

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to Subchapter A, General Provisions, §291.8; Subchapter B, Rates, Rate Making, and Rates/Tariff Changes, §§291.21, 291.22, 291.28, 291.29, and 291.31; Subchapter E, Customer Service and Protection, §§291.81, 291.82, 291.85, 291.87, and 291.88; Subchapter G, Certificates of Convenience and Necessity, §291.113; and Subchapter H, Utility Submetering and Allocation, §291.122 and §291.127. Sections 291.21, 291.22, 291.28, 291.29, 291.31, 291.81, 291.82, 291.85, 291.87, and 291.113 are adopted *with changes* to the proposed text as published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 2969). Sections 291.8, 291.88, 291.122, and 291.127 are adopted *without changes* and will not be republished. Sections 291.24, 291.26, 291.32, and 291.34 are being withdrawn.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these revisions to Chapter 291 in order to implement legislation from the 77th Legislature, 2001.

Although the proposal for this rulemaking included language to implement Senate Bill (SB) 2, §§10.01 and 10.03 - 10.07, these proposed amendments (i.e., §§291.24, 291.26, 291.32, and 291.34) are being withdrawn from consideration. Testimony provided at the Commission Agenda on July 24, 2002, questioned these proposed amendments in light of the legislative language in SB 2, §10.08. The commission believes that the interpretation of SB 2, §10.08 needs to be considered further and that the changes to the proposed language that were suggested would be substantive. Therefore, the amendments proposed in regards to SB 2, Article 10 are being withdrawn from consideration at this

time. The commission is adopting the other proposed amendments.

House Bill (HB) 924 and SB 1444, 77th Legislature, 2001, amended Texas Water Code (TWC), §49.218, Acquisition of Property, by adding subsection (d) specifying the conditions under which a water district or water supply corporation (WSC) may require the grant of an easement as a precondition of service.

HB 2404, 77th Legislature, 2001, amended TWC, §13.502, Submetering, by adding subsections (b) - (e). The new provisions require the installation of submeters owned by the property owner or manager, or individual meters owned by the retail public utility, for any construction of an apartment house, a manufactured home rental community, a multiple use facility, or a condominium (referred to jointly as “facilities”), which begins after January 1, 2003. This section requires that if an owner or manager chooses to charge for water, the owner or manager must do so in the form of submetering or metering in facilities constructed after January 1, 2003. The section provides an exception for government assisted or subsidized housing facilities for low or very low income residents by only requiring them to install a plumbing system that is compatible with the installation of submeters as opposed to requiring that they install submeters or charge for water on a submetered or metered basis. The section also requires a retail public utility, upon the request of an owner or manager of a facility, to install individual meters owned by the retail public utility unless the utility determines that the installation of meters is not feasible, in which case the owner or manager is required to install a plumbing system that is compatible with the installation of submeters or individual meters. The section allows the owner of any of these facilities to change from submetered to allocated billing only in certain situations. This

legislation also amended TWC, Chapter 13, Subchapter M, Submetering and Nonsubmetering for Apartments and Manufactured Home Rental Communities and Other Multiple Use Facilities, by adding §13.506, Plumbing Fixtures, to require the owner of an apartment house, a manufactured home rental community, a multiple use facility, or a condominium which begins construction after January 1, 2003, to meet standards prescribed by Texas Health and Safety Code (THSC), §372.002, before billing tenants for submetered or allocated water service.

HB 2912, §3.10, 77th Legislature, 2001, amended TWC, §13.187, Statement of Intent to Change Rates; Hearing; Determination of Rate Level, by amending subsection (a) to increase the number of days required for a notice involving a Statement of Intent to Change Rates (SICR).

HB 2912, §18.01, 77th Legislature, 2001, changed the name of the agency from “Texas Natural Resource Conservation Commission” to “Texas Commission on Environmental Quality, effective January 1, 2004, and allows the commission to phase in the new name prior to the effective date. The name of the commission is updated in the sections opened in this rulemaking.

HB 2912, §20.01, 77th Legislature, 2001, amended TWC, Chapter 13, Subchapter K, Violations and Enforcement, by adding §13.4115, Action to Require Adjustment to Consumer Charge; Penalty, to allow the commission to issue an order if a public utility fails to make an adjustment to a customer’s bill and to assess penalties if the utility does not make the ordered adjustment within 30 days of receiving the order.

