected.]

[(e) Waiver of tenant rights prohibited. A rental agreement provision that purports to waive a tenant's rights or an owner's responsibilities under this subchapter is void.]

**[§291.124. Charges and Calculations.]**

[(a) Prohibited charges. Charges billed to tenants for submetered or allocated utility service may only include bills for water or wastewater from the retail public utility and must not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.]

[(b) Dwelling unit base charge. If the retail public utility's rate structure includes a dwelling unit base charge, the owner shall bill each dwelling unit for the base charge applicable to that unit. The owner may not bill tenants for any dwelling unit base charges applicable to unoccupied dwelling units.]

[(c) Customer service charge. If the retail public utility's rate structure includes a customer service charge, the owner shall bill each dwelling unit the amount of the customer service charge divided by the total number of dwelling units, including vacant units, that can receive service through the master meter serving the tenants.]

[(d) Calculations for submetered utility service. The tenant's submetered charges must include the dwelling unit base charge and customer service charge, if applicable, and the gallonage charge and must be calculated each month as follows:]

[(1) water utility service: the retail public utility's total monthly charges for water service (less dwelling unit base charges or customer service charges, if applicable), divided by the total monthly water consumption measured by the retail public utility to obtain an average water cost per gallon, liter, or cubic foot, multiplied by the tenant's

monthly consumption or the volumetric rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;]

[(2) wastewater utility service: the retail public utility's total monthly charges for wastewater service (less dwelling unit base charges or customer service charges, if applicable), divided by the total monthly water consumption measured by the retail public utility, multiplied by the tenant's monthly consumption or the volumetric wastewater rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;]

[(3) service charge for manufactured home rental community or the owner or manager of apartment house: a manufactured home rental community or apartment house may charge a service charge in an amount not to exceed 9% of the tenant's charge for submetered water and wastewater service, except when;]

[(A) the resident resides in a unit of an apartment house that has received an allocation of low income housing tax credits under Texas Government Code, Chapter 2306, Subchapter DD; or]

[(B) the apartment resident receives tenant-based voucher assistance under United States Housing Act of 1937 Section 8, (42 United States Code, §1437f); and]

[(4) final bill on move-out for submetered service: if a tenant moves out during a billing period, the owner may calculate a final bill for the tenant before the owner receives the bill for that period from the retail public utility. If the owner is billing using the average water or wastewater cost per gallon, liter, or cubic foot as described in paragraph (1) of this subsection, the owner may calculate the tenant's bill by calculating the tenant's average volumetric rate for the last three months and multiplying that average volumetric rate by the tenant's consumption for the billing period.]

[(e) Calculations for allocated utility service.]

[(1) Before an owner may allocate the retail public utility's master meter bill for water and sewer service to the tenants, the owner shall first deduct:]

[(A) dwelling unit base charges or customer service charge, if applicable; and]

[(B) common area usage such as installed landscape irrigation systems, pools, and laundry rooms, if any, as follows:]

[(i) if all common areas are separately metered or submetered, deduct the actual common area usage;]

[ (ii) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is an installed landscape irrigation system, deduct at least 25% of the retail public utility's master meter bill;]

[ (iii) if all water used for an installed landscape irrigation system is metered or submetered and there are other common areas such as pools or laundry rooms that are not metered or submetered, deduct at least 5% of the retail public utility's master meter bill; or]

[ (iv) if common areas that are served through the master meter that provides water to the dwelling units are not separately metered or submetered and there is no installed landscape irrigation system, deduct at least 5% of the retail public utility's master meter bill.]

[(2) To calculate a tenant's bill:]

[(A) for an apartment house, the owner shall multiply the amount established in paragraph (1) of this subsection by:]

[ (i) the number of occupants in the tenant's dwelling unit divided by the total number of occupants in all dwelling units at the beginning of the month for which bills are being rendered; or]

[(ii) the number of occupants in the tenant's dwelling unit using a ratio occupancy formula divided by the total number of occupants in all dwelling units at the beginning of the retail public utility's billing period using the same ratio occupancy formula to determine the total. The ratio occupancy formula will reflect what the owner believes more accurately represents the water use in units that are occupied by multiple tenants. The ratio occupancy formula that is used must assign a fractional portion per tenant of no less than that on the following scale:]

[(I) dwelling unit with one occupant = 1;]

[(II) dwelling unit with two occupants = 1.6;]

[(III) dwelling unit with three occupants = 2.2; or]

[(IV) dwelling unit with more than three occupants = 2.2 + 0.4 per each additional occupant over three; or]

[(iii) the average number of occupants per bedroom, which shall be determined by the following occupancy formula. The formula must calculate the average number of occupants in all dwelling units based on the number of bedrooms in the dwelling unit according to the scale below, notwithstanding the actual number of occupants in each of the dwelling unit's bedrooms or all dwelling units:]

[(I) dwelling unit with an efficiency = 1;]

[(II) dwelling unit with one bedroom = 1.6;]

[(III) dwelling unit with two bedrooms = 2.8;]

[(IV) dwelling unit with three bedrooms = 4 + 1.2 for each additional bedroom; or]

[(iv) a factor using a combination of square footage and occupancy in which no more than 50% is based on square footage. The square footage portion must be based on the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house; or]

[(v) the individually submetered hot or cold water usage of the tenant's dwelling unit divided by all submetered hot or cold water usage in all dwelling units;]



[ (B) a condominium manager shall multiply the amount established in paragraph (1) of this subsection by any of the factors under subparagraph (A) of this paragraph or may follow the methods outlined in the condominium contract;]

[ (C) for a manufactured home rental community, the owner shall multiply the amount established in paragraph (1) of this subsection by:]

[ (i) any of the factors developed under subparagraph (A) of this paragraph; or]

[ (ii) the area of the individual rental space divided by the total area of all rental spaces; and]

[ (D) for a multiple use facility, the owner shall multiply the amount established in paragraph (1) of this subsection by:]

[ (i) any of the factors developed under subparagraph (A) of this paragraph; or]

[ (ii) the square footage of the rental space divided by the total square footage of all rental spaces.]

[(3) If a tenant moves in or out during a billing period, the owner may calculate a bill for the tenant. If the tenant moves in during a billing period, the owner shall prorate the bill by calculating a bill as if the tenant were there for the whole month and then charging the tenant for only the number of days the tenant lived in the unit divided by the number of days in the month multiplied by the calculated bill. If a tenant moves out during a billing period before the owner receives the bill for that period from the retail public utility, the owner may calculate a final bill. The owner may calculate the tenant's bill by calculating the tenant's average bill for the last three months and multiplying that average bill by the number of days the tenant was in the unit divided by the number of days in that month.]

[(f) Conversion to approved allocation method. An owner using an allocation formula other than those approved in subsection (e) of this section shall immediately provide notice as required under §291.123(c) of this title (relating to Rental Agreement) and either:]

[(1) adopt one of the methods in subsection (e) of this section; or]

[(2) install submeters and begin billing on a submetered basis; or]

[(3) discontinue billing for utility services.]

**[§291.125. Billing.]**

[(a) Monthly billing of total charges. The owner shall bill the tenant each month for the total charges calculated under §291.124 of this title (relating to Charges and Calculations). If it is permitted in the rental agreement, an occupant or occupants who are not residing in the rental unit for a period longer than 30 days may be excluded from the occupancy calculation and from paying a water and sewer bill for that period.]

[(b) Rendering bill.]

[(1) Allocated bills shall be rendered as promptly as possible after the owner receives the retail public utility bill.]

[(2) Submeter bills shall be rendered as promptly as possible after the owner receives the retail public utility bill or according to the time schedule in the rental agreement if the owner is billing using the retail public utility's rate.]

[(c) Submeter reading schedule. Submeters or point-of-use submeters shall be read within three days of the scheduled reading date of the retail public utility's master meter or according to the schedule in the rental agreement if the owner is billing using the retail public utility's rate.]

[(d) Billing period.]

[(1) Allocated bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period.]

[(2) Submeter bills shall be rendered for the same billing period as that of the retail public utility, generally monthly, unless service is provided for less than that period. If the owner uses the retail public utility's actual rate, the billing period may be an alternate billing period specified in the rental agreement.]

[(e) Multi-item bill. If issued on a multi-item bill, charges for submetered or allocated utility service must be separate and distinct from any other charges on the bill.]

[(f) Information on bill. The bill must clearly state that the utility service is submetered or allocated, as applicable, and must include all of the following:]

[(1) total amount due for submetered or allocated water;]

[(2) total amount due for submetered or allocated wastewater;]

[(3) total amount due for dwelling unit base charge(s) or customer service charge(s) or both, if applicable;]

[(4) total amount due for water or wastewater usage, if applicable;]

[(5) the name of the retail public utility and a statement that the bill is not from the retail public utility;]

[(6) name and address of the tenant to whom the bill is applicable;]

[(7) name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute; and]

[(8) name, address, and telephone number of the party to whom payment is to be made.]

[(g) Information on submetered service. In addition to the information required in subsection (f) of this section, a bill for submetered service must include all of the following:]

[(1) the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters;]

[(2) the cost per gallon, liter, or cubic foot for each service provided; and]

[(3) total amount due for a service charge charged by an owner of a manufactured home rental community, if applicable.]

[(h) Due date. The due date on the bill may not be less than 16 days after it is mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend, in which case the following work day will be the due date. The owner shall record the date the bill is mailed or hand delivered. A payment is delinquent if not received by the due date.]

[(i) Estimated bill. An estimated bill may be rendered if a master meter, submeter, or point-of-use submeter has been tampered with, cannot be read, or is out of order; and in such case, the bill must be distinctly marked as an estimate and the subsequent bill must reflect an adjustment for actual charges.]

[(j) Payment by tenant. Unless utility bills are paid to a third-party billing company on behalf of the owner, or unless clearly designated by the tenant, payment must be applied first to rent and then to utilities.]

[(k) Overbilling and underbilling. If a bill is issued and subsequently found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment must be calculated for all of that tenant's bills that included overcharges. If the overbilling or underbilling affects all tenants, an adjustment must be calculated for all of the tenants' bills. If the tenant was undercharged, and the cause was not due to submeter or point-of-use submeter error, the owner may calculate an adjustment for bills issued in the previous six months. If the total undercharge is \$25 or more, the owner

shall offer the tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be back billed to a current tenant.]

[l) Disputed bills. In the event of a dispute between a tenant and an owner regarding any bill, the owner shall investigate the matter and report the results of the investigation to the tenant in writing. The investigation and report must be completed within 30 days from the date the tenant gives written notification of the dispute to the owner.]

[m) Late fee. A one-time penalty not to exceed 5% may be applied to delinquent accounts. If such a penalty is applied, the bill must indicate the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease that states the percentage amount of such late penalty.]

**[§291.127. Submeters or Point-of-Use Submeters and Plumbing Fixtures.]**

[(a) Submeters or point-of-use submeters.]

[(1) Same type submeters or point-of-use submeters required. All submeters or point-of-use submeters throughout a property must use the same unit of measurement, such as gallon, liter, or cubic foot.]

[(2) Installation by owner. The owner shall be responsible for providing, installing, and maintaining all submeters or point-of-use submeters necessary for the measurement of water to tenants and to common areas, if applicable.]

[(3) Submeter or point-of-use submeter tests prior to installation. No submeter or point-of-use submeter may be placed in service unless its accuracy has been established. If any submeter or point-of-use submeter is removed from service, it must be properly tested and calibrated before being placed in service again.]

[(4) Accuracy requirements for submeters and point-of-use submeters. Submeters must be calibrated as close as possible to the condition of zero error and within the accuracy standards established by the American Water Works Association (AWWA) for water meters. Point-of-use submeters must be calibrated as closely as possible to the condition of zero error and within the accuracy standards established by the American Society of Mechanical Engineers (ASME) for point-of-use and branch-water submetering systems.]

[(5) Location of submeters and point-of-use submeters. Submeters and point-of-use submeters must be installed in accordance with applicable plumbing codes and AWWA standards for water meters or ASME standards for point-of-use submeters, and must be readily accessible to the tenant and to the owner for testing and inspection where such activities will cause minimum interference and inconvenience to the tenant.



[(6) Submeter and point-of-use submeter records. The owner shall maintain a record on each submeter or point-of-use submeter which includes:]

[(A) an identifying number;]

[(B) the installation date (and removal date, if applicable);]

[(C) date(s) the submeter or point-of-use submeter was calibrated or tested;]

[(D) copies of all tests; and]

[(E) the current location of the submeter or point-of-use submeter.]

[(7) Submeter or point-of-use submeter test on request of tenant. Upon receiving a written request from the tenant, the owner shall either:]

[(A) provide evidence, at no charge to the tenant, that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months and determined to be within the accuracy standards established by the AWWA for water meters or ASME standards for point-of-use submeters; or]

[ (B) have the submeter or point-of-use submeter removed and tested and promptly advise the tenant of the test results.]

[(8) Billing for submeter or point-of-use submeter test.]

[(A) The owner may not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards for water meters or ASME standards for point-of-use submeters.]

[(B) The owner may not bill the tenant for testing costs if there is no evidence that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months.]

[(C) The owner may bill the tenant for actual testing costs (not to exceed \$25) if the submeter meets AWWA accuracy standards or the point-of-use submeter meets ASME accuracy standards and evidence as described in paragraph (7)(A) of this subsection was provided to the tenant.]

[(9) Bill adjustment due to submeter or point-of-use submeter error. If a submeter does not meet AWWA accuracy standards or a point-of-use submeter does not meet ASME accuracy standards and the tenant was overbilled, an adjusted bill must be rendered in accordance with §291.125(k) of this title (relating to Billing). The owner may

not charge the tenant for any underbilling that occurred because the submeter or point-of-use submeter was in error.]

[(10) Submeter or point-of-use submeter testing facilities and equipment. For submeters, an owner shall comply with the AWWA's meter testing requirements. For point-of-use meters, an owner shall comply with ASME's meter testing requirements.]

[(b) Plumbing fixtures. After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager shall adhere to the following standards:]

[(1) Texas Health and Safety Code, §372.002, for sink or lavatory faucets, faucet aerators, and showerheads;]

[(2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found; and]

[(3) not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service, the owner or manager shall:]

[(A) remove any toilets that exceed a maximum flow of 3.5 gallons per flush; and]

[(B) install toilets that meet the standards prescribed by Texas Health and Safety Code, §372.002.]

[(c) Plumbing fixture not applicable. Subsection (b) of this section does not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.]

**SUBCHAPTER I: WHOLESALE WATER PETITIONS [OR SEWER SERVICE]**

**§§291.128, 291.129, 291.130, 291.131**

**Statutory Authority**

The amendments and new rules are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; TWC, §11.036 concerning the sale of conserved or stored water; and TWC, §11.041 concerning complaints for the denial of water.

The adopted amendments and new rules implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**§291.128. Petition [or Appeal] Concerning Wholesale Water [Rate].**

This subchapter sets forth substantive guidelines and procedural requirements concerning[:]

[(1)] a petition [to review rates charged for the sale of water for resale] filed pursuant to Texas Water Code, §§11.036 - 11.041. [Chapter 11 or 12; or]

[(2) an appeal pursuant to Texas Water Code, §13.043(f) (appeal by retail public utility concerning a decision by a provider of water or sewer service).]

**§291.129. Petition.**

(a) The petitioner must file a written petition with the commission accompanied by the filing fee required by the Texas Water Code. The petitioner must serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties.

(b) The petition must clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks. The petitioner must attach any applicable contract to the petition.

**§291.130. Contents of Petition under Texas Water Code, §§11.036 - 11.041.**

(a) A person seeking relief under the Texas Water Code (TWC), §§11.036 - 11.041 should include in a written petition to the commission, the following information, as applicable to the section of the TWC Texas Water Code under which the petitioner seeks relief:

(1) the petitioner's name;

(2) the name of the entity from which water is received or sought;

(3) an explanation of why **the** petitioner is entitled to receive or use the water;

(4) that the petitioner is willing and able to pay a just and reasonable price for the water;

(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

(b) Water suppliers seeking relief under **TWC** ~~the Texas Water Code~~, §§11.036 - 11.041 should include in a written petition for relief to the commission, the following information:

(1) **the** petitioner's name;

(2) the name of the ratepayers to whom water is rendered;

(3) an explanation of why the petitioner is entitled to the relief requested;

(4) that the petitioner is willing and able to supply water at a just and reasonable price; and

(5) that the price demanded by the petitioner for the water is just and reasonable and is not discriminatory.

(c) If the petition for relief is accompanied by the deposit stipulated in the TWC Texas Water Code, the executive director shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.

(d) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition. In the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction. In a petition filed under TWC, §11.041, the commission's jurisdiction is limited to:

(1) whether the petitioner is entitled to receive or use the water;



(2) whether the petitioner is willing and able to pay a just and reasonable price for the water, where a just and reasonable price is determined by the Public Utility Commission of Texas;

(3) whether the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) whether the party owning or controlling the water supply fails or refuses to supply available water to the petitioner.

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

(a) When a petition [or appeal] is filed, including a petition subject to the Texas Water Code (TWC), §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 §291.129 [§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 §291.129 [§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 §291.129 [§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 under TWC, §§11.036 - 11.041 as applicable.

[(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.]

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

**[§§291.129, 291.130, 291.132 - 291.138]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**[§291.129. Definitions.]**

[For purposes of this subchapter, the following definitions apply.]

[(1) Petitioner--The entity that files the petition or appeal.]

[(2) Protested rate--The rate demanded by the seller.]

[(3) Cash basis calculation of cost of service--A calculation of the revenue requirement to which a seller is entitled to cover all cash needs, including debt

obligations as they come due. Basic revenue requirement components considered under the cash basis generally include operation and maintenance expense, debt service requirements, and capital expenditures which are not debt financed. Other cash revenue requirements should be considered where applicable. Basic revenue requirement components under the cash basis do not include depreciation.]

[(4) Utility basis calculation of cost of service--A calculation of the revenue requirement to which a seller is entitled which includes a return on investment over and above operating costs. Basic revenue requirement components considered under the utility basis generally include operation and maintenance expense, depreciation, and return on investment.]

**[§291.130. Petition or Appeal.]**

[(a) The petitioner must file a written petition with the commission accompanied by the filing fee required by the Texas Water Code. The petitioner must serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties.]

[(b) The petition must clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks. The petitioner must attach any applicable contract to the petition.]

[(c) The petitioner must file an appeal pursuant to the Texas Water Code, §13.043(f), in accordance with the time frame provided therein.]

**[§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), 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) Prior to the evidentiary hearing on public interest, discovery shall be limited to matters relevant to the evidentiary hearing on public interest.]

[(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.]

[(d) The seller and buyer may agree to consolidate the evidentiary hearing on public interest and the evidentiary hearing on cost of service. If the seller and buyer so agree the administrative law judge shall hold a consolidated evidentiary hearing.]

**[§291.133. Determination of Public Interest.]**

[(a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concludes at least one of the following public interest criteria have been violated:]

[(1) the protested rate impairs the seller's ability to continue to provide service, based on the sellers's financial integrity and operational capability;]

[(2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, based on the purchaser's financial integrity and operational capability;]

[(3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:]

[(A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;]

[(B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;]

[(C) the seller changed the computation of the revenue requirement or rate from one methodology to another;]

[(D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;]

[(E) incentives necessary to encourage regional projects or water conservation measures;]

[(F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;]

[(G) the rates charged in Texas by other sellers of water or sewer service for resale;]

[(H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser;]

[(4) the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.]

[(b) The commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service.]

**[\S291.134. Commission Action to Protect Public Interest, Set Rate.]**

[(a) If as a result of the evidentiary hearing on public interest the commission determines the protested rate does not adversely affect the public interest, the commission will deny the petition or appeal by final order. The commission must state in the final order that dismisses a petition or appeal the bases upon which the commission finds the protested rate does not adversely affect the public interest.]

[(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 \S291.131(a) and (c) of this title (relating to Executive Director's Review of Petition or Appeal), 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) 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 commission shall 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 commission must state in a final order the bases upon which the commission finds the protested rate adversely affects the public interest.]

**[\$291.135. Determination of Cost of Service.]**

[(a) The commission shall follow the mandates of the Texas Water Code, Chapters 11, 12, and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.]

[(b) When the protested rate was calculated using the cash basis or the utility basis, and the rate which the protested rate supersedes was not based on the same methodology, the commission may calculate cost of service using the superseded methodology unless the seller establishes a reasonable basis for the change in

methodologies. Where the protested rate is based in part upon a change in methodologies the seller must show during the evidentiary hearing the calculation of revenue requirements using both the methodology upon which the protested rate is based, and the superseded methodology. When computing revenue requirements using a new methodology, the commission may allow adjustments for past payments.]

**[§291.136. Burden of Proof.]**

[The petitioner shall have the burden of proof in the evidentiary proceedings to determine if the protested rate is adverse to the public interest. The seller of water or sewer service (whether the petitioner or not) shall have the burden of proof in evidentiary proceedings on determination of cost of service.]

**[§291.137. Commission Order To Discourage Succession of Rate Disputes.]**

[(a) If the commission finds the protested rate adversely affects the public interest and sets rates on a cost of service basis, then the commission shall add the following provisions to its order:]

[(1) If the purchaser files a new petition or appeal, and the executive director forwards the petition or appeal to the State Office of Administrative Hearings pursuant to §291.131 of this title (relating to Executive Director's Determination of Probable Grounds), then the administrative law judge shall set an interim rate

immediately. The interim rate shall equal the rate set by the commission in this proceeding where the commission granted the petition or appeal and set a cost of service rate].

[2) The commission shall determine in the proceedings pursuant to the new petition or appeal that the protested rate adversely affects the public interest. The administrative law judge shall not hold an evidentiary hearing on public interest but rather shall proceed with the evidentiary hearing to determine a rate consistent with the ratemaking mandates of the Texas Water Code, Chapters 11, 12, and 13.]

[(b) The effective period for the provisions issued pursuant to subsection (a) of this section shall expire upon the earlier of three years after the end of the test year period, or upon the seller and purchaser entering into a new written agreement for the sale of water or sewer service which supersedes the agreement which was the subject of the proceeding where the commission granted the petition or appeal and set a cost of service rate. The provisions shall be effective in proceedings pursuant to a new petition or appeal if the petition or appeal is filed before the date of expiration.]

[(c) For purposes of subsection (b) of this section, the "test year period" is the test year used by the commission in the proceeding where the commission granted the petition or appeal and set rates on a cost of service basis.]

**[§291.138. Filing of Rate Data.]**

[(a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission may require each provider of water or sewer service for resale to report the retail and wholesale rates it charges to purchasers.]

[(b) Within 30 days after receiving a written request from the executive director, a provider of water or sewer service for resale shall file a report with the commission. The report must provide the information prescribed in a form prepared by the commission.]

**SUBCHAPTER J: ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP**

**[§§291.141, 291.146, 291.147]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**[§291.141. Supervision of Certain Utilities.]**

[(a) The commission may place a utility under supervision where:]

[(1) the utility has exhibited gross or continuing mismanagement; or]

[(2) the utility has exhibited gross or continuing noncompliance with Chapter 13 of the Water Code or commission rules; or]

[(3) the utility has exhibited noncompliance with commission orders; and]

[(4) notice has been provided to the utility advising the utility of the proposed commission action, the reasons for the action and giving the utility an opportunity to request a hearing.]

[(b) The commission may require the utility to abide by conditions and requirements, including but not limited to:]

[(1) management requirements;]

[(2) additional reporting requirements;]

[(3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets;]

[(4) a requirement that the utility place all or part of the utility's funds and revenues into an account in a financial institution approved by the executive director and restricting use of funds in that account to reasonable and necessary expenses;]

[(5) operational requirements;]

[(6) priority order of payments or obligations; and]

[(7) limitation of payment for owner's or owner's family member's expenses or salaries or payments to affiliates.]

[(c) Any utility under supervision may be required to obtain the approval of the executive director before taking any action that may be restricted under subsection (b) of this section. If the commission in its order has required prior approval, any action or transaction which occurs without that approval may be voided by the executive director.]

**[\$291.146. Municipal Rates for Certain Recreational Vehicle Parks.]**

[(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.]

[(1) Nonsubmetered master metered utility service--Potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.]

[(2) Recreational vehicle--Includes a:]

[(A) house trailer as that term is defined by Texas Transportation Code, §501.002; and]

[ (B) towable recreational vehicle as that term is defined by Texas Transportation Code, §541.201.]

[(3) Recreational vehicle park--A commercial property on which service connections are made for recreational vehicle transient guest use and for which fees are paid at intervals of one day or longer.]

[(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park shall determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses, including hotels and motels, that serve transient customers and receive nonsubmetered master metered utility service from the utility.]

[(c) Notwithstanding any other provision of this chapter, the commission has jurisdiction to enforce this section.]

**§291.147. Temporary Rates for Services Provided for a Nonfunctioning System.]**

[(a) Notwithstanding other provisions of this chapter, upon sending written notice to the executive director, a retail public utility other than a municipally owned utility or a water and sewer utility subject to the original rate jurisdiction of a municipality that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider may immediately begin charging the customers of the



nonfunctioning system a temporary rate to recover the reasonable costs incurred for interconnection or other costs incurred in making services available and any other reasonable costs incurred to bring the nonfunctioning system into compliance with commission rules.]

[(b) Notice of the temporary rate must be provided to the customers of the nonfunctioning system no later than the first bill which includes the temporary rates.]

[(c) Within 90 days of receiving notice of the temporary rate increase, the executive director will issue an order regarding the reasonableness of the temporary rates. In making the determination, the executive director will consider information submitted by the retail public utility taking over the provision of service, the customers of the nonfunctioning system, or any other affected person.]

**SUBCHAPTER J: ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP**

**§291.142, §291.143**

**Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 294 passed by the 85th Texas Legislature, 2017.

**§291.142. Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver.**

(a) The commission or the executive director, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that:

(1) has discontinued or abandoned operations or the provision of services;

or

(2) is being referred to the attorney general for the appointment of a receiver under Texas Water Code (TWC), §13.412 for:

(A) having expressed an intent to abandon or abandoned operation of its facilities; [or]

(B) having violated a final order of the commission; [or]

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission; or [.]

(D) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(i) TWC, Chapter 7;

(ii) TWC, Chapter 13; or

(iii) Texas Health and Safety Code, Chapter 341.

(b) The commission or the executive director may appoint a person under this section by emergency order under Chapter 35 of this title (relating to Emergency and

Temporary Order and Permits; Temporary Suspension or Amendment of Permit Conditions). A corporation may be appointed a temporary manager.

(c) Abandonment includes, but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

**§291.143. Operation of a Utility by a Temporary Manager.**

(a) By emergency order under Texas Water Code (TWC), §5.507 and §13.4132, the commission or the executive director may appoint a person under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or [and] Amendment of Permit Conditions) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC [Texas Water Code], §13.412.

(b) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The temporary manager shall serve a term of 180 days [one year], unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission;

(3) the temporary manager is discharged from his responsibilities by the commission; or

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general [Attorney General].

(e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The

temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(h) The temporary manager shall report to the executive director on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the executive director.

(i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.



**[SUBCHAPTER K: PROVISIONS REGARDING MUNICIPALITIES]**

**[§§291.150 - 291.153]**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**[§291.150. Jurisdiction of Municipality: Surrender of Jurisdiction.]**

[(a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding

before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.]

[(b) The City of Coffee City, a municipality, surrendered its jurisdiction to the commission effective December 4, 1993.]

[(c) The City of Nolanville, a municipality, surrendered its jurisdiction to the commission effective April 18, 1996.]

[(d) The City of Aurora, a municipality, surrendered its jurisdiction to the commission effective April 14, 1997.]

[(e) The City of Arcola, a municipality, surrendered its jurisdiction to the commission effective May 5, 1998.]

**[§291.151. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.]**

[The commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. These rules include Subchapters E and F of this chapter (relating to Customer Service and Protection and Quality of Service).]

**[§291.152. Notification Regarding Use of Revenue.]**

[At least annually, and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure, not water or sewer related, funded in whole or in part by customer revenue.]

**[§291.153. Fair Wholesale Rates for Wholesale Water Sales to a District.]**

[(a) A municipality that makes a wholesale sale of water to a special district created under §52, Article III, or §59, Article XVI, Texas Constitution, and that operates under Title 4 (General Law Districts), or under Chapter 36 (Groundwater Conservation Districts) shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.]

[(b) This section does not apply to a sale of water under a contract executed before September 1, 1997.]

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §293.11 and §293.44, *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4690) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 291, Utility Regulations.

### **Section by Section Discussion**

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes included

appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs were removed, subsequent paragraphs were renumbered, accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

*§293.11, Information Required to Accompany Applications for Creation of Districts*

The commission adopts amended §293.11(h) to remove paragraph (11), because the language pertains to functions that were transferred from the commission to PUC in HB 1600 and SB 567.

*§293.44, Special Considerations*

The commission adopts amended §293.44(b)(7) to remove the reference to Chapter 291, Subchapter G, which pertains to functions that were transferred from the commission to PUC in HB 1600 and SB 567.

**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 Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend TCEQ rules in Chapter 293 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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 rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts this rulemaking for the purpose of amending TCEQ rules in Chapter 293 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the adopted rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

Further, the commission determined that promulgation of these adopted rules 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 rule because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the adopted rulemaking is to amend by removing obsolete references and language relating to the economic regulation of water and wastewater utilities. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

### **Public Comment**

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission did not receive any comments regarding Chapter 293.

**SUBCHAPTER B: CREATION OF WATER DISTRICTS**

**§293.11**

**Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

**§293.11. Information Required to Accompany Applications for Creation of Districts.**

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

(1) \$700 nonrefundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial

jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Texas Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Texas Local Government Code, §42.042, have been followed;

(3) if city consent was obtained under paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(e) and (i);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting a creation petition and report to the appropriate commission regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement, as appropriate, to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

(11) other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC, Chapter 36, Groundwater Conservation Districts, are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for TWC, Chapter 51, Water Control and Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §51.013, requesting creation signed by the majority of persons holding title to land representing a total value of more than 50% of value of all land in the proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail; and

(F) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;



(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district, and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate

as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §51.072;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(9) other information as required by the executive director.

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §54.014 and §54.015, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by tax rolls of the central appraisal

district. If there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed; and

(E) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing,

general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

(8) for districts proposed to be created within the corporate boundaries of a municipality, evidence that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district

if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in Texas Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with TWC, §49.052 and §54.102;

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee;

(11) if the petition within the application includes a request for road powers, information meeting the requirements of §293.202(b) of this title (relating to Application Requirements for Commission Approval); and

(12) other data and information as the executive director may require.

(e) Creation applications for TWC, Chapter 55, Water Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §55.040, signed by persons holding title to more than 50% of all land in the proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district; and

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;



(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall

submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for TWC, Chapter 58, Irrigation Districts, within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §58.013 and §58.014, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures,

sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(l) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for TWC, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by TWC, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or extraterritorial jurisdiction the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and



(ii) endorsing resolutions from all municipal districts to be included;

(2) evidence that a copy of the petition was filed with the city clerk in each city where the proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates; and

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by TWC, §49.052 and §59.021;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for TWC, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by TWC, §65.014 and §65.015, signed by the president and secretary of the board of

directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board;

(E) a request specifying each purpose for which the proposed district is being created; and

(F) if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of the proposed district as described in the petition;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography, and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement;

(ii) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC, Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution;

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §65.102, where applicable;

[(11) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.109 of this title (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and §291.112 of this title (relating to Transfer of Certificate of Convenience and Necessity);]

(11) [(12)] if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(12) [(13)] other information as the executive director requires.

(i) Creation applications for TWC, Chapter 66, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by TWC, §§66.014 - 66.016, requesting creation of a storm water control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;



(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography, and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage; and

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary, and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §66.102, where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Texas Local Government Code, Chapter 375, Municipal Management Districts in General, shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, by verifiable landmarks, including a road, creek, or railroad line, or by lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District";]

(E) list of proposed initial directors and experience and term of each;  
and

(F) a resolution of municipality in support of creation, if inside a city;

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Texas Local Government Code, Chapter 375, including budget, statement of expenses, revenues, and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with Texas Local Government Code, §375.063; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee.

## SUBCHAPTER E: ISSUANCE OF BONDS

### §293.44

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### **§293.44. Special Considerations.**

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, wastewater, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the



fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the

volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project.

Pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with

good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not

include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, wastewater, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this paragraph [subsection], "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this paragraph [subsection], "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge



Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a licensed professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, wastewater, or drainage, under contracts authorized under Texas Local Government Code, §552.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, wastewater, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other services on

the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection [and Chapter 291, Subchapter G of this title (relating to Certificates of Convenience and Necessity)].

Chapter 1467 of the Insurance Code if the amount for which the enrollee is responsible to the physician, after copayments, deductibles, and coinsurance, including the amount unpaid by the administrator or insurer, is greater than \$500.]

(2) Failure to provide notice under this section shall not subject a licensee to disciplinary action. [The written notice shall include a reference to TDI's website about the mediation process - <http://www.tdi.state.tx.us/consumer/epmmediation.html>.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 28, 2018.

TRD-201802856

Stephen "Brint" Carlton, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 305-7016



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS

##### SUBCHAPTER E. EMERGENCY ORDERS FOR UTILITIES

###### 30 TAC §35.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of 30 TAC §35.202.

Background and Summary of the Factual Basis for the Proposed Repeal

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section Discussion

§35.202, *Emergency Order for Rate Increase in Certain Situations*

The commission proposes the repeal of §35.202. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed repeal is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed repeal.

The rulemaking is proposed in order to repeal an obsolete rule for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes the repeal of §35.202 as this section is obsolete and no longer applies to the commission.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred \$1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of \$184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated \$499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was \$3,567,824 and \$3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was \$3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government because of the implementation or administration of the proposed repeal.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated from the rulemaking will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking reflects the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a

local economy in a material way for the first five years that the proposal is in effect.

#### Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed repeal does not adversely affect rural communities in a material way for the first five years that the proposal is in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed repeal for the first five-year period the proposed repeal is in effect. The proposed rulemaking repeals an obsolete rule to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed repeal does not adversely affect a small or micro-business in a material way for the first five years the proposal is in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does provide for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed repeal is in effect, the proposed repeal should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to repeal an obsolete TCEQ rule in Chapter 35 relating to the economic regulation of water and wastewater utilities. There-

fore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to repeal the rule relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed 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 proposal will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed repeal would not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether the proposed repeal constitutes a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of repealing an obsolete rule in Chapter 35 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the proposed rulemaking based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater

utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed repeal neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of the proposal. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to repeal an obsolete TCEQ rule relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed 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 proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For

further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

#### Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### §35.202. *Emergency Order for Rate Increase in Certain Situations.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802871

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## CHAPTER 37. FINANCIAL ASSURANCE SUBCHAPTER O. FINANCIAL ASSURANCE FOR PUBLIC DRINKING WATER SYSTEMS AND UTILITIES

### 30 TAC §§37.5001, 37.5002, 37.5011

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§37.5001, 37.5002, and 37.5011.