SB 2, §2.53, 77th Legislature, 2001, provides, in part, groundwater conservation districts (GWCDs) with the authority to collect production fees based on the amount of water withdrawn from a well, not to exceed \$10 per acre foot of water used for any purpose (not including agricultural uses).

SB 2, Article 9, 77th Legislature, 2001, amended TWC, Chapter 13, Subchapter G, Certificates of Convenience and Necessity, by adding §13.2541, to allow a municipality with a population of more than 1.3 million to request that the commission revoke a public utility's certificate of convenience and necessity (CCN) under certain situations.

SB 352, 77th Legislature, 2001, amended THSC, §364.034, to allow fee collection for solid waste disposal (SWD) services by an entity other than the public agency or county providing the services and to allow the termination of other utility services provided by the collecting entity if bills are not paid. A provision excluding anyone who has solid waste disposed by another service provider from being covered by the section (including the requirement to use the services of the public agency or county for SWD) is also included.

#### SECTION BY SECTION DISCUSSION

##### *Section 291.8, Administrative Completeness*

The amendment to subsection (b) increases from 30 days to 60 days the time lapse for a rate change to become effective after proper public notice is made of the rate change. This amendment is adopted in accordance with HB 2912, §3.10, and SB 2, §10.06.

*Section 291.21, Form and Filing of Tariffs*

The proposed amendments to §291.21 published on April 26, 2002, included several changes and those amendments are still being made. This section is being republished to correct a typographic error in §291.21(a) and to change the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Per SB 352 provisions, subsection (a) is amended both to allow a utility to enter into a contract with a county or other public agency to collect fees for SWD services provided by the county or public agency and to allow the fees to be included on the bills to customers for the water service provided by the utility. Subsection (b)(2)(A)(viii) is adopted to facilitate the collection from customers of production fees charged by a GWCD to utilities. Subsection (h)(1) is amended by removing language which requires a utility to submit a rate change application in order to pass on GWCD production fees to its customers. Subsection (k)(2) is replaced with new language to clarify the existing types of cost increases that can be passed on to customers as surcharges without being specifically listed in the tariff and to add GWCD production fees as another type of cost that may be recovered through a surcharge. This amendment provides regulatory consistency because the executive director may already allow a utility to recover other types of regulatory assessment fees either through a minor tariff change or surcharge. Requiring a utility to submit a rate/tariff change application in order to recover a GWCD production fee from its customers would be overly burdensome because the utility does not have any control over the amount of the fee or whether to pay the fee.

*Section 291.22, Notice of Intent to Change Rates*

Per HB 2912, §3.10 provisions, the amendments to subsections (a) and (c) - (e) change the number of days by which a utility must provide notice of a proposed rate change from 30 to 60 days prior to the proposed effective date. Because the proposed amendments related to SB 2, §10.06 are not being adopted, the proposed paragraphs (3) and (4) in §291.22(a) are deleted in the adoption.

*Section 291.24, Jurisdiction Over Affiliated Interests*

Because the proposed amendments related to SB 2, §10.07 are not being adopted, the proposed changes to §291.24 are withdrawn.

*Section 291.26, Suspension of Rates*

Because the proposed amendments related to SB 2, §10.06 are not being adopted, the proposed changes to §291.26 are withdrawn.

*Section 291.28, Action on Notice of Rate Change by Ratepayers Pursuant to Texas Water Code, §13.187(b)*

An amendment in §291.28(5) reflects the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Because the proposed amendments related to SB 2, §10.06 are not being adopted, the proposed changes to §291.81(1) are deleted in the adoption.

*Section 291.29, Interim Rates*

For consistency, revisions are made to §291.29 to correct the TWC citation. As proposed an amendment in §291.29(h) is made because of the agency name change. Because the proposed amendments related to SB 2, §10.06 are not being adopted, the other proposed changes to §291.29 are deleted in the adoption.

*Section 291.31, Cost of Service*

For consistency, revisions are made to §291.31 to correct the TWC citation. Because the proposed amendments related to SB 2, §10.07 are not being adopted, the proposed changes to §291.31 are deleted in the adoption.

*Section 291.32, Rate Design*

Because the proposed amendments related to SB 2, §10.03 are not being adopted, the proposed changes to §291.32 are withdrawn.