Background and Summary of the Factual Basis for the Proposed Rules. The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

Section by Section Discussion. In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain



terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

#### *§37.5001, Applicability*

The commission proposes to amend §37.5001 to remove "retail public utilities" and the reference to Chapter 291. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

#### *§37.5002, Definitions*

The commission proposes to amend §37.5002 to remove the reference to §291.3. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

#### *§37.5011, Financial Assurance for a Public Water System or Retail Public Utility*

The commission proposes to amend §37.5011 to remove "or Retail Public Utility" from the section title and language in subsections (b) and (c) which pertain to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

#### *Fiscal Note: Costs to State and Local Government*

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to amend rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes to amend §§37.5001, 37.5002, and 37.5011 to remove references to Chapter 291, §291.3, and retail public utilities; and remove any language which pertains to functions that were transferred from the commission to the PUC through HB 1600 and SB 567. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred \$1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of \$184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated \$499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was \$3,567,824 and \$3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was \$3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience

and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

#### *Public Benefits and Costs*

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rules are not expected to result in fiscal implications for businesses or individuals. The proposed rules amend current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

#### *Local Employment Impact Statement*

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### *Rural Community Impact Statement*

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### *Small Business and Micro-Business Assessment*

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

#### *Small Business Regulatory Flexibility Analysis*

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### *Government Growth Impact Statement*

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend rules for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

## Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 37 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules 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 proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental

rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 37 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however,

commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

**Submittal of Comments.** Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rule-making can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

#### §37.5001. *Applicability.*

This subchapter applies to public water systems [~~and retail public utilities~~] required to provide evidence of financial assurance under Chapter 290 of this title (relating to Public Drinking Water); ~~or Chapter 291 of this title (relating to Utility Regulation)].~~

#### §37.5002. *Definitions.*

For definitions of words and terms and other definitions not found in Subchapter A of this chapter (relating to General Financial Assurance Requirements) [~~Chapter, relating to General Financial Assurance Requirements;~~] see §290.38[.] of this title (relating to Definitions). [~~Rules and Regulations for Public Water Systems;~~] and §291.3, of this title (relating to Definitions of Terms).]

#### §37.5011. *Financial Assurance for a Public Water System [or Retail Public Utility].*

(a) Financial assurance demonstrations shall comply with the wordings of the mechanisms as described in Subchapter A of this chapter (relating to General Financial Assurance Requirements), Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), and Subchapter D of this chapter (relating to Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), except operation should be substituted for closure.

(b) The prospective owner or operator of a public water system may be ordered to provide adequate financial assurance to operate the system as specified in §290.39(f) of this title (relating to General Provisions). A public water system that was constructed without approval or has a history of noncompliance or is subject to commission enforcement action as specified in §290.39(n) of this title, may

be required to provide financial assurance to operate the system in accordance with applicable laws and rules. [~~Financial assurance may be required of an applicant requesting approval for a certificate or a certificate amendment or a person establishing, purchasing or acquiring a retail public utility as specified in §291.102(d) of this title (relating to Criteria for Considering and Granting Certificates or Amendments); and §291.109(e) of this title (relating to Report of Sale, Merger, Etc: Investigation; Disallowance of Transaction). A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial assurance as specified in §291.111(e) of this title (relating to Purchase of Voting Stock in Another Utility). The commission may order a utility that has failed to provide continuous and adequate service to provide financial assurance to ensure that the system will be operated as required by §291.114 of this title (relating to Requirements to Provide Continuous and Adequate Service). Such financial assurance will allow for payment of improvements and repairs to the water or sewer system.]~~

~~[(c) If rate increases or customer surcharges are determined by the executive director to be an acceptable form for demonstrating financial assurance in accordance with §290.39(n)(3) of this title, such funds shall be deposited into an escrow account with an escrow agent that has the authority to act as an escrow agent and whose escrow operations are regulated and examined by a federal or state agency. At least annually a statement of the account shall be submitted to the executive director.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802872

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§50.31, 50.45, 50.131, and 50.145.

### Background and Summary of the Factual Basis for the Proposed Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

## Section by Section Discussion

In addition to the proposed revisions associated with this rule-making, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs are proposed for removal, subsequent paragraphs are renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

### *§50.31, Purpose and Applicability*

The commission proposes to amend §50.31 to remove subsection (b)(4) and (12). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

### *§50.45, Corrections to Permits*

The commission proposes to amend §50.45 to remove subsection (b)(4) and (5). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

### *§50.131, Purpose and Applicability*

The commission proposes to amend §50.131 to remove subsection (b)(4) and (12). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

### *§50.145, Corrections to Permits*

The commission proposes to amend §50.145 to remove subsection (b)(4) and (5). With the transfer of these functions to the PUC in HB 1600 and SB 567, this language is no longer needed.

## Fiscal Note: Costs to State and Local Government 1

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to amend rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes to amend §§50.31, 50.45, 50.131, and §50.145.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred \$1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employee (FTEs) to the PUC. In addition, there was also a transfer of \$184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated \$499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Years 2016 and 2017 was \$3,567,824 and \$3,567,824,

respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was \$3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

## Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

## Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

## Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

## Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

## Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

## Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend TCEQ's rules for a program

transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend Chapter 50 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules 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 proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and

federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 50 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room

201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Brian Dickey, TCEQ Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

### SUBCHAPTER C. ACTION BY EXECUTIVE DIRECTOR

#### 30 TAC §50.31, §50.45

##### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

##### §50.31. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

- (1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);
- (2) appointments to the board of directors of districts created by special law;
- (3) certificates of adjudication;
- {(4) certificates of convenience and necessity;}

(4) [(5)] district matters under Texas Water Code (TWC), Chapters 49 - 66 [of the Texas Water Code];

(5) [(6)] districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(6) [(7)] extensions of time to commence or complete construction;

(7) [(8)] industrial and hazardous waste permits;

(8) [(9)] municipal solid waste permits;

(9) [(10)] on-site waste water disposal system permits;

(10) [(11)] radioactive material permits or licenses;

{(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;}

(11) [(13)] underground injection control permits;

(12) [(14)] water rights permits;

(13) [(15)] wastewater permits;

(14) [(16)] weather modification measures permits;

(15) [(17)] driller licenses under TWC [Texas Water Code], Chapter 32;

(16) [(18)] pump installer licenses under TWC [Texas Water Code], Chapter 33;

(17) [(19)] irrigator or installer registrations under TWC [Texas Water Code], Chapter 34;

(18) [(20)] municipal management district matters under Texas Local Government Code, Chapter 375;

(19) [(21)] determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency; and

(20) [(22)] certification of an organization that is installing plumbing in a "self-help" project, in a county any part of which is within 50 miles of an international border.

(c) This subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program);

(3) air quality standard exemptions;

(4) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(5) district matters under TWC [Texas Water Code], Chapters 49 - 66, as follows:

(A) an appeal under TWC [Texas Water Code], §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC [Texas Water Code], Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC [Texas Water Code], §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC [Texas Water Code], §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under TWC [Texas Water Code], §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under TWC [Texas Water Code], §54.030 for conversion of a district to a municipal utility district;

(6) emergency or temporary orders or temporary authorizations;

(7) actions of the executive director under Chapters 101, 111 - 115, 117 and 118 [~~111, 112, 113, 114, 115, 117, 118 and 119~~] of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants [~~Control of Air Pollution From Toxic Materials~~]; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes[; and ~~Control of Air Pollution From Carbon Monoxide~~]);

(8) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(9) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection [~~Notwithstanding subsections~~] (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.39(b) - (f) of this title (relating to Motion for Reconsideration) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

#### §50.45. *Corrections to Permits.*

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program). The executive director, on his own motion or at the request of the permittee, may make a non-substantive [~~nonsubstantive~~] correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue non-substantive [~~nonsubstantive~~] permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

~~[(4) to describe more accurately the location of the area certified under a certificate of convenience and necessity;]~~

~~[(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;]~~

(4) [(6)] to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

~~(5) [(7)] to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;~~

~~(6) [(8)] to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;~~

~~(7) [(9)] to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or~~

~~(8) [(10)] to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.~~

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802873

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-2613



## SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

### 30 TAC §50.131, §50.145

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### §50.131. *Purpose and Applicability.*

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission. This subchapter does not affect the executive director's authority to act on an application where that authority is delegated elsewhere.

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 to certifications of Water Quality Management Plan (WQMP) updates. Applications that are administratively complete before September 1, 1999 are subject to Subchapter B of this chapter (relating to Action by the Commission). Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

~~(4) certificates of convenience and necessity;~~

~~(4) [(5)] district matters under Texas Water Code (TWC), Chapters 49 - 66 [of the Texas Water Code];~~

~~(5) [(6)] districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;~~

~~(6) [(7)] extensions of time to commence or complete construction;~~

~~(7) [(8)] industrial and hazardous waste permits;~~

~~(8) [(9)] municipal solid waste permits;~~

~~(9) [(10)] on-site wastewater disposal system permits;~~

~~(10) [(11)] radioactive waste or radioactive material permits or licenses;~~

~~[(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;]~~

~~(11) [(13)] underground injection control permits;~~

~~(12) [(14)] water rights permits;~~

~~(13) [(15)] wastewater permits;~~

~~(14) [(16)] weather modification measures permits;~~

~~(15) [(17)] driller licenses under TWC [Texas Water Code], Chapter 32;~~

~~(16) [(18)] pump installer licenses under TWC [Texas Water Code], Chapter 33;~~

~~(17) [(19)] irrigator or installer registrations under TWC [Texas Water Code], Chapter 34; and~~

~~(18) [(20)] municipal management district matters under Texas Local Government Code, Chapter 375.~~

(c) In addition to those things excluded from coverage under ~~this chapter in~~ §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by Rule ~~Exemptions from Permitting~~) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under TWC [Texas Water Code], Chapters 49 - 66, as follows:

(A) an appeal under TWC [Texas Water Code], §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC [Texas Water Code], Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC [Texas Water Code], §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC [Texas Water Code], §54.239, of a board decision involving the cost, purchase, or use of facilities; or

(E) an application under TWC [Texas Water Code], §54.030 for conversion of a district to a municipal utility district;

(5) actions of the executive director under Chapters 101, 111 - 115, 117, and 118 ~~[(11, 112, 113, 114, 115, 117, 118, and 119)]~~ of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants ~~[Control of Air Pollution From Toxic Materials]~~; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes; ~~and Control of Air Pollution From Carbon Monoxide~~);

(6) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(7) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection ~~[Notwithstanding subsections]~~ (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

#### §50.145. Corrections to Permits.

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits Program). The executive director, on his own motion or at the request of the permittee, may make a non-substantive ~~[nonsubstantive]~~ correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue non-substantive ~~[nonsubstantive]~~ permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

~~[(4) to describe more accurately the location of the area certified under a certificate of convenience and necessity;]~~



{(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;}

(4) [(6)] to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(5) [(7)] to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(6) [(8)] to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(7) [(9)] to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(8) [(40)] to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802874

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §55.1, 55.27, 55.101, and 55.250.

Background and Summary of the Factual Basis for the Proposed Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### Section by Section Discussion

In addition to the proposed revisions associated with this rule-making, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections are proposed for removal, subsequent subsections are re-lettered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

#### §55.1, *Applicability*

The commission proposes to amend §55.1(a) to remove the reference to Texas Water Code (TWC), §12.013 and Chapter 13. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable. Additionally, the commission proposed to remove the reference to TWC, §11.036 and §11.041, because Chapter 55, Subchapters D and G do not apply to TWC, §11.036 and §11.041.

#### §55.27, *Commission Action on Hearing Request*

The commission proposes to amend §55.27 to remove subsection (d), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also proposes to remove §55.27(e), because the language in the subsection is obsolete due to the repeal of Chapter 80, Subchapter E in September 1999.

#### §55.101, *Applicability*

The commission proposes to amend §55.101(g)(5) to remove the reference to TWC, §12.013 and Chapter 13 and revise the sentence accordingly to account for the removal. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable. Additionally, the commission proposes to remove the requirements for the executive director to review hearing requests, determine the sufficiency of hearing requests, and refer the application to the chief clerk for hearing processing, because those requirements are not applicable to TWC, §11.036 and §11.041, petitions.

#### §55.250, *Applicability*

The commission proposes to amend §55.250 to remove the reference to TWC, §12.013 and Chapter 13 and revise the sentence accordingly to account for the removal. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

Fiscal Note: Costs to State and Local Government 1

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to amend rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes to amend §§55.1, 55.27, 55.101, and 55.250.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred \$1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of \$184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated \$499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was \$3,567,824 and \$3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was \$3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

#### Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity program to the PUC.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend rules for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 55 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend the rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules 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 proposed rules will be significant with respect to the economy

as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 55 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rules neither relate to, nor have any impact on, the use or

enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800)-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

## SUBCHAPTER A. APPLICABILITY AND DEFINITIONS

### 30 TAC §55.1

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to

carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§55.1. *Applicability.*

(a) This chapter is divided into subchapters, each of which governs only certain specific types of applications. This subchapter and Subchapter B of this chapter (relating to Hearing Requests, Public Comment) describe the hearing request and comment procedures which will continue to apply to applications declared administratively complete before September 1, 1999. Subchapter D of this chapter (relating to Applicability and Definitions) describes the applications that will be subject to Subchapters E, F, and G of this chapter [title] (relating to Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications). Subchapters E and F of this chapter establish public comment, public meeting, request for reconsideration and contested case hearing procedures that apply to applications filed under Texas Water Code (TWC), Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382 that are declared administratively complete on or after September 1, 1999. Subchapter G of this chapter addresses requests for contested case hearing and public comment procedures on applications filed under other statutory provisions that are declared administratively complete on or after September 1, 1999; ~~except applications filed under Texas Water Code, Chapter 13 and §§11.036, 11.041 and 12.013.~~

(b) Hearing requests and comments regarding any permit application that is declared administratively complete before September 1, 1999 are subject to this subchapter and Subchapter B of this chapter.

(c) This subchapter and Subchapter B of this chapter do not apply to hearing requests on:

- (1) applications for emergency or temporary orders;
- (2) applications for temporary or term permits for water rights;
- (3) air quality exemptions from permitting under Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project; and
- (4) applications for weather modification licenses or permits under TWC [~~Texas Water Code~~], Chapter 18.

(d) This subchapter and Subchapter B of this chapter do not apply to:

- (1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);
- (2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations) [~~that chapter~~];
- (3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);
- (4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);
- (5) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(6) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(7) applications where the opportunity for a contested case hearing does not exist under the law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802875

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER B. HEARING REQUESTS, PUBLIC COMMENT

### 30 TAC §55.27

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### §55.27. *Commission Action on Hearing Request.*

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the Texas Administrative Procedure Act (APA) [APA]. The commission will evaluate the hearing request at the scheduled commission meeting, and may:

- (1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;
- (2) determine that a hearing request does not meet the requirements of this subchapter, and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to State Office of Administrative Hearings (SOAH) [SOAH] for a hearing; or
- (4) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA.

(b) A request for a contested case hearing shall be granted if the request is:

- (1) made by the applicant or the executive director;

- (2) made by an affected person if the request:
- (A) is reasonable;
  - (B) is supported by competent evidence;
  - (C) complies with the requirements of §55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment);
  - (D) is timely filed with the chief clerk; and
  - (E) is pursuant to a right to hearing authorized by law;
- (3) for an air quality permit, made by a legislator in the general area of the facility if the request:
- (A) is reasonable;
  - (B) complies with the requirements of §55.21 of this title, except for §55.21(d)(2) - (4) of this title [subsection (e)(2)-(4)];
  - (C) is timely filed with the chief clerk; and
  - (D) is pursuant to a right to hearing authorized by law.

(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.

~~{(d) The executive director shall determine the sufficiency of hearing requests on utility matters listed in this subsection. If a hearing request meets the requirements in this subsection, the executive director shall refer the hearing request to the chief clerk. The executive director shall review hearing requests concerning the following matters and shall use the specified standards for reviewing the requests.}~~

~~{(1) If a utility files a statement of intent to change rates under Texas Water Code, §13.187, the executive director shall evaluate any complaints or hearing requests received and determine if a hearing is required.}~~

~~{(2) If a person files an application or petition concerning a certificate of convenience and necessity under Texas Water Code, Chapter 13, Subchapter G, the executive director shall evaluate any complaints or hearing requests and determine if a hearing is required.}~~

~~{(3) If a person files an appeal under Texas Water Code, §13.043, invoking the commission's appellate jurisdiction over water, sewer, or drainage rates, the executive director shall evaluate the appeal and determine if a hearing is required.}~~

~~{(e) During a commission meeting, the commission may determine whether the application should be processed under the requirements of Chapter 80, Subchapter E of this title (relating to Freezing the Process). The commission may consider the number and sophistication of the parties or potential parties, the expected length of the hearing, and the complexity of the issues.}~~

(d) ~~{(f)}~~ A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(e) ~~{(g)}~~ If a hearing request is denied, the procedures contained in §80.272 ~~{§80.271}~~ of this title (relating to Motion for Rehearing) apply. A motion for rehearing in such a case must be filed no earlier than, and no more than 20 days after, the date the person or his attorney of record is notified of the commission's final decision or order on the application. If the motion is denied under §80.272 of this title

~~{§80.271}~~ and §80.273 of this title (relating to ~~Motion for Rehearing and~~ Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802876

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

### 30 TAC §55.101

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### *§55.101. Applicability.*

(a) ~~This subchapter and Subchapters E - G [Subchapters D - G] of this chapter (relating to [Applicability and Definitions;] Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.~~

(b) ~~This subchapter and Subchapters E - G [Subchapters D - G] of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.~~

(c) ~~This subchapter and Subchapters E and F [Subchapters D - F] of this chapter apply only to applications filed under Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361 and 382.~~

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under TWC [Texas Water Code], Chapters 26, 27, and 32 and THSC [Texas Health and Safety Code], Chapters 361 and 382.

(e) ~~This subchapter and Subchapters E and F [Subchapters D - F] of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Pro-~~

cessing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(f) This subchapter and Subchapters E - G [~~Subchapters D - G~~] of this chapter do not apply to hearing requests related to:

- (1) applications for emergency or temporary orders;
- (2) applications for temporary or term permits for water rights;
- (3) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by [By] Rule) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project;

(4) applications for Class I injection well permits used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under TWC [Texas Water Code], §27.021, concerning Permit for Disposal of Brine From Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(5) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under TWC, §27.025 [Texas Water Code, §27.023], concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals; and

(6) applications where the opportunity for a contested case hearing does not exist under other laws.

(g) This subchapter and Subchapters E - G [~~Subchapters D - G~~] of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) except for applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations) [~~that chapter~~];

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under TWC [Texas Water Code, Chapter 13 and Texas Water Code], [§]§11.036[.] or §11.041[.] ~~or 12.013~~. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law, and may refer the application to the chief clerk for hearing processing. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings (SOAH) under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a SOAH [State Office of Administrative Hearings] hearing on an application subject to this provision are all those issues that are material and relevant under the law;

(6) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(7) applications for initial issuance of voluntary emissions reduction permits under THSC [Texas Health and Safety Code], §382.0519;

(8) applications for initial issuance of permits for electric generating facility permits under Texas Utilities Code, §39.264;

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under THSC [Texas Health and Safety Code], §382.05194;

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-Injection Units Registration); and

(12) applications where the opportunity for a contested case hearing does not exist under other laws.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802877

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

### 30 TAC §55.250

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### §55.250. *Applicability.*

This subchapter applies to applications filed with the commission except applications filed under Texas Water Code (TWC), Chapter 26 or 27, Texas Health and Safety Code, Chapter 361 or 382, [Texas Water Code, Chapter 13,] or TWC, [Texas Water Code, §]§11.036[.] or §11.041[.] ~~or 12.013~~. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.  
TRD-201802878  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: August 12, 2018  
For further information, please call: (512) 239-6812



## CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§80.3, 80.17, 80.105, and 80.109.

Background and Summary of the Factual Basis for the Proposed Rules. The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections and paragraphs are proposed for removal, subsequent subsections and paragraphs are re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

#### §80.3, *Judges*

The commission proposes to amend §80.3 to remove paragraph (15), because the paragraph pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

#### §80.17, *Burden of Proof*

The commission proposes to amend §80.17 to remove subsection (b), because the subsection pertains to the burden of proof in reviewing rates charged pursuant to a contract. The setting of rates pursuant to Texas Water Code (TWC), Chapter 11 was transferred from the commission to the PUC on September 1, 2014.

#### §80.105, *Preliminary Hearings*

The commission proposes to amend §80.105(b)(2)(B) to remove the reference to TWC, §12.013. With the transfer of these func-

tions from the commission to the PUC in HB 1600 and SB 567, this language is no longer applicable.

#### §80.109, *Designation of Parties*

The commission proposes to amend §80.109(b)(1)(A) to remove the reference to TWC, §12.013. With the transfer of these functions from the commission to the PUC in HB 1600, this language is no longer applicable.

#### Fiscal Note: Costs to State and Local Government 1

Jené Bearse, Analyst in Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to modify rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The amendments to §§80.3, 80.17, 80.105, and 80.109 relate to contested case hearings and will modify rules to ensure that they are applicable to the commission as a result of the transfer of the responsibility for the economic regulation of water and wastewater utilities to the PUC.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred \$1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full time employees (FTEs) to the PUC. In addition, there was also a transfer of \$184,000 each year to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated \$499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs each fiscal year to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

#### Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local econ-

omy in a material way for the first five years that the proposed rules are in effect.

#### Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend TCEQ's rules for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 80 relating to the economic regulation of water and wastewater utilities. Therefore, the in-

tent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules 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 proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 80 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater



utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

**Submittal of Comments.** Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adapt.html](https://www.tceq.texas.gov/rules/propose_adapt.html). For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

## SUBCHAPTER A. GENERAL RULES

## 30 TAC §80.3, §80.17

### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

### §80.3. Judges.

#### (a) Applicability and delegation.

(1) Any application that is declared administratively complete before September 1, 1999 is subject to this section.

(2) The commission delegates to the State Office of Administrative Hearings [SOAH] the authority to conduct hearings designated by the commission.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

#### (c) Judges shall have authority to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the jurisdiction of the commission;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate and align parties and establish the order for presentation of evidence, except that the executive director and the public interest counsel shall not be aligned with any other party;

(6) examine and administer oaths to witnesses;

(7) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents;

(8) authorize the taking of depositions and compel other forms of discovery;

(9) set prehearing conferences and issue prehearing orders;

(10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(11) limit testimony to matters under the commission's jurisdiction;

(12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions; and

~~[(15) issue interim rate orders under Texas Water Code, Chapter 13;]~~

~~(15) [(16)] exercise any other appropriate powers necessary or convenient to carry out his responsibilities.~~

~~§80.17. Burden of Proof.~~

~~(a) The burden of proof is on the moving party by a preponderance of the evidence, except as provided in subsection [subsections] (b) [- (d)] of this section.~~

~~[(b) Section 291.136 of this title (relating to Burden of Proof) governs the burden of proof in a proceeding related to a petition to review rates charged pursuant to a written contract for the sale of water for resale filed under Texas Water Code, Chapter 11.]~~

~~(b) [(e)] In an enforcement case, the executive director has the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions. The respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. Any party submitting facts relevant to the factors prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty has the burden of proving those facts by a preponderance of the evidence.~~

~~(c) [(d)] In contested cases regarding a permit application filed with the commission on or after September 1, 2015, and referred under Texas Water Code, §5.556 or §5.557:~~

~~(1) the filing of the administrative record as described in §80.118(c) of this title (relating to Administrative Record) establishes a prima facie demonstration that the executive director's draft permit meets all state and federal legal and technical requirements, and, if issued consistent with the executive director's draft permit, would protect human health and safety, the environment, and physical property;~~

~~(2) a party may rebut the presumption in paragraph (1) of this subsection by presenting evidence regarding the referred issues demonstrating that the draft permit violates a specifically applicable state or federal legal or technical requirement; and~~

~~(3) if a rebuttal case is presented by a party under paragraph (2) of this subsection, the applicant and executive director may present additional evidence to support the executive director's draft permit.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802879

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER C. HEARING PROCEDURES

### 30 TAC §80.105, §80.109

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the

commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### §80.105. Preliminary Hearings.

(a) After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding. A preliminary hearing is not required in an enforcement matter, except in those under federally authorized underground injection control or Texas Pollutant Discharge Elimination System programs. A preliminary hearing is required for applications referred to the State Office of Administrative Hearings under §55.210 of this title (relating to Direct Referrals).

(b) If jurisdiction is established, the judge shall:

(1) name the parties;

(2) accept public comment in the following matters:

(A) enforcement hearings; and

(B) applications under Texas Water Code (TWC), §11.036 or §11.041 and TWC, Chapter 13 [~~and TWC, §§11.036, 11.041, or 12.013~~];

(3) establish a docket control order designed to complete the proceeding within the maximum expected duration set by the commission. The order should include a discovery and procedural schedule including a mechanism for the timely and expeditious resolution of discovery disputes; and

(4) allow the parties an opportunity for settlement negotiations.

(c) When agreed to by all parties in attendance at the preliminary hearing, the judge may proceed with the evidentiary hearing on the same date of the first preliminary hearing.

(d) One or more preliminary hearings may be held to discuss:

(1) formulating and simplifying issues;

(2) evaluating the necessity or desirability of amending pleadings;

(3) all pending motions;

(4) stipulations;

(5) the procedure at the hearing;

(6) specifying the number and identity of witnesses;

(7) filing and exchanging prepared testimony and exhibits;

(8) scheduling discovery;

(9) setting a schedule for filing, responding to, and hearing of dispositive motions; and

(10) other matters that may expedite or facilitate the hearing process.

(e) For applications directly referred under §55.210 of this title, a preliminary hearing may not be held until the executive director's response to public comment has been provided.

#### §80.109. Designation of Parties.

(a) Determination by judge. All parties to a proceeding shall be determined at the preliminary hearing or when the judge otherwise designates. To be admitted as a party, a person must have a justiciable

interest in the matter being considered and must, unless the person is specifically named in the matter being considered, appear at the preliminary hearing in person or by representative and seek to be admitted as a party. After parties are designated, no person will be admitted as a party except upon a finding that good cause and extenuating circumstances exist and that the hearing in progress will not be unreasonably delayed.

(b) Parties.

(1) The executive director is a mandatory party to all commission proceedings concerning matters in which the executive director bears the burden of proof, and in the following commission proceedings:

(A) matters concerning Texas Water Code (TWC), [§]§11.036[; and §11.041[; and 12.043]; TWC, Chapters 13, 35, 36, and 49 - 66; and Texas Local Government Code, Chapters 375 and 395;

(B) matters arising under Texas Government Code, Chapter 2260 and Chapter 11, Subchapter D of this title (relating to Resolution of Contract Claims); and

(C) matters under TWC, Chapter 26, Subchapter I, and Chapter 334, Subchapters H and L of this title (relating to Reimbursement Program and Overpayment Prevention).

(2) In addition to paragraph (1) of this subsection [~~(b)(1)~~ of this section], the executive director is always a party in contested case hearings concerning permitting matters, pursuant to, and in accordance with, the provisions of §80.108 of this title (relating to Executive Director Party Status in Permit Hearings).

(3) The public interest counsel of the commission is a party to all commission proceedings.

(4) The applicant is a party in a hearing on its application.

(5) Affected persons shall be parties to hearings on permit applications, based upon the standards set forth in §55.29 and §55.203 of this title (relating to Determination of Affected Person). Regardless of [Notwithstanding] any other law, a state agency, except a river authority, may not be a party to a hearing on an application received by the commission on or after September 1, 2011 unless the state agency is the applicant.

(6) The parties to a contested enforcement case include:

(A) the respondent(s);

(B) any other parties authorized by statute; and

(C) in proceedings alleging a violation of or failure to obtain an underground injection control or Texas Pollutant Discharge Elimination System permit, or a state permit for the same discharge covered by a National Pollutant Discharge Elimination System (NPDES) permit that has been assumed by the state under NPDES authorization, any other party granted permissive intervention by the judge. In exercising discretion whether to permit intervention, the judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(7) The parties to a hearing upon a challenge to commission rules include the person(s) challenging the rule and any other parties authorized by statute.

(8) The parties to a permit revocation action initiated by a person other than the executive director shall include the respondent and the petitioner.

(9) The parties to a post-closure order contested case are limited to:

(A) the executive director;

(B) the applicant(s); and

(C) the Public Interest Counsel.

(c) Alignment of participants. Participants (both party and non-party) may be aligned according to the nature of the proceeding and their relationship to it. The judge may require participants of an aligned class to select one or more persons to represent them in the proceeding. Unless otherwise ordered by the judge, each group of aligned participants shall be considered to be one party for the purposes of §80.115 of this title (relating to Rights of Parties) for all purposes except settlement.

(d) Effect of postponement. If a hearing is postponed for any reason, any person already designated as a party retains party status.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802880

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## CHAPTER 281. APPLICATIONS PROCESSING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §281.2 and §281.17; and the repeal of §281.16.

### Background and Summary of the Factual Basis for the Proposed Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

### Section by Section Discussion

In addition to the proposed revisions associated with this rule-making, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs are proposed for removal, subsequent paragraphs are

renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

#### *§281.2, Applicability*

The commission proposes to amend §281.2 to remove paragraph (8), because the paragraph pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

#### *§281.16, Applications for Certificates of Convenience and Necessity*

The commission proposes the repeal of §281.16. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

#### *§281.17, Notice of Receipt of Application and Declaration of Administrative Completeness*

The commission proposes to amend §281.17(d) to remove the reference to §281.16. With the transfer of this function from the commission to the PUC in HB 1600 and SB 567, this reference is no longer required.

#### *Fiscal Note: Costs to State and Local Government*

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to repeal or modify obsolete rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The commission therefore proposes this rulemaking to remove any language which pertains to functions that were transferred from the commission to PUC through HB 1600 and SB 567.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred \$1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of \$184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated \$499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was \$3,567,824 and \$3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was \$3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

#### *Public Benefits and Costs*

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals. The proposed rulemaking amends and repeals obsolete TCEQ's rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

#### *Local Employment Impact Statement*

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### *Rural Community Impact Statement*

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

#### *Small Business and Micro-Business Assessment*

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends and repeals obsolete TCEQ's rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

#### *Small Business Regulatory Flexibility Analysis*

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### *Government Growth Impact Statement*

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, but it does amend and repeal TCEQ's rules for a program transferred to the PUC. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

#### *Draft Regulatory Impact Analysis Determination*

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code,

§2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 281 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend and repeal the rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules 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 proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending and repealing obsolete TCEQ rules in Chapter 281 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend and repeal obsolete TCEQ rules relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the submittal of comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

## SUBCHAPTER A. APPLICATIONS PROCESSING

### 30 TAC §281.2, §281.17

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### §281.2. Applicability.

This subchapter is [~~These sections are~~] applicable to the processing of:

- (1) applications for new, amended, or renewed water use permits, certificates of adjudication and certified filings, and extensions of time to commence and/or complete construction of water use facilities;
- (2) applications for new, amended, or renewed wastewater discharge permits, including subsurface area drip dispersal systems;
- (3) applications for new, amended, or renewed injection well permits;
- (4) applications for new, amended, or modified or renewed industrial solid and/or municipal hazardous waste permits filed under §335.2 and §335.43 of this title (relating to Permit Required) [~~and §335.43 of this title (relating to Permit Required)~~] or for new or amended compliance plans filed under §305.401 of this title (relating to Compliance Plan);

(5) applications for plan approval of reclamation projects (levees, etc.);

(6) applications for creation of water districts;

(7) water district applications and petitions requiring commission approval;

~~[(8) applications for new or amended certificates of convenience and necessity;]~~

(8) [(9)] applications for new, amended, or renewed municipal solid waste permits; and

(9) [(10)] applications for new, amended, or renewed radioactive material licenses.

#### §281.17. Notice of Receipt of Application and Declaration of Administrative Completeness.

(a) Applications for use of state water. If an application for the use of state water, other than for a permit under §297.13 of this title (relating to Temporary Permit ~~under~~ [~~Under~~] the Texas Water Code, [§]§11.138 [~~and 11.153 - 11.155~~] or §297.17 of this title (relating to Emergency Authorization (Texas Water Code, §11.139)), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness. The executive director shall forward a copy of the statement to the chief clerk, along with a copy of the application.

(b) Applications for temporary permits to use state water. If an application for a temporary permit, other than a provisional temporary permit under §295.181 of this title (relating to Provisional Disposition of Application for Temporary Permit), for the use of state water is received containing the required information and attachments required by §281.4 of this title [~~as set forth therein~~], the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness, and shall forward a copy of the statement to the chief clerk.

(c) Applications for provisional temporary permits to use state water. When an application for a provisional temporary permit for the use of state water under §295.181 of this title, is received containing the information and attachments required by §281.4 of this title, the chief clerk shall cause notice of the receipt of the application and declaration of administrative completeness to be published in the *Texas Register*. The chief clerk may include in the notice other information concerning the disposition of the application.

(d) Other applications. Upon receipt of an application described in §281.2(2) or (5) - (9) [(11)] of this title (relating to Applicability), which contains the information and attachments required by [§]§281.5[;] and §281.6[;] and 281.16 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits; and Applications for Plan Approval of Reclamation Projects[;] and ~~Certificates of Convenience and Necessity~~), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed injection well permit, for a new, amended, or renewed industrial solid waste permit, or for a new or amended compliance plan as described in §281.2(3) and (4) of this title, the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable

for publishing or mailing and shall forward that statement to the chief clerk. Upon receipt of an application for a new, amended, or renewed radioactive material license as described in Chapter 336 of this title (relating to Radioactive Substance Rules), the executive director or his designee shall assign the application a number for identification purposes and prepare a statement of the receipt of the application which is suitable for mailing and shall forward that statement to the chief clerk prior to the expiration of the administrative review periods established in §281.3(d) of this title (relating to Initial Review). The chief clerk shall notify every person entitled to notification of a particular application under the rules of the commission.

(e) Notice requirements. The notice of receipt of the application and declaration of administrative completeness, or for applications for a new, amended, or renewed injection well permit, or for a new or amended compliance plan as described in §281.2(3) and (4) of this title, the notice of receipt of the application, shall contain the following information:

- (1) the identifying number given the application by the executive director;
- (2) the type of permit or license sought under the application;
- (3) the name and address of the applicant and, if different, the location of the proposed facility;
- (4) the date on which the application was submitted; and
- (5) a brief summary of the information included in the application.

(f) Notice of application and draft permit. Nothing in this section shall be construed so as to waive the requirement of notice of the application and draft permit in accordance with Chapter 39 of this title (relating to Public Notice) for applications for radioactive material licenses, and for wastewater discharge, underground injection, hazardous waste, municipal solid waste, and industrial solid waste management permits.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.  
TRD-201802881  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: August 12, 2018  
For further information, please call: (512) 239-6812



### 30 TAC §281.16

#### Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§281.16. *Applications for Certificates of Convenience and Necessity.* The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.  
TRD-201802882  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: August 12, 2018  
For further information, please call: (512) 239-6812



## CHAPTER 290. PUBLIC DRINKING WATER

### SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

#### 30 TAC §290.38, §290.39

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §290.38 and §290.39.

#### Background and Summary of the Factual Basis for the Proposed Rules

The proposed rules are intended to implement statutory changes made by House Bill (HB) 1600 and Senate Bill (SB) 567 of the 83rd Texas Legislature, 2013, and SB 1842 of the 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rule-making is to amend TCEQ rules in Chapter 290 resulting from the proposed repeal of rules in 30 TAC Chapter 291.

SB 1842 amended Texas Health and Safety Code (THSC), §341.035(d) to include a Class A utility, as defined by Texas Water Code (TWC), §13.002, among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a certificate of convenience and necessity (CCN) under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 291, Utility Regulations; and Chapter 293, Water Districts.

#### Section by Section Discussion

In addition to the proposed revisions associated with this rule-making, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current

*Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs are proposed, subsequent paragraphs are renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

#### §290.38, *Definitions*

The commission proposes to amend the definition of "Affected utility" in §290.38(1) to update the cross-reference to exempt utility in amended §291.103. Additionally, the commission proposes to modify to correct the alphabetization of definitions in paragraphs (45) and (46) and paragraphs (64) and (65).