*Section 291.34, Alternative Rate Methods*

Because the proposed amendments related to SB 2, §10.05 are not being adopted, the proposed change to §291.34 is withdrawn.

*Section 291.81, Customer Relations*

Revisions to the proposal language have been made incorporating the agency name change from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality and

correcting another name. Because the proposed amendments related to SB 2, §10.01 are not being adopted, the proposed changes to §291.81 are deleted in the adoption.

*Section 291.82, Resolution of Disputes*

The amendments to §291.82 place the existing language into proposed new subsection (a) and add new subsection (b) to implement revisions from HB 2912, §20.01 provisions. These amendments allow the commission to issue orders requiring utilities to make adjustments if the executive director, in response to a customer complaint arising out of a charge made by a utility, finds that a utility has failed to make the proper adjustment to a customer's bill after completion of the complaint process.

*Section 291.85, Response to Requests for Service by a Retail Public Utility Within Its Certificated Area*

A revision has been made concerning the agency's name change from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. The amendments to subsection (d), concerning easements, divide the existing language into paragraphs (1) and (2) for clarity and limit the applicability of the section to public utilities. Revisions are made to subsection (d) in response to comments received: 1) the language in paragraphs (1) and (2) that made the rule apply to retail public utilities is changed to apply to public utilities; 2) the language in paragraphs (1) and (2) is clarified that the activities for which easements may be required apply to water "and/or" sewer facilities, which is a return to the current rule language; and 3) a new paragraph (3) is added to clarify that districts and WSCs may require an applicant for service to grant an easement as allowed under applicable law. TWC, §49.218 establishes the conditions under which districts and WSCs may require easements.

*Section 291.87, Billing*

Based on SB 352, a new provision is added to subsection (e)(3) to allow SWD fees collected under contract with a county or other public agency to be included on bills for water service. Because the proposed amendments related to SB 2, §10.01 are not being adopted, the proposed changes to §291.87(b) are deleted in the adoption.

*Section 291.88, Discontinuance of Service*

Based on SB 352 provisions, two revisions are made in §291.88. The amendment to subsection (a)(2)(F) allows disconnection of water service if payment is not made after a utility sends a bill for SWD fees charged by a county or other public agency. Subsection (h)(2)(D) is added as new language to specify that a fee cannot be charged for reconnecting water service after disconnection solely for failure to pay for SWD fees collected by the utility.

*Section 291.113, Revocation or Amendment of Certificate*

For consistency, revisions are made to §291.113 to correct the TWC and Texas Property Code citations. Based on SB 2, §9.01 provisions, new subsections (i) - (m) are added to §291.113. These cover the potential for certain municipalities to request that the commission revoke a certificate of public convenience and necessity if a utility has failed to provide continuous and adequate service, has been grossly or continuously mismanaged, or has grossly or continuously not complied with applicable laws, rules, or orders. If the certificate is revoked, the municipality must operate the decertified utility during an interim period while waiting for the commission to transfer the certificate of public convenience and necessity and to approve the municipality's acquisition of the decertified utility's

facilities. The monetary amount to be paid for the facilities will be determined by a qualified individual or firm acting as an independent appraiser who is agreed upon by the utility and municipality. The appraiser's fee must be paid by the municipality. The appraiser must refer to Texas Property Code, Chapter 21 to determine the value of real property. The commission must determine if the compensation to the utility from the municipality will be in a lump sum or paid over a specified period of time.

*Section 291.122, Owner Registration and Records*

The amendment to §291.122 adds new subsections (b) - (d), and the subsequent subsections are relettered. New subsection (b) requires the manager of condominiums and the owners of apartment houses, manufactured home rental communities, or multiple use facilities, on which construction begins after January 1, 2003, to provide individual meters or submeters to measure the amount of water used in each unit. New subsection (c) requires the owners of apartment houses constructed on or after January 1, 2003, which provide government assisted or subsidized rental housing, to install plumbing systems that are compatible with the installation of submeters. New subsection (d) requires that, upon request of the property owner or manager, a public utility install at a reasonable charge individual meters in the types of multi-family residences above, unless this action is not feasible. If the installation is not feasible for the utility, the owner or manager must install a plumbing system that is compatible with the installation of submeters or individual meters.