#### §290.39, *General Provisions*

The commission proposes §290.39(g)(4) to include a Class A utility, as defined by TWC, §13.002, among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate.

#### Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to amend rules for a program transferred to PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and CCNs from the commission to the PUC.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred \$1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of \$184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated \$499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Years 2016 and 2017 was \$3,567,824 and \$3,567,824. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was \$3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and CCNs has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

The proposed rulemaking also implements changes made by SB 1842, which exempts certain Class A utilities from the requirements to file a business plan for a public drinking water system

with the commission. No fiscal implications to the state or local government are expected from this proposed amendment.

#### Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rules are not expected to result in fiscal implications for businesses or individuals.

The amendments would modify rules as a result of the transfer of the responsibility for the economic regulation of water and wastewater utilities to the PUC. Staff and fees associated with the implementation of the program have been transferred from the TCEQ to the PUC.

The proposed rulemaking also implements changes made by SB 1842, which exempts certain Class A utilities from the requirements to file a business plan for a public drinking water system with the commission.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking modifies current rules to reflect the transfer of the regulation of water and wastewater rates, services, and CCNs to the PUC. The proposed rulemaking also implements changes made by SB 1842, which exempts certain Class A utilities from the requirements to file a business plan for a public drinking water system with the commission.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it re-



quire an increase or decrease in fees paid to the agency. The proposed rulemaking does not create or expand an existing regulation, but it does limit a regulation and may decreased the number of individuals affected by the regulation by exempting a Class A utility from having to submit a business plan for a public drinking water supply system to the commission. During the first five years that the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB 1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. SB 1842 amends THSC, §341.035(d) to exempt a Class A utility, as defined by TWC, §13.258 from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply system will operate. The specific intent of the proposed rulemaking is to amend Chapter 290 relating to the economic regulation of water and wastewater utilities and to include certain Class A utilities among the entities exempt from the requirement to file a business plan for a public drinking water system with the TCEQ. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC and to exempt certain Class A utilities from the requirement to file a business plan with the TCEQ.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules 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 proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or

representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of TWC, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities or THSC, Chapter 341 relating to the minimum standards of sanitation and health protection measures; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes these rules for the following purposes: 1) to amend TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; and 2) to exempt certain Class A utilities from the requirement to file a business plan for a public drinking water system with the TCEQ.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment in Chapter 290 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5) provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendments of TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this portion of the proposed rulemaking.

Further, the commission determined that amending TCEQ rules in Chapter 290 relating to the economic regulation of water and wastewater utilities and exempting certain Class A utilities from the requirement to file a business plan with the TCEQ for a public drinking water system would 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 proposed rules neither relate to, nor have any impact

on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The specific intent of the proposed rulemaking is to amend TCEQ rules relating to the economic regulation of water and wastewater utilities and to exempt certain Class A utilities from the requirement to file a business plan for a public drinking water system with the TCEQ. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adapt.html](https://www.tceq.texas.gov/rules/propose_adapt.html). For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013. Additionally, the proposed amendments implement Senate Bill 1842 passed by the 85th Texas Legislature, 2017.

#### §290.38. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Water Dictionary: A Comprehensive Reference of Water Terminology*, prepared by the American Water Works Association.

(1) Affected utility--A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103[(d)(1)] of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer:

(A) in a county with a population of 3.3 million or more;

or

(B) in a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more.

(2) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

(3) American National Standards Institute (ANSI) standards--The standards of the American National Standards Institute, Inc.

(4) American Society of Mechanical Engineers (ASME) standards--The standards of the ASME.

(5) American Water Works Association (AWWA) standards--The latest edition of the applicable standards as approved and published by the AWWA.

(6) Approved laboratory--A laboratory approved by the executive director to analyze water samples to determine their compliance with certain maximum or minimum allowable constituent levels.

(7) ASTM International standards--The standards of ASTM International (formerly known as the American Society for Testing and Materials).

(8) Auxiliary power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(9) Bag filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(10) Baseline performance--In reference to a membrane treatment facility, the detailed assessment of observed operational conditions at the time the membrane facility is placed in service for the purpose of tracking changes over time and determining when maintenance or service is required. Examples of parameters where baseline performance data is collected include: net driving pressure, normalized permeate flow, salt rejection, and salt passage.

(11) Cartridge filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an

engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(12) Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels. After June 30, 2008, laboratories must be accredited, not certified, in order to perform sample analyses previously performed by certified laboratories.

(13) Challenge test--A study conducted to determine the removal efficiency (log removal value) of a device for a particular organism, particulate, or surrogate.

(14) Chemical disinfectant--Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(15) Community water system--A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(16) Connection--A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

(A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption);

(B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or

(C) the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(17) Contamination--The presence of any foreign substance (organic, inorganic, radiological, or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

(18) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(19) Direct integrity test--A physical test applied to a membrane unit in order to identify and isolate integrity breaches/leaks that could result in contamination of the filtrate.

(20) Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water.

(21) Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(22) Distribution system--A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

(23) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "drinking water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(24) Drinking water standards--The commission rules covering drinking water standards in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(25) Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(26) Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 35 pounds per square inch.

(27) Emergency power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

(28) Extended power outage--A power outage lasting for more than 24 hours.

(29) Filtrate--The water produced from a filtration process; typically used to describe the water produced by filter processes such as membranes.

(30) Flux--The throughput of a pressure-driven membrane filtration system expressed as flow per unit of membrane area. For example, gallons per square foot per day or liters per hour per square meter.

(31) Grantee--For purposes of this chapter, any person receiving an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(32) Grantor--For purposes of this chapter, any person who conveys an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(33) Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(34) Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*;

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions; or

(C) site-specific characteristics including measurements of water quality parameters, well construction details, existing geological attributes, and other features that are similar to groundwater sources that have been identified by the executive director as being under the direct influence of surface water.

(35) Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(36) Human consumption--Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(37) Indirect integrity monitoring--The monitoring of some aspect of filtrate water quality, such as turbidity, that is indicative of the removal of particulate matter.

(38) Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a) - (f) of this title (relating to Water Treatment).

(39) Interconnection--A physical connection between two public water supply systems.

(40) International Fire Code (IFC)--The standards of the International Code Council.

(41) Intruder-resistant fence--A fence six feet or greater in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle with the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(42) L/d ratio--The dimensionless value that is obtained by dividing the length (depth) of a granular media filter bed by the weighted effective diameter "d" of the filter media. The weighted effective diameter of the media is calculated based on the percentage of the total bed depth contributed by each media layer.

(43) Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(44) Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as  $\log_{10}$  (i.e.,  $\log_{10}$  (feed concentration) -  $\log_{10}$  (filtrate concentration)).

(45) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(45) [(46)] Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

(46) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(47) Membrane filtration--A pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal effi-

ciency of a target organism that can be verified through the application of a direct integrity test; includes the following common membrane classifications microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO), as well as any "membrane cartridge filtration" (MCF) device that satisfies this definition.

(48) Membrane LRV<sub>C-Test</sub>--The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of log removal values (LRVs) obtained during challenge testing, with one representative LRV established per module tested.

(49) Membrane module--The smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(50) Membrane sensitivity--The maximum log removal value that can be reliably verified by a direct integrity test.

(51) Membrane unit--A group of membrane modules that share common valving, which allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(52) Milligrams per liter (mg/L)--A measure of concentration, equivalent to and replacing parts per million in the case of dilute solutions.

(53) Monthly reports of water works operations--The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(54) National Fire Protection Association (NFPA) standards--The standards of the NFPA.

(55) NSF International--The organization and the standards, certifications, and listings developed by NSF International (formerly known as the National Sanitation Foundation) related to drinking water.

(56) Noncommunity water system--Any public water system which is not a community system.

(57) Nonhealth hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

(58) Nontransient, noncommunity water system--A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(59) Pass--In reference to a reverse osmosis or nanofiltration membrane system, stages of pressure vessels in series in which the permeate from one stage is further processed in a following stage.

(60) Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(61) Plumbing inspector--Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(62) Plumbing ordinance--A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

- (A) the International Plumbing Code; or
- (B) the Uniform Plumbing Code.

(63) Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

(64) Potable water service line--The section of pipe between the potable water main and the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

(64) [(65)]Potable water main--A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

(65) Potable water service line--The section of pipe between the potable water main and the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

(66) Potential contamination hazard--A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

- (A) bypass arrangements;
- (B) jumper connections;
- (C) removable sections or spools; and
- (D) swivel or changeover assemblies.

(67) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(68) psi--Pounds per square inch.

(69) Public drinking water program--Agency staff designated by the executive director to administer the Safe Drinking Water Act and state statutes related to the regulation of public drinking water. Any report required to be submitted in this chapter to the executive director must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(70) Public health engineering practices--Requirements in this chapter or guidelines promulgated by the executive director.

(71) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service

connections or serve at least 25 individuals at least 60 days out of the year. This term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(72) Quality Control Release Value (QCRV)--A minimum quality standard of a non-destructive performance test established by the manufacturer for membrane module production that ensures that the module will attain the targeted log removal value demonstrated during challenge testing.

(73) Reactor Validation Testing--A process by which a full-scale ultraviolet (UV) reactor's disinfection performance is determined relative to operating parameters that can be monitored. These parameters include flow rate, UV intensity as measured by a UV sensor and the UV lamp status.

(74) Resolution--The size of the smallest integrity breach that contributes to a response from a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water.

(75) Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding. For an example, see commission Form 20698.

(76) Sanitary survey--An onsite review of a public water system's adequacy for producing and distributing safe drinking water by evaluating the following elements: water source; treatment; distribution system; finished water storage; pump, pump facilities, and controls; monitoring, reporting, and data verification; system management, operation and maintenance; and operator compliance.

(77) Sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water; also applies to some continuous indirect integrity monitoring methods.

(78) Service line--A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(79) Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(80) Significant deficiency--Significant deficiencies cause, or have the potential to cause, the introduction of contamination into water delivered to customers. This may include defects in design, operation, or maintenance of the source, treatment, storage, or distribution systems.

(81) Stage--In reference to a reverse osmosis or nanofiltration membrane system, a set of pressure vessels installed in parallel.

(82) System--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

(83) Transfer pump--Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(84) Transient, noncommunity water system--A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient, noncommunity water system.

(85) Vessel--In reference to a reverse osmosis or nanofiltration membrane system, a cylindrical housing unit where membrane modules are placed in a series to form one unit.

(86) Wastewater lateral--Any pipe or constructed conveyance carrying wastewater, running laterally down a street, alley, or easement, and receiving flow only from the abutting properties.

(87) Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

(88) Water system--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

§290.39. *General Provisions.*

(a) Authority for requirements. Texas Health and Safety Code (THSC), Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulation and control of public drinking water systems in the state. The statute requires that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems not exempted by THSC, §341.035(d). The statute also requires the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. Texas Water Code (TWC), §13.1395, prescribes the duties of the commission relating to standards for emergency operations of affected utilities. The statute requires that the commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster.

(b) Reason for this subchapter and minimum criteria. This subchapter has been adopted to ensure regionalization and area-wide options are fully considered, the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical, and operating practices must be specified to ensure that facilities are properly operated to produce and distribute safe, potable water.

(c) Required actions and approvals prior to construction. A person may not begin construction of a public drinking water supply system unless the executive director determines the following requirements have been satisfied and approves construction of the proposed system.

(1) A person proposing to install a public drinking water system within the extraterritorial jurisdiction of a municipality; or within 1/2-mile of the corporate boundaries of a district, or other

political subdivision providing the same service; or within 1/2-mile of a certificated service area boundary of any other water service provider shall provide to the executive director evidence that:

(A) written application for service was made to that provider; and

(B) all application requirements of the service provider were satisfied, including the payment of related fees.

(2) A person may submit a request for an exception to the requirements of paragraph (1) of this subsection if the application fees will create a hardship on the person. The request must be accompanied by evidence documenting the financial hardship.

(3) A person who is not required to complete the steps in paragraph (1) of this subsection, or who completes the steps in paragraph (1) of this subsection and is denied service or determines that the existing provider's cost estimate is not feasible for the development to be served, shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.

(4) Emergency Preparedness Plan for Public Water Systems that are Affected Utilities.

(A) Each public water system that is also an affected utility, as defined by §290.38 of this title (relating to Definitions), is required to submit to the executive director, receive approval for, and adopt an emergency preparedness plan in accordance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) using either the template in Appendix G of §290.47 of this title (relating to Appendices) or another emergency preparedness plan that meets the requirements of this section. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(B) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under subparagraph (A) of this paragraph provision for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(C) The executive director shall review an emergency preparedness plan submitted under subparagraph (A) of this paragraph. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(D) Each affected utility shall install any required equipment to implement the emergency preparedness plan approved by the executive director immediately upon operation.

(E) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical

information as requested by the executive director to demonstrate the financial burden.

(d) Submission of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed professional engineer. All engineering documents must have engineering seals, signatures, and dates affixed in accordance with the rules of the Texas Board of Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's public drinking water program furnishes consultation services as a reviewing body only, and its licensed professional engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by this subchapter will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the executive director in writing upon completion of all work. Planning materials shall be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 159, P.O. Box 13087, Austin, Texas 78711-3087.

(e) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

- (A) statement of the problem or problems;
- (B) present and future areas to be served, with population data;
- (C) the source, with quantity and quality of water available;
- (D) present and estimated future maximum and minimum water quantity demands;
- (E) description of proposed site and surroundings for the water works facilities;
- (F) type of treatment, equipment, and capacity of facilities;
- (G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and
- (H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) The location of all abandoned or inactive wells within 1/4-mile of a proposed well site shall be shown or reported.

(C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the executive director may give limited approval. In such a case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided to the owner and shall also specify those conditions under which the bond will be forfeited. Such a bond will be transferable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) A copy of each fully executed sanitary control easement and any other documentation demonstrating compliance with §290.41(c)(1)(F) of this title (relating to Water Sources) shall be provided to the executive director prior to placing the well into service. Each original easement document, if obtained, must be recorded in the deed records at the county courthouse. For an example, see commission Form 20698.

(5) Construction features and siting of all facilities for new water systems and for major improvements to existing water systems must be in conformity with applicable commission rules.

(6) For public water systems using reverse osmosis or nanofiltration membranes, the engineering report must include the requirements specified in paragraph (1)(A) - (H) of this subsection, and additionally must provide sufficient information to ensure effective treatment. Specifically:

(A) Provide a clear identification of the proposed raw water source.

(i) If the well has been constructed, a copy of the State of Texas Well Report according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), a cementing certificate (as required by §290.41(c)(3)(A) of this title), and a copy of the complete physical and chemical analysis of the raw water from the well as required by §290.41(c)(3)(G) of this title; or

(ii) If the well has not been constructed, the approximate longitude and latitude for the new well and the projected water quality.

(B) Provide a description of the pretreatment process that includes:

(i) target water quality of the proposed pretreatment process;

(ii) constituent(s) to be removed or treated;

(iii) method(s) or technologies used; and

(iv) operating parameters, such as chemical dosages, filter loading rates, and empty bed contact times.

(C) The design of a reverse osmosis or nanofiltration membrane system shall be based on the standard modeling tools of the manufacturer. The model must be run for both new membranes and end-of-life membranes. All design parameters required by the mem-

brane manufacturer's modeling tool must be included in the modeled analysis. At a minimum, the model shall provide:

- (i) system flow rate;
- (ii) system recovery;
- (iii) number of stages;
- (iv) number of passes;
- (v) feed pressure;
- (vi) system configuration with the number of vessels per stage, the number of passes (if applicable), and the number of elements per vessel;
- (vii) flux (in gallons per square foot per day) for the overall system;
- (viii) selected fouling factor for new and end-of-life membranes; and
- (ix) ion concentrations in the feed water for all constituents required by the manufacturer's model and the projected ion concentrations for the permeate water and concentrate water.

(D) In lieu of the modeling requirements as detailed in subparagraph (C) of this paragraph, the licensed professional engineer may provide either a pilot study or similar full-scale data in accordance with §290.42(g) of this title (relating to Water Treatment). Alternatively, for reverse osmosis or nanofiltration units rated for flow rates less than 300 gallons per minute, the design specifications can be based on the allowable operating parameters of the manufacturer.

(E) Provide documentation that the components and chemicals for the proposed treatment process conform to American National Standards Institute/NSF International (ANSI/NSF) Standard 60 for Drinking Water Treatment Chemicals and ANSI/NSF Standard 61 for Drinking Water System Components.

(F) Provide the details for post-treatment and re-mineralization to reduce the corrosion potential of the finished water. If carbon dioxide and/or hydrogen sulfide is present in the reverse osmosis permeate, include the details for a degasifier for post-treatment.

(G) For compliance with applicable drinking water quality requirements in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), provide the projected water quality at the entry point to the distribution system and the method(s) used to make the water quality projections.

(H) When blending is proposed, provide the blending ratio, source of the water to be blended, and the calculations showing the concentrations of regulated constituents in the finished water.

(I) Provide a description of the disinfection byproduct formation potential based on total organic carbon and other precursor sample results.

(J) Provide the process control details to ensure the integrity of the membrane system. The engineering report shall identify specific parameters and set points that indicate when membrane cleaning, replacement, and/or inspection is necessary.

(i) The parameters shall be based on one, or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(ii) Define the allowable change from baseline performance.

(7) Before reverse osmosis or nanofiltration membrane systems can be used to produce drinking water, but after the reverse osmosis or nanofiltration membrane system has been constructed at the water system, the licensed professional engineer must submit an addendum to the engineering report required by paragraph (6) of this subsection to the executive director for review and approval. The addendum shall include the following verification data of the full-scale treatment process:

(A) Provide the initial baseline performance of the plant. The baseline net driving pressure, normalized permeate flow, and salt rejection (or salt passage) must be documented when the reverse osmosis or nanofiltration membrane systems are placed online.

(B) Provide the frequency of cleaning or membrane replacement. The frequency must be based on a set time interval or at a set point relative to baseline performance of the unit(s).