*Section 291.127, Submeters*

Section 291.127 is renamed as “Submeters and Plumbing Fixtures” and the new requirements for plumbing fixtures in HB 2404 are added to this section. The existing requirements for submeters are grouped in new subsection (a), and the plumbing fixture requirements are added as new subsection (b). The new plumbing fixture subsection requires that after January 1, 2003, prior to billing tenants for water service, an owner or manager must: 1) meet the standards for all sink and lavatory faucets, faucet aerators and showerheads prescribed in THSC, §372.002; 2) perform water leak audits on all dwelling units and common areas and repair all leaks; and 3) within one year of the date that the billing starts, replace toilets exceeding the maximum flow rate of 3.5 gallons per flush (gpf) with 1.6-gallon toilets meeting the standards in THSC, §372.002. These requirements do not apply to manufactured home rental community owners who do not own the manufactured homes on the property.

**FINAL REGULATORY IMPACT ANALYSIS**

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. “Major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rules concern the regulation of utility rates and services. The rules incorporate new legislative requirements and provide for regulatory consistency. The amendments do not 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. Further, this rulemaking does not meet the applicability criteria of a “major environmental rule” because the amendments do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. The proposed amendments are not adopted solely under the general rulemaking authority of the commission, but also under TWC, §§13.041(b), 13.137(b), 13.182(d), and 13.183.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these amendments in accordance with Texas Government Code, §2007.043. The specific purpose of the amendments is to implement applicable requirements of SB 2, SB 352, HB 2912, and HB 2404, 77th Legislature, 2001, relating to utility regulations; and for regulatory consistency, to amend rules to provide the executive director with the authority to allow utilities to pass through to their customers the cost of a GWCD production fee either by a minor tariff change or by surcharge. The proposed rule amendments substantially advance the stated purpose by incorporating the applicable requirements of SB 2, SB 352, HB 2912, and HB 2404 and by amending the applicable provisions regarding the recovery of GWCD production fees.

Promulgation and enforcement of these amendments do not burden private real property because the actions that are required by the amendments relate primarily to the relationships between water utility operators and their customers, concerning establishment of rates, procedures for providing services, and billing for the services. The rules provide protection to both the utility operators and their customers. Therefore, this rulemaking does not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. Therefore, the amendments to Chapter 291 are not subject to the CMP.

#### PUBLIC COMMENT

The commission held a public hearing in Austin on May 6, 2002. The public comment period closed on May 13, 2002. Texas Rural Water Association (TRWA) provided oral comments at the public hearing on Chapter 291. The following commenters provided written comments: Law Offices of Mark H. Zeppa, P.C. (Zeppa), Lower Colorado River Authority (LCRA), Texas Apartment Association (TAA), Texas Manufactured Housing Association (TMHA), Texas Rural Water Association (TRWA), and the City of Fort Worth (Fort Worth). Related to testimony provided at Commission Agenda on July 24, 2002, Zeppa also provided additional comments on July 29, 2002, which are also addressed in the Response to Comments section.

TAA supported the proposed rulemaking. Zeppa, LCRA, TMHA, TRWA, and Fort Worth suggested revisions to the proposal as stated in the RESPONSE TO COMMENTS section of the preamble.

## RESPONSE TO COMMENTS

TMHA commented that proposed §291.122 generally incorporates the provisions of HB 2404, however, TMHA is concerned that §291.122(d) is unclear. This subsection requires retail public utility, on the request of the property owner or manager of a manufactured home rental community, to install individual meters owned by the utility unless the utility determines that the installation of meters is not “feasible.” TMHA commented that failure to provide guidance regarding the meaning of “feasible” may create a situation whereby a utility will be allowed to deny service despite its CCN obligation by claiming that installing the meters is not feasible. TMHA urges the commission to provide factors that a retail public utility must satisfy to demonstrate lack of feasibility. Forth Worth also requests that the commission provide guidance on how to determine if the installation of meters is or is not feasible.

**RESPONSE: The commission has made no changes to the proposed rules in response to these comments. The statute clearly specifies that the feasibility determination rests with the retail public utility which has received the request to install individual meters. Pursuant to commission rules, a retail public utility which possesses a CCN may not refuse to provide service, regardless of whether it is feasible to install individual meters. Regarding factors, the diversity