(C) If modeling is used as the basis for the design, provide verification of the model's accuracy. If the baseline performance evaluation shows that the modeling projection in the engineering report were inaccurate, the licensed professional engineer shall determine if the deviation from the modeled projections resulted from incorrect water quality assumptions or from other incorrect data in the model. The model shall be considered inaccurate if the overall salt passage or the required feed pressure is 10% greater than the model projection. For any inaccurate model, provide a corrected model with the addendum to the engineering report.

(D) Provide verification of plant capacity. The capacity of the reverse osmosis and nanofiltration membrane facility shall be based on the as-built configuration of the system and the design parameters in the engineering report with adjustments as indicated by the baseline performance. Refer to paragraph (6)(C) of this subsection and §290.45(a)(6) of this title for specific considerations.

(E) Provide a complete physical and chemical analysis of the water. The analyses shall be in accordance with §290.41(c)(3)(G) of this title for the raw water (before any treatment), the water produced from the membrane systems, and the water after any post-treatment. Samples must be submitted to an accredited laboratory for chemical analyses.

(8) The calculations for sizing feed pump(s) and chemical storage tank(s) must be submitted to demonstrate that a project meets chemical feed and storage capacity requirements.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director may order the prospective owner or operator to demonstrate financial assurance to operate the system in accordance with applicable laws and rules as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems [and Utilities]), or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at a minimum, the following elements:

(1) description of areas and population to be served by the potential system;

(2) description of drinking water supply systems within a two-mile radius of the proposed system, copies of written requests



seeking to obtain service from each of those drinking water supply systems, and copies of the responses to the written requests;

(3) time line for construction of the system and commencement of operations;

(4) identification of and costs of alternative sources of supply;

(5) selection of the alternative to be used and the basis for that selection;

(6) identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) an operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) for retail public utilities as defined by TWC, §13.002:

(A) projected rate revenue from residential, commercial, and industrial customers; and

(B) pro forma income, expense, and cash flow statements;

(11) identification of any appropriate financial assurance, including those being offered to capital providers;

(12) a notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information; and

(13) other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) Business plans not required. A person is not required to file a business plan if the person:

(1) is a county;

(2) is a retail public utility as defined by TWC, §13.002, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; [or]

(4) is a Class A utility, as defined by TWC, §13.002, that has applied for or been granted an amendment of a certificate of convenience and necessity under TWC, §13.258, for the area in which the construction of the public drinking water supply system will operate; or

(5) [(4)] is a noncommunity nontransient water system and the person has demonstrated financial assurance under THSC, Chapter 361 or Chapter 382 or TWC, Chapter 26.

(h) Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan from the executive director. No person may begin construction of modifications to a public

water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) The executive director shall be notified in writing by the design engineer or the owner before construction is started.

(3) Upon completion of the water works project, the engineer or owner shall notify the executive director in writing as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) Changes in previously approved plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units, and storage tanks, shall be submitted to the executive director for review and approval.

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Significant changes in existing systems or supplies shall not be instituted without the prior approval of the executive director.

(1) Public water systems shall submit plans and specifications to the executive director for the following significant changes:

(A) proposed changes to existing systems which result in an increase or decrease in production, treatment, storage, or pressure maintenance capacity;

(B) proposed changes to the disinfection process used at plants that treat surface water or groundwater that is under the direct influence of surface water including changes involving the disinfectants used, the disinfectant application points, or the disinfectant monitoring points;

(C) proposed changes to the type of disinfectant used to maintain a disinfectant residual in the distribution system;

(D) proposed changes in existing distribution systems when the change is greater than 10% of the number of connections, results in the water system's inability to comply with any of the applicable capacity requirements of §290.45 of this title, or involves interconnection with another public water system; and

(E) any other material changes specified by the executive director.

(2) Public water systems shall notify the executive director in writing of the addition of treatment chemicals, including long-term treatment changes, that will impact the corrosivity of the water. These are considered to be significant changes that require written approval from the executive director.

(A) Examples of long-term treatment changes that could impact the corrosivity of the water include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants, and switching corrosion inhibitor products. Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(B) After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the water system

shall submit plans and specifications in accordance with the requirements of subsection (d) of this section.

(3) Plans and specifications may not be required for changes that are specifically addressed in paragraph (1)(D) of this subsection in the following situations:

(A) Unless plans and specifications are required by Chapter 293 of this title (relating to Water Districts), the executive director will not require another state agency or a political subdivision to submit planning material on distribution line improvements if the entity has its own internal review staff and complies with all of the following criteria:

(i) the internal review staff includes one or more licensed professional engineers that are employed by the political subdivision and must be separate from, and not subject to the review or supervision of, the engineering staff or firm charged with the design of the distribution extension under review;

(ii) a licensed professional engineer on the internal review staff determines and certifies in writing that the proposed distribution system changes comply with the requirements of §290.44 of this title (relating to Water Distribution) and will not result in a violation of any provision of §290.45 of this title;

(iii) the state agency or political subdivision includes a copy of the written certification described in this subparagraph with the initial notice that is submitted to the executive director.

(B) Unless plans and specifications are required by Chapter 293 of this title, the executive director will not require planning material on distribution line improvements from any public water system that is required to submit planning material to another state agency or political subdivision that complies with the requirements of subparagraph (A) of this paragraph. The notice to the executive director must include a statement that a state statute or local ordinance requires the planning materials to be submitted to the other state agency or political subdivision and a copy of the written certification that is required in subparagraph (A) of this paragraph.

(4) Public water systems shall notify the executive director in writing of proposed replacement or change of membrane modules, which may be a significant change. After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section. In its notification to the executive director, the system shall include the following information:

(A) The membrane module make/type, model, and manufacturer;

(B) The membrane plant's water source (groundwater, surface water, groundwater under the direct influence of surface water, or other);

(C) Whether the membrane modules are used for pathogen treatment or not;

(D) Total number of membrane modules per membrane unit; and

(E) The number of membrane modules being replaced or changed for each membrane unit.

(k) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of this subchapter will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines

that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) Exceptions. Requests for exceptions to one or more of the requirements in this subchapter shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception shall precede the submission of engineering plans and specifications for a proposed project for which an exception is being requested.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(4) The executive director may establish site-specific requirements for systems that have been granted an exception. The requirements may include, but are not limited to: site-specific design, operation, maintenance, and reporting requirements.

(5) Water systems that are granted an exception shall comply with the requirements established by the executive director under paragraph (4) of this subsection.

(m) Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title.

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by THSC, §341.035, that has a history of noncompliance with THSC, Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section;

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director.

(A) The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director.

(B) The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title and will be as specified by the executive director.

(C) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in Chapter 37, Subchapter O of this title and released only with the approval of the executive director.

(o) Emergency Preparedness Plans for Affected Utilities.

(1) Each public water system that is also an affected utility and that exists as of November 1, 2011 is required to adopt and submit to the executive director an emergency preparedness plan in accordance with §290.45 of this title and using the template in Appendix G of §290.47 of this title or another emergency preparedness plan that meets the requirements of this subchapter no later than February 1, 2012. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under this subsection provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(3) The executive director shall review an emergency preparedness plan submitted under this subsection. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with the commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(4) Not later than June 1, 2012, each affected utility shall implement the emergency preparedness plan approved by the executive director.

(5) An affected utility may file with the executive director a written request for an extension not to exceed 90 days, of the date by which the affected utility is required under this subsection to submit the affected utility's emergency preparedness plan or of the date by which the affected utility is required under this subsection to implement the affected utility's emergency preparedness plan. The executive director may approve the requested extension for good cause shown.

(6) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802883

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Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§291.1, 291.3, 291.14, 291.76, 291.92, 291.103, 291.110, 291.114, 291.128, 291.131, 291.142, and 291.143; proposes the repeal of §§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12, 291.21 - 291.32, 291.34, 291.35, 291.41 - 291.45, 291.71 - 291.75, 291.80 - 291.91, 291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113, 291.115 - 291.125, 291.127, 291.129, 291.130, 291.132 - 291.138, 291.141, 291.146, 291.147, and 291.150 - 291.153; and proposes new §291.129 and §291.130.

### Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is proposed to implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013; and HB 294, 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities.

HB 294 adds additional criteria to Texas Water Code (TWC), §13.412(a) that will allow the commission to request the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or Texas Health and Safety Code (THSC), Chapter 341.

The proposed amendment to §291.76 would facilitate the ability to convert the regulatory assessment fee (RAF) to an efficient, on-line reporting, invoicing, and payment structure within the confines of the commission's existing SUNSS, Basis2, and ePay applications. This conversion from a self-report, self-pay to a billed fee allows for the collection of delinquent fees, late fees, and penalty fees as directed by 30 TAC Chapter 12, Payment of Fees.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 293, Water Districts.

### Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections, paragraphs, or subparagraphs are proposed for removal, subsequent subsections, paragraphs, or subparagraphs are re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

## *Subchapter A: General Provisions*

### *§291.1, Purpose and Scope of This Chapter*

The commission proposes to amend §291.1 to remove all reference to rates and consumer protection and clarify that Chapter 291 applies to commission proceedings under TWC, §§11.036 - 11.041 and Chapter 13.

### *§291.2, Severability Clause*

The commission proposes the repeal of §291.2 to conform with current commission's rule writing practices.

### *§291.3, Definitions of Terms*

The commission proposes to amend §291.3 to remove all paragraphs, with the exception of §291.3(2), (5), (10), (13) - (15), (23), (28), (29), (32), (34) - (36), (40), (42), (43), (52), (53), and (55). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also proposes to amend renumbered §291.3(3) to add "Public Utility Commission of Texas" to the definition of "Certificate of Convenience and Necessity" to clarify that the PUC is the agency that grants certificates of convenience and necessity.

### *§291.4, Cooperative Corporation Rebates*

The commission proposes the repeal of §291.4. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.5, Submission of Documents*

The commission proposes the repeal of §291.5. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.6, Signatories of Applications*

The commission proposes the repeal of §291.6. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.8, Administrative Completeness*

The commission proposes the repeal of §291.8. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.9, Agreements To Be in Writing*

The commission proposes the repeal of §291.9 to conform with current commission's rule writing practices.

### *§291.11, Informal Proceedings*

The commission proposes the repeal of §291.11. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.12, Burden of Proof*

The commission proposes the repeal of §291.12. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.14, Emergency Orders*

The commission proposes to amend §291.14 to remove all language, with the exception of §291.14(b), (b)(1), and (c). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also proposes to combine ex-

isting §291.14(b) and (b)(1) to form one sentence in proposed §291.14(a).

## *Subchapter B: Rates, Rate-Making, And Rates/Tariff Changes*

The commission proposes the repeal of Subchapter B, §§291.21 - 291.32, 291.34, 291.35. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

## *Subchapter C: Rate-Making Appeals*

The commission proposes the repeal of Subchapter C, §§291.41 - 291.45. The language in existing §291.44 is proposed as new §291.130 with the removal of references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600 and SB 567. The purpose of moving the language in §291.44 to Subchapter I is to combine all rules related to petitions for the sale or use of water under one subchapter.

## *Subchapter D: Records and Reports*

### *§291.71, General Reports*

The commission proposes the repeal of §291.71. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.72, Financial Records and Reports--Uniform System of Accounts*

The commission proposes the repeal of §291.72. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.73, Water and Sewer Utilities Annual Reports*

The commission proposes the repeal of §291.73. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

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

The commission proposes the repeal of §291.74. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.75, Management Audits*

The commission proposes the repeal of §291.75. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

### *§291.76, Regulatory Assessment*

The commission proposes to amend §291.76(d) to provide clarification between the amount of RAF payable to the commission versus the amounts payable to the utility service provider by their customers for water and sewer invoices. The RAF rule does not apply to ancillary fees (e.g., late fees, tap fees, reclaimed water, etc.), the clarification in this revision should ensure proper calculation, reporting, and remittance of fees.

The commission proposes to amend §291.76(e) to clarify the payment period as the previous calendar year.

The commission proposes to amend §291.76(h) to clarify that retail water and sewer applies to both charges and the assessment collection.

The commission proposes to amend §290.76(i) to specify the utility service provider must ensure retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's on-line portal.

The commission proposes §291.76(i)(1) to allow the commission to issue an invoice based on previously reported revenues and adjustment based on available information if the utility service provider does not report charges for water and sewer charges to the commission by January 30th of each year.

The commission proposes §291.76(i)(2) to allow the commission to issue an invoice in an amount up to \$100 if the utility service provider has not previously reported charges for water and sewer services to the commission.

The commission proposes §291.76(i)(3) to clarify that utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline are not relieved of the requirement to ensure retail water and sewer charges are reported through the on-line portal. Once the utility service provider reports charges for water and sewer services to the commission through the on-line portal, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

The commission proposes to amend §291.76(k) to clarify that assessment shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal.

#### *Subchapter E: Customer Service and Protection*

The commission proposes the repeal of Subchapter E, §§291.80 - 291.90. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required. Additionally, the requirements for each utility to maintain a current copy of Chapter 290, Subchapter D and Chapter 291 at each office location is no longer necessary because up-to-date versions of Chapters 290 and 291 are readily available online.

#### *Subchapter F: Quality of Service*

##### *§291.91, Applicability*

The commission proposes the repeal of §291.91. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.92, Requirements of Service*

The commission proposes to amend §291.92 to remove subsection (b), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

#### *Subchapter G: Certificates of Convenience and Necessity*

##### *§291.101, Certificate Required*

The commission proposes the repeal of §291.101. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.102, Criteria for Considering and Granting Certificates or Amendments*

The commission proposes the repeal of §291.102. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.103, Certificates Not Required*

The commission proposes to amend §291.103 to remove all language, with the exception of §291.103(d)(1) and (1)(A) - (D). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

##### *§291.104, Applicant*

The commission proposes the repeal of §291.104. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.105, Contents of Certificate of Convenience and Necessity Applications*

The commission proposes the repeal of §291.105. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.106, Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications*

The commission proposes the repeal of §291.106. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.107, Action on Applications*

The commission proposes the repeal of §291.107. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.109, Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction*

The commission proposes the repeal of §291.109. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.110, Foreclosure and Bankruptcy*

The commission proposes to amend §291.110 to remove all language, with the exception of §291.110(a), (c), and (e). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. Additionally, the commission proposes to amend re-lettered §291.110(b) to remove "is not required to provide the 120-day notice prescribed by §13.301 of the code" which also pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

##### *§291.111, Purchase of Voting Stock in Another Utility*

The commission proposes the repeal of §291.111. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.112, Transfer of Certificate of Convenience and Necessity*

The commission proposes the repeal of §291.112. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.113, Revocation or Amendment of Certificate*

The commission proposes the repeal of §291.113. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

##### *§291.114, Requirement To Provide Continuous and Adequate Service*

The commission proposes to amend §291.114 to remove all language, with the exception of §291.114(b) and (b)(1) - (3). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The language in §291.114(b)(4) was removed to be consistent with TWC, §13.041. Additionally, the commission proposes to amend existing §291.114(b)(1)(B) to replace "commission" with "Public Utility Commission of Texas" and remove the

requirement that a retail public utility provide financial assurance in accordance with TCEQ's rules in Chapter 37.

*§291.115, Cessation of Operations by a Retail Public Utility*

The commission proposes the repeal of §291.115. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.116, Exclusiveness of Certificates*

The commission proposes the repeal of §291.116. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.117, Contracts Valid and Enforceable*

The commission proposes the repeal of §291.117. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.118, Contents of Request for Commission Order under the Texas Water Code, §13.252*

The commission proposes the repeal of §291.118. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.119, Filing of Maps*

The commission proposes the repeal of §291.119. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.120, Single Certification in Incorporated or Annexed Areas*

The commission proposes the repeal of §291.120. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*Subchapter H: Utility Submetering and Allocation*

The commission proposes the repeal of Subchapter H, §§291.121 - 291.125 and §291.127. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

*Subchapter I: Wholesale Water or Sewer Services*

The commission proposes to amend the title of Subchapter I to "Wholesale Water Petitions" to more closely reflect the subchapter's contents.

*§291.128, Petition or Appeal Concerning Wholesale Rate*

The commission proposes to amend §291.128(1) to clarify the applicable sections in TWC, Chapter 11 and remove the reference to TWC, Chapter 12. The commission also proposes to remove §291.128(2) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567; and rename the section to more closely reflect the section's purpose.

*§291.129, Definitions*

The commission proposes the repeal of §291.129. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.129, Petition*

The commission proposes new §291.129. The language in new §291.129 is from existing §291.130, with the exception of §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

*§291.130, Petition or Appeal*

The commission proposes the repeal of §291.130. The language in §291.130 is proposed as new §291.129, with the exception of §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The purpose of moving the language in §291.130 to proposed new §291.129 is so the general language in existing §291.130 comes before the new language in proposed §291.130 pertaining to specific petitions under TWC, §§11.036 - 11.041.

*§291.130, Contents of Petition under the Texas Water Code, §§11.036 - 11.041*

The commission proposes new §291.130. The language in new §291.130 is from existing §291.44 with the following changes: removed the references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600 and SB 567; changed the reference from ratepayer to person, changed the reference from water supplier to entity, and removed the references to supply service in order to conform to TWC, §§11.036 - 11.041; included language to clarify that the petition includes the applicable requirements depending on which statutory provision is being invoked; and removed redundant language found in proposed new §291.129. The purpose of moving the language from §291.44 to proposed new §291.130 is to combine all rules related to petitions for the sale or use of water under one subchapter. The commission seeks public comments on the proposed rule provisions concerning the commission's review and hearing process for wholesale water petitions filed under TWC, §§11.036 - 11.041.

*§291.131, Executive Director's Review of Petition or Appeal*

The commission proposes to amend §291.131 by removing all language, with the exception of §291.131(a). The language proposed for removal pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission proposes to remove the reference to appeal and to add language to clarify TCEQ's authority under TWC, §§11.036 - 11.041. The commission also proposes to update the references from §291.130 to proposed new §291.129. The commission seeks public comments on the proposed rule provisions concerning the commission's review and hearing process for wholesale water petitions filed under TWC, §§11.036 - 11.041.

*§291.132, Evidentiary Hearing on Public Interest*

The commission proposes the repeal of §291.132. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 with the exception of TWC, §11.036 transferred from the commission to the PUC on September 1, 2014.

*§291.133, Determination of Public Interest*

The commission proposes the repeal of §291.133. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.134, Commission Action to Protect Public Interest, Set Rate*

The commission proposes the repeal of §291.134. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The

setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.135, Determination of Cost of Service*

The commission proposes the repeal of §291.135. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.136, Burden of Proof*

The commission proposes the repeal of §291.136. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.137, Commission Order To Discourage Succession of Rate Disputes*

The commission proposes the repeal of §291.137. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*§291.138, Filing of Rate Data*

The commission proposes the repeal of §291.138. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

*Subchapter J: Enforcement, Supervision, and Receivership*

*§291.141, Supervision of Certain Utilities*

The commission proposes the repeal of §291.141. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.142, Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver*

The commission proposes §290.142(a)(2)(D) to include additional criteria that would allow the commission or the executive director to request the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or THSC, Chapter 341.

*§291.143, Operation of a Utility by a Temporary Manager*

The commission proposes to amend §291.143(d) to change the term of the temporary manager from "one year" to "180 days" to be consistent with TWC, §5.505.

*§291.146, Municipal Rates for Certain Recreational Vehicle Parks*

The commission proposes the repeal of §291.146. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*§291.147, Temporary Rates for Services Provided for a Non-functioning System*

The commission proposes the repeal of §291.147. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

*Subchapter K: Provisions Regarding Municipalities*

The commission proposes the repeal of Subchapter K, §§291.150 - 291.153. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

*Fiscal Note: Cost to State and Local Government*

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to repeal or modify obsolete rules for a program transferred to the PUC through the passage of HB 1600 and SB 567 (2013). Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The proposed revisions to Chapter 291 will eliminate or modify rules that are no longer applicable to the commission as a result of the transfer of the responsibility to the PUC. Staff, fees, and functions relating to the economic regulation of water and sewer utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015.

In addition, the proposed rulemaking implements statutory changes made by HB 567 (2017). HB 567 allows the commission to request the appointment of a receiver to a water or sewer utility that violates a final judgment issued by a district court.

Finally, the proposed rulemaking includes an efficiency recommendation from the commission to convert the RAF to an on-line billing system and clarify provisions which have historically caused confusion for the regulated entities.

For the purpose of this fiscal note, it is assumed that all retail public utilities, which include investor-owned utilities, counties, water supply and wastewater service corporation, and districts, have computer and internet access. In the unlikely circumstance that they do not, the commission determined that there may be a minimal cost to the retail public utility to obtain access to the agency's on-line billing system.

*Public Benefits and Cost*

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law, clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity, and a more efficient system of collecting fees from retail public utilities.

There are no anticipated fiscal implications as a result of amending or repealing obsolete rules for the regulation of water and wastewater rates, services, and certificates of convenience and necessity because these functions have already been transferred to the PUC.

The amendments to Chapter 291 also implement an efficiency recommendation from the commission to convert the RAF to an on-line billing system and clarifies the language to avoid confusion by the regulated parties.

For the purpose of this fiscal note, it is assumed that all retail public utilities, which include investor-owned utilities, counties, water supply and sewer service corporation, and districts, have

computer and internet access. In the unlikely circumstance that they do not, the commission determined that there may be a minimal cost to the retail public utility to obtain access to the agency's on-line billing system.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rules would apply statewide and have the same effect in rural communities as in urban communities.

#### Small and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect.

In the unlikely circumstance that a retail public utility does not have computer and internet access, the commission determined that there may be a minimal cost to the entity.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does expand an existing regulation by adding additional criteria that will allow the commission to request the attorney general appoint a receiver to a water or wastewater utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13, or THSC, Chapter 341. The proposed rulemaking also repeals obsolete rules for a program transferred to the PUC. The proposed rulemaking also converts the RAF from a self-report, self-pay fee to a billed fee. The proposed rulemaking may alter the number of individuals affected by the addition of the criteria that will allow the commission to request the appointment of a receiver to a water or wastewater utility. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which

is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB 1600 and SB 567 (2013), transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The intent of the proposed rulemaking associated with HB 1600 and SB 567 is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities. HB 294 (2017) adds additional criteria to TWC, §13.412(a) that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341. The intent of the proposed rulemaking associated with HB 294 is to incorporate the additional criteria listed in TWC, §13.142(a) into §291.142. The intent of the proposed changes to §291.76 is to convert the RAF from a self-report, self-pay fee to a billed fee. The conversion from a self-report, self-pay fee to a billed fee will allow for the collection of delinquent fees, late fees, and penalty fees as directed by Chapter 12. The intent of these rules is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend and repeal the rules relating to economic regulation of water and wastewater utilities; incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules 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 proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any



express requirements of TWC, Chapter 5, 11, 12, or 13, which relate to the collection of fees, economic regulation of water and wastewater utilities, and the appointment of a receiver for water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes these rules for the following purposes: 1) to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; 2) to incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) the conversion of the RAF from a self-report, self-pay fee to a billed fee.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5) provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this portion of the proposed rulemaking.

Further, the commission determined that amending and repealing obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities; incorporating additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee would 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 proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The specific intent of the proposed rulemaking is to: 1) transfer functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567; 2) incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) to convert the RAF from a self-report, self-pay fee to a billed fee. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adapt.html](https://www.tceq.texas.gov/rules/propose_adapt.html). For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §§291.1, 291.3, 291.14

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

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

This chapter is intended to govern the procedure for the institution, conduct and determination of commission proceedings under Texas Water Code (TWC), §§11.036 - 11.041 and Chapter 13. This chapter 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. 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. [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.]

§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.]~~

(1) ~~[(2)]~~ Affected county--A county to which Texas 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.]~~

(2) ~~[(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 Texas 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.]~~

(3) ~~[(10)]~~ Certificate of Convenience and Necessity--A permit issued by the Public Utility Commission of Texas [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.]~~

~~(4) [(13)] Code--The Texas Water Code.~~

~~(5) [(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.~~

~~(6) [(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.]~~

~~(7) [(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.]~~

~~(8) [(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).~~

~~(9) [(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.]~~

~~(10) [(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.]~~

~~(11) [(34)] Public utility--The definition of public utility is that definition given to "Water [water] and sewer utility" in this section [subchapter].~~

~~(12) [(35)] Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.~~

~~(13) [(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.]

(14) [(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.]

(15) [(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.

(16) [(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.]

(17) [(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.

(18) [(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 non-profit 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.]

(19) [(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.

#### §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 paragraph (2) of this subsection and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.}

(a) [(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){:}

[(4)] 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.}

(b) [(e)] 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802884

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



### 30 TAC §§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.2. *Severability Clause.*

§291.4. *Cooperative Corporation Rebates.*

§291.5. *Submission of Documents.*

§291.6. *Signatories to Applications.*

§291.8. *Administrative Completeness.*

§291.9. *Agreements To Be in Writing.*

§291.11. *Informal Proceedings.*

§291.12. *Burden of Proof.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802885

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



### SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

#### 30 TAC §§291.21 - 291.32, 291.34, 291.35

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.21. *Form and Filing of Tariffs.*

§291.22. *Notice of Intent to Change Rates.*

§291.23. *Time between Filings.*

§291.24. *Jurisdiction over Affiliated Interests.*

§291.25. *Rate Change Applications, Testimony and Exhibits.*

§291.26. *Suspension of Rates.*

§291.27. *Request for a Review of a Rate Change by Ratepayers Pursuant to the Texas Water Code, §13.187(b).*

§291.28. *Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b).*

§291.29. *Interim Rates.*

§291.30. *Escrow of Proceeds Received under Rate Increase.*

§291.31. *Cost of Service.*

§291.32. *Rate Design.*

§291.34. *Alternative Rate Methods.*

§291.35. *Jurisdiction of Commission over Certain Water or Sewer Supply Corporations.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802886

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER C. RATE-MAKING APPEALS

### 30 TAC §§291.41 - 291.45

#### Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.41. *Appeal of Rate-making Pursuant to the Texas Water Code, §13.043.*

§291.42. *Contents of Petition Seeking Review of Rates Pursuant to the Texas Water Code, §13.043(b).*

§291.43. *Refunds during Pendency of Appeal.*

§291.44. *Contents of Pleadings Seeking Review of Rates for Sales of Water under the Texas Water Code, §§11.036-11.041 and 12.013.*

§291.45. *Rates Charged by a Municipality to a District.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802887

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER D. RECORDS AND REPORTS

### 30 TAC §§291.71 - 291.75

#### Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.71. *General Reports.*

§291.72. *Financial Records and Reports--Uniform System of Accounts.*

§291.73. *Water and Sewer Utilities Annual Reports.*

§291.74. *Maintenance and Location of Records.*

§291.75. *Management Audits.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802888

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



### 30 TAC §291.76

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.701, concerning Fees, which the commission is authorized to collect.

The proposed amendment implements TWC, §§5.102, 5.103, and 5.701.

§291.76. *Regulatory Assessment.*

(a) For the purpose of this section, utility service provider means a public utility, water supply or sewer service corporation as defined in Texas [the] Water Code (TWC), §13.002, or a district as defined in TWC [the Water Code], §49.001.

(b) Except as otherwise provided, a utility service provider which provides potable water or sewer utility service shall collect a regulatory assessment from each retail customer and remit such fee to the commission under the provisions of this section.

(c) A utility service provider is prohibited from collecting a regulatory assessment from the state or a state agency or institution.

(d) The regulatory assessment amount [Amounts] payable to the commission shall be based on the following:

(1) for a public utility as defined in TWC [the Water Code], §13.002, 1.0% of the charge for retail water and sewer service;

(2) for a water supply or sewer service corporation as defined in TWC [the Water Code], §13.002, 0.5% of the charge for retail water and sewer service;

(3) for a district as defined in TWC [the Water Code], §49.001, 0.5% of the charge for retail water and sewer service.

(e) The amount payable to the commission shall be based on the amounts actually collected by the utility service provider during the previous calendar year [payment period].

(f) The amount payable shall be based on water and sewer service charges to retail customers only, and shall not be based on:

(1) associated delinquent, penalty, or interest charges;

(2) tap fees, standby fees, impact fees, extension fees, capital improvement surcharges, itemized solid waste collection fees, or other unrelated charges; or

(3) wholesale charges from one utility service provider to another.

(g) The utility service provider may include the assessment as a separate line item on a customer's bill or include it in the retail charge.

(h) The utility service provider shall be responsible for keeping proper records of the annual retail water and sewer charges and assessment collections [for retail water and sewer service] and provide such records to the commission upon request.

(i) By January 30th of each year, the utility service provider must ensure the retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's designated format. [The full amount payable for the 12 calendar months of each year must be remitted to the commission by January 30th of the following year.]

(1) If the utility service provider does not report charges for water and sewer services to the commission by January 30th of each year, the commission may issue an invoice based on previously reported revenues and adjustment based on available information.

(2) If the utility service provider has not previously reported charges for water and sewer services to the commission, the commission may issue an invoice in an amount up to \$100.

(3) Utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline, and who pay an invoice generated by paragraph (1) or (2) of this subsection, are not relieved of the requirement to ensure retail water and sewer charges are reported through the designated format. Once the utility service provider reports charges for water and sewer services to the commission through the designated format, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

(j) The utility service provider shall pursue collection of the assessment from the customer in the same manner and with the same diligence that it pursues collection of other service charges.

(k) Assessments [If assessments] collected in the 12 months prior to January 1st [+] of each year shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. If assessments are not received by the invoice due date, penalties and interest for the late payment of fees shall be assessed [are not received by the commission by January 30th of that year, the utility service provider shall be assessed penalties and interest] in accordance with Chapter 12 of this title (relating to Payment of Fees).

(l) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(m) A utility service provider is exempt from the provisions of this section if the [such] provider:

(1) does not own and has no responsibility for operation and maintenance of the facilities necessary in providing water and sewer utility service, including distribution and collection systems;

(2) does not maintain a security interest in the facilities necessary in providing water and sewer utility service;

(3) has no authority to set the retail customer's rates; and

(4) does not make policy decisions regarding water and sewer services.

(n) If it appears that utility service provider has violated this section, the commission may request a civil suit to be brought in a court of competent jurisdiction for injunctive or other appropriate relief.

(1) At the request of the commission, the attorney general shall bring and conduct the suit in the name of the state.

(2) The suit may be brought in Travis County or in the county in which the defendant resides.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802889

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

### 30 TAC §§291.80 - 291.90

#### Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.80. *Applicability.*

§291.81. *Customer Relations.*

§291.82. *Resolution of Disputes.*

§291.83. *Refusal of Service.*

§291.84. *Applicant and Customer Deposit.*

§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.*

§291.90. *Continuity of Service.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802890

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER F. QUALITY OF SERVICE

### 30 TAC §291.91

#### Statutory Authority

The repeal of the section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the section implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.91. *Applicability.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802891

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



**30 TAC §291.92**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendment implements House Bill 1600 and Senate Bill 567, passed by the 83rd Texas Legislature, 2013.

§291.92. *Requirements by Others.*

[(a)] The application of commission rules shall not relieve the retail public utility from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

[(b)] ~~The commission's rules in this chapter relating to rates, records and reporting, customer service and protection and quality of service shall apply to utilities operating within the corporate limits of a municipality exercising original rate jurisdiction, unless the municipality adopts its own rules.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802892

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



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

**30 TAC §§291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113, 291.115 - 291.120**

**Statutory Authority**

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.101. *Certificate Required.*

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

§291.104. *Applicant.*

§291.105. *Contents of Certificate of Convenience and Necessity Applications.*

§291.106. *Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications.*

§291.107. *Action on Applications.*

§291.109. *Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.*

§291.111. *Purchase of Voting Stock in Another Utility.*

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

§291.113. *Revocation or Amendment of Certificate.*

§291.115. *Cessation of Operations by a Retail Public Utility.*

§291.116. *Exclusiveness of Certificates.*

§291.117. *Contracts Valid and Enforceable.*

§291.118. *Contents of Request for Commission Order under the Texas Water Code, §13.252.*

§291.119. *Filing of Maps.*

§291.120. *Single Certification in Incorporated or Annexed Areas.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802893

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



**30 TAC §§291.103, 291.110, 291.114**

**Statutory Authority**

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the



TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.103. *Certificates Not Required.*

~~[(a) Extension of Service.]~~

~~[(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of public convenience and necessity, a retail public utility is not required to secure a certificate of public convenience and necessity for:]~~

~~[(A) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area; and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or]~~

~~[(B) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.]~~

~~[(2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the certificated area clearly showing the extension, accompanied by a written explanation of the extension.]~~

~~[(b) Construction of Facilities. A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.]~~

~~[(c) Municipality Pursuant to the Texas Water Code, §13.255. A municipality which has given notice under the Texas Water Code, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:]~~

~~[(1) a copy of the notice required pursuant to the Texas Water Code, §13.255; and]~~

~~[(2) a map showing the area affected under the Texas Water Code, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.]~~

~~[(d) Utility or Water Supply Corporation With Less Than 15 Potential Connections.]~~

~~[(1)] A utility or water supply corporation is exempt from the requirement to possess a certificate of convenience and necessity in order to provide retail water service if it:~~

~~(1) [(A)] has less than 15 potential service connections;~~

~~(2) [(B)] is not owned by or affiliated with a retail public utility or any other provider of potable water service;~~

~~(3) [(C)] is not within the certificated area of another retail public utility; and~~

~~(4) [(D)] is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.~~

~~[(2) Utilities or water supply corporations with less than 15 potential connections currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.]~~

~~[(3) The executive director may revoke the current certificate of convenience and necessity upon written request by the exempt utility or water supply corporation.]~~

~~[(4) An exempted utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the executive director which shall not be more stringent than those in §§291.80-291.90 of this title.]~~

~~[(5) The exempted utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.]~~

~~[(6) Exempt Utility Tariff and Rate Change Requirements. An exempted utility operating with or without a certificate of convenience and necessity:]~~

~~[(A) must maintain a current copy of the exempt utility tariff form with its current rates at its business location; and]~~

~~[(B) may change its rates without following the requirements in §291.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of rate changes prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written protests may be submitted to the commission at that address. If the commission receives written protests to a proposed rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the executive director will review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments from customers or the exempt utility, the executive director will establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the executive director. The exempt utility shall refund any rates collected in excess of the rates established by the executive director in accordance with the time frames or other requirements established by the executive director.]~~

~~[(C) The exempt utility or water supply corporation, public interest counsel, or any affected customer may file a written request for reconsideration or protest of the executive director's decision on rates with the chief clerk not later than the 20th day after the date on which the executive director mailed his decision to the exempt utility and customers. The rates determined by the executive director shall remain in effect while the commission considers the request or protest. If the request or protest is not acted on by the commission within 45 days after the date on which the executive director mailed his decision on rates to the exempt provider and customers, the request shall be deemed to be overruled.]~~

~~[(D) A rate change application filed by an exempt utility that follows the rate change procedures in §291.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.]~~

{(7) Unless authorized in writing by the executive director, a utility or a water supply corporation operating under these requirements may not cease utility operations. A utility may not discontinue service to a customer with or without notice except in accordance with the Exempt Utility Tariff Form and a water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.}

{(8) A utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff specified by the executive director shall be subject to any and all enforcement remedies provided by this chapter and the Texas Water Code, Chapter 13.}

{(e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under Texas Water Code, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by Texas Water Code, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by Texas Water Code, §13.255(b).}

§291.110. *Foreclosure and Bankruptcy.*

(a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the commission in writing of that fact not later than the tenth day after the date on which the utility receives the notice.

{(b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing utility service unless the person has a completed application for a certificate of convenience and necessity or to transfer the current certificate of convenience and necessity on file with the commission within 30 days after the foreclosure is completed.}

(b) [(e)] A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service [is not required to provide the 120-day notice prescribed by §13.301 of the code, but] shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

{(d) The financial institution may operate the utility for an interim period not to exceed 12 months before transferring or otherwise obtaining a certificate of convenience and necessity unless the executive director in writing extends the time period. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.}

(c) [(e)] Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the commission in writing.

§291.114. *Requirement To Provide Continuous and Adequate Service.*

{(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:}

{(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;}

{(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;}

{(3) nonuse; or}

{(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.}

{(b)} After notice and hearing, the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Texas Water Code, §16.341, to:

(A) provide specified improvements in its service in a defined area if:

(i) service in that area is inadequate as set forth in §291.93 and §291.94 of this title (relating to Adequacy of Water Utility Service; and Adequacy of Sewer Service); or

(ii) is substantially inferior to service in a comparable area; and

(iii) it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the Public Utility Commission of Texas [commission] to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules [as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities); or as specified by the commission];

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service; or

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider. [; or]

{(4) issue an emergency order, with or without a hearing, under §291.14 of this title (relating to Emergency Orders).}

{(e) If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable

a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Health and Safety Code, §341.0355, or under this chapter, the commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a commission meeting, may:]

{(1) immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the financial assurance in an amount determined by the commission not to exceed the amount of the financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting; and}

{(2) require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.}

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802894

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER H. UTILITY SUBMETERING AND ALLOCATION

### 30 TAC §§291.121 - 291.125, 291.127

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.121. *General Rules and Definitions.*

§291.122. *Owner Registration and Records.*

§291.123. *Rental Agreement.*

§291.124. *Charges and Calculations.*

§291.125. *Billing.*

§291.127. *Submeters or Point-of-Use Submeters and Plumbing Fixtures.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802895

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812

## SUBCHAPTER I. WHOLESALE WATER PETITIONS

### 30 TAC §§291.128 - 291.131

#### Statutory Authority

The amendments and new rules are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; TWC, §11.036 concerning the sale of conserved or stored water; and TWC, §11.041 concerning complaints for the denial of water

The proposed amendments and new rules implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.128. *Petition [or Appeal] Concerning Wholesale Water [Rate].* This subchapter sets forth substantive guidelines and procedural requirements concerning[:]

{(1) a petition [to review rates charged for the sale of water for resale] filed pursuant to Texas Water Code, §§11.036 - 11.041. [Chapter 11 or 12; or]

{(2) an appeal pursuant to Texas Water Code, §13.043(f) (appeal by retail public utility concerning a decision by a provider of water or sewer service).}

§291.129. *Petition.*

(a) The petitioner must file a written petition with the commission accompanied by the filing fee required by the Texas Water Code. The petitioner must serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties.

(b) The petition must clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks. The petitioner must attach any applicable contract to the petition.

§291.130. *Contents of Petition under Texas Water Code, §§11.036-11.041.*

(a) A person seeking relief under the Texas Water Code, §§11.036 - 11.041 should include in a written petition to the commission, the following information, as applicable to the section of the Texas Water Code under which petitioner seeks relief:

- (1) the petitioner's name;
- (2) the name of the entity from which water is received or sought;
- (3) an explanation of why petitioner is entitled to receive or use the water;
- (4) that the petitioner is willing and able to pay a just and reasonable price for the water;
- (5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and
- (6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

(b) Water suppliers seeking relief under the Texas Water Code, §§11.036 - 11.041 should include in a written petition for relief to the commission, the following information:

- (1) petitioner's name;
- (2) the name of the ratepayers to whom water is rendered;
- (3) an explanation of why petitioner is entitled to the relief requested;
- (4) that the petitioner is willing and able to supply water at a just and reasonable price; and
- (5) that the price demanded by petitioner for the water is just and reasonable and is not discriminatory.

(c) If the petition for relief is accompanied by the deposit stipulated in the Texas Water Code, the executive director shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.

(d) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition. In the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction.

§291.131. Executive Director's Review of Petition [or Appeal].

[(a)] When a petition [or appeal] is filed, including a petition subject to the Texas Water Code (TWC), §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 §291.129 [§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 §291.129 [§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 §291.129 [§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 under TWC, §§11.036 - 11.041 as applicable.

[(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.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802896  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: August 12, 2018  
For further information, please call: (512) 239-6812



## SUBCHAPTER I. WHOLESALE WATER OR SEWER SERVICE

### 30 TAC §§291.129, 291.130, 291.132 - 291.138

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

- §291.129. Definitions.*
- §291.130. Petition or Appeal.*
- §291.132. Evidentiary Hearing on Public Interest.*
- §291.133. Determination of Public Interest.*
- §291.134. Commission Action to Protect Public Interest, Set Rate.*
- §291.135. Determination of Cost of Service.*
- §291.136. Burden of Proof.*
- §291.137. Commission Order To Discourage Succession of Rate Disputes.*
- §291.138. Filing of Rate Data.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802897  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: August 12, 2018  
For further information, please call: (512) 239-6812



## SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

### 30 TAC §§291.141, 291.146, 291.147

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.141. *Supervision of Certain Utilities.*

§291.146. *Municipal Rates for Certain Recreational Vehicle Parks.*

§291.147. *Temporary Rates for Services Provided for a Nonfunctioning System.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802898

Robert Martinez

Director, Environmental Law Division

Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



### 30 TAC §291.142, §291.143

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 294 passed by the 85th Texas Legislature, 2017.

§291.142. *Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver.*

(a) The commission or the executive director, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that:

(1) has discontinued or abandoned operations or the provision of services; or

(2) is being referred to the attorney general for the appointment of a receiver under Texas Water Code (TWC), §13.412 for:

(A) having expressed an intent to abandon or abandoned operation of its facilities; ~~or~~

(B) having violated a final order of the commission; ~~or~~

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission; ~~or~~ [-]

(D) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(i) TWC, Chapter 7;

(ii) TWC, Chapter 13; or

(iii) Texas Health and Safety Code, Chapter 341.

(b) The commission or the executive director may appoint a person under this section by emergency order under Chapter 35 of this title (relating to Emergency and Temporary Order and Permits; Temporary Suspension or Amendment of Permit Conditions). A corporation may be appointed a temporary manager.

(c) Abandonment includes, but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

§291.143. *Operation of a Utility by a Temporary Manager.*

(a) By emergency order under Texas Water Code (TWC), §5.507 and §13.4132, the commission or the executive director may appoint a person under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; ~~Temporary Suspension or~~ [and] Amendment of Permit Conditions) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC [Texas Water Code], §13.412.

(b) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The temporary manager shall serve a term of 180 days ~~one year~~, unless:

- (1) specified otherwise by the commission;
- (2) an extension is requested by the executive director or the temporary manager and granted by the commission;
- (3) the temporary manager is discharged from his responsibilities by the commission; or
- (4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general [Attorney General].

(e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(h) The temporary manager shall report to the executive director on a monthly basis. This report shall include:

- (1) an income statement for the reporting period;
- (2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and
- (3) any other information required by the executive director.

(i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.  
 TRD-201802899  
 Robert Martinez  
 Director, Environmental Law Division  
 Texas Commission on Environmental Quality  
 Earliest possible date of adoption: August 12, 2018  
 For further information, please call: (512) 239-6812



## SUBCHAPTER K. PROVISIONS REGARDING MUNICIPALITIES

### 30 TAC §§291.150 - 291.153

#### Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under

the TWC, and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.150. *Jurisdiction of Municipality: Surrender of Jurisdiction.*

§291.151. *Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.*

§291.152. *Notification Regarding Use of Revenue.*

§291.153. *Fair Wholesale Rates for Wholesale Water Sales to a District.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802900  
 Robert Martinez  
 Director, Environmental Law Division  
 Texas Commission on Environmental Quality  
 Earliest possible date of adoption: August 12, 2018  
 For further information, please call: (512) 239-6812



## CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §293.11 and §293.44.

### Background and Summary of the Factual Basis for the Proposed Rules

The Public Utility Commission of Texas (PUC) Sunset Legislation, House Bill (HB) 1600 and Senate Bill (SB) 567 passed by the 83rd Texas Legislature, 2013, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities effective September 1, 2014.

Concurrent with this proposal, and published in this issue of the *Texas Register*, the commission is proposing revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 291, Utility Regulations.

### Section by Section Discussion

In addition to the proposed revisions associated with this rule-making, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where paragraphs are proposed for removal, subsequent paragraphs are renumbered, accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

*§293.11, Information Required to Accompany Applications for Creation of Districts*

The commission proposes to amend §293.11(h) to remove paragraph (11), because the language pertains to functions that were transferred from the commission to PUC in HB 1600 and SB 567.

*§293.44, Special Considerations*

The commission proposes to amend §293.44(b)(7) to remove the reference to Chapter 291, Subchapter G, which pertains to functions that were transferred from the commission to PUC in HB 1600 and SB 567.

Fiscal Note: Cost to State and Local Government 1

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The rulemaking is proposed in order to modify rules for a program transferred to the PUC through the passage of HB 1600 and SB 567. Effective September 1, 2014, HB 1600 and SB 567 transferred the responsibility for regulating water and wastewater rates, services, and certificates of convenience and necessity from the commission to the PUC. The proposed amendments to §293.11 and §293.44 modify rules that are no longer applicable to the commission as a result of the transfer of the responsibility for the economic regulation of water and wastewater utilities to the PUC.

Staff, fees, and functions relating to the economic regulation of water and wastewater utilities were transferred from the TCEQ to the PUC in Fiscal Year 2015. The agency transferred \$1,429,818 out of Water Resource Management Account Number 153 funds and 20.0 full-time employees (FTEs) to the PUC. In addition, there was also a transfer of \$184,000 to the PUC to cover the cost of the contract with the State Office of Administrative Hearings for water and wastewater utility contested case hearings. The Office of Public Utility Counsel was appropriated \$499,680 in Water Resource Management Account Number 153 funds and 5.0 FTEs in Fiscal Year 2015 to represent water and wastewater utility customers as provided by the provisions of HB 1600 and SB 567.

For Fiscal Year 2016, the legislature increased the appropriation to the PUC and the Office of Public Utility Counsel; the total cost to the Water Resource Management Account Number 153 for Fiscal Year 2016 and 2017 was \$3,567,824 and \$3,567,824, respectively. The total cost to the Water Resource Management Account Number 153 for Fiscal Year 2018 was \$3,470,453.

Since the transfer of the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity has already taken place, there are no fiscal implications anticipated for the agency, PUC, or for other units of state or local government as a result of the implementation or administration of the proposed rules.

Public Benefit and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and clear rules for the administration and regulation of water and wastewater rates, services, and certificates of convenience and necessity.

The proposed rulemaking is not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rulemaking amends current rules to reflect the transfer of the regulation of water and wastewater rates, services, and certificates of convenience and necessity to the PUC.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking amends TCEQ's rules for a program transferred to the PUC. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 proposed 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 PUC Sunset Legislation, HB

1600 and SB 567, transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the proposed rulemaking is to amend TCEQ rules in Chapter 293 relating to the economic regulation of water and wastewater utilities. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend rules relating to economic regulation of water and wastewater utilities as those functions were transferred to the PUC.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules 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 proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the economic regulation of water or wastewater utilities; 2) does not exceed any express requirements of Texas Water Code, Chapter 11, 12, or 13, which relate to the economic regulation of water and wastewater utilities; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes this rulemaking for the purpose of amending TCEQ rules in Chapter 293 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed rulemaking falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. This rulemaking is required due to the transfer of functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567. The specific intent of the proposed rulemaking is to amend by removing obsolete references and language relating to the economic regulation of water and wastewater utilities. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 7, 2018, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments



Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-057-291-OW. The comment period closes on August 13, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Brian Dickey, Water Supply Division, Plan and Technical Review Section at (512) 239-0963.

## SUBCHAPTER B. CREATION OF WATER DISTRICTS

### 30 TAC §293.11

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

*§293.11. Information Required to Accompany Applications for Creation of Districts.*

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

- (1) \$700 nonrefundable application fee;
- (2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Texas Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Texas Local Government Code, §42.042, have been followed;
- (3) if city consent was obtained under paragraph (2) of this subsection, provide the following:
  - (A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;
  - (B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(e) and (i);
  - (4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;
  - (5) evidence of submitting a creation petition and report to the appropriate commission regional office;
  - (6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement, as appropriate, to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

(11) other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC, Chapter 36, Groundwater Conservation Districts, are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for TWC, Chapter 51, Water Control and Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §51.013, requesting creation signed by the majority of persons holding title to land representing a total value of more than 50% of value of all land in the proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

- (A) name of district;
- (B) area and boundaries of district;
- (C) constitutional authority;
- (D) purpose(s) of district;
- (E) statement of the general nature of work and necessity and feasibility of project with reasonable detail; and
- (F) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to

the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district, and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §51.072;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(9) other information as required by the executive director.

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §54.014 and §54.015, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by tax rolls of the central appraisal district. If there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed; and

(E) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

- (iii) groundwater level within the region;
- (iv) recharge capability of a groundwater source;
- (v) natural run-off rates and drainage; and
- (vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

(8) for districts proposed to be created within the corporate boundaries of a municipality, evidence that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in Texas Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with TWC, §49.052 and §54.102;

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee;

(11) if the petition within the application includes a request for road powers, information meeting the requirements of §293.202(b) of this title (relating to Application Requirements for Commission Approval); and

(12) other data and information as the executive director may require.

(e) Creation applications for TWC, Chapter 55, Water Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §55.040, signed by persons holding title to more than 50% of all land in the proposed district as indicated by county tax rolls, or by 50

qualified property taxpaying electors. The petition shall include the following:

- (A) name of district; and
- (B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required

by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for TWC, Chapter 58, Irrigation Districts, within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §58.013 and §58.014, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for TWC, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by TWC, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or extraterritorial jurisdiction the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included;

(2) evidence that a copy of the petition was filed with the city clerk in each city where the proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates; and

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by TWC, §49.052 and §59.021;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for TWC, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by TWC, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board;

(E) a request specifying each purpose for which the proposed district is being created; and

(F) if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of the proposed district as described in the petition;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography, and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement;

(ii) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC, Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution;

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §65.102, where applicable;

~~[(11) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.109 of this title (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and §291.112 of this title (relating to Transfer of Certificate of Convenience and Necessity);]~~

~~(11) [(12)]~~ if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee; and

~~(12) [(13)]~~ other information as the executive director requires.

(i) Creation applications for TWC, Chapter 66, Stormwater Control Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §§66.014 - 66.016, requesting creation of a storm water control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography, and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage; and

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary, and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §66.102, where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Texas Local Government Code, Chapter 375, Municipal Management Districts in General, shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, by verifiable landmarks, including a road, creek, or railroad line, or by lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District;"[3]

(E) list of proposed initial directors and experience and term of each; and

(F) a resolution of municipality in support of creation, if inside a city;

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Texas Local Government Code, Chapter 375, including budget, statement of expenses, revenues, and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with Texas Local Government Code, §375.063; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional \$100 filing fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.

TRD-201802901

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 12, 2018

For further information, please call: (512) 239-6812



## SUBCHAPTER E. ISSUANCE OF BONDS

### 30 TAC §293.44

#### Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

#### §293.44. *Special Considerations.*

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property

owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, wastewater, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project. Pursuant to

the provisions of TWC, §49.4641, as amended, a district is not required to prorate the costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.



(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, wastewater, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes

of this paragraph [subsection], "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this paragraph [subsection], "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a licensed professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, wastewater, or drainage, under contracts authorized under Texas Local Government Code, §552.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, wastewater, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection [and Chapter 291, Subchapter G of this title (relating to Certificates of Convenience and Necessity)].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2018.  
TRD-201802902

Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: August 12, 2018  
For further information, please call: (512) 239-6812

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**CHAPTER 305. CONSOLIDATED PERMITS**  
**SUBCHAPTER D. AMENDMENTS,**  
**RENEWALS, TRANSFERS, CORRECTIONS,**  
**REVOCATION, AND SUSPENSION OF**  
**PERMITS**

**30 TAC §305.62**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §305.62.

Background and Summary of the Factual Basis for the Proposed Rule

The TCEQ proposes to implement a federal rule update as well as respond to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA-UC) in October 2016 (Project Number 2017-005-PET-NR; approved on December 15, 2016, to initiate rulemaking). The rulemaking would modify rules in 30 TAC in order to fulfill the requirements of an Agreement State program for radioactive material licenses and also to clarify and streamline rules. The proposed revisions in §305.62 would change the category for certain types of radioactive material license amendment applications dealing with reductions in financial assurance.

This rulemaking includes corresponding changes to 30 TAC Chapter 331, Underground Injection Control and Chapter 336, Radioactive Substance Rules.

Section Discussion

**§305.62, Amendments**

Under current rule, any reduction in the amount of financial assurance for a radioactive materials license triggers as a major amendment application. This practice is not always consistent with other programs that require financial assurance. If a licensee completes required closure (such as decommissioning or groundwater restoration) and the agency has approved such closure, financial assurance for that closure is no longer needed and a major amendment application for the license should not be required to reduce the financial assurance. In some cases, approval of the licensee's closure activity may also require concurrence of the Nuclear Regulatory Commission. The commission proposes to amend §305.62(i) so that a licensee would submit a minor amendment application for a reduction in financial assurance as a result of completed closure activities.

The commission proposes an amendment to §305.62(i)(1)(J) to delete the word "amounts" and add the phrase "unless such a reduction occurs as a result of completed closure activities that have been approved by the appropriate regulatory authority." This amendment would reduce regulatory costs and time requirements.

The commission proposes an amendment to §305.62(i)(2)(B) to delete the word "or" as a result of proposed §305.62(i)(2)(C).

# Texas Commission on Environmental Quality



## ORDER ADOPTING AMENDED RULES

**Docket No. 2017-0065-RUL**

**Rule Project No. 2013-057-291-OW**

On December 12, 2018, the Texas Commission on Environmental Quality (Commission) adopted amended rules or repealed rules in 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; Chapter 291, Utility Regulations; and Chapter 293, Water Districts. The proposal was published for comment in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4634).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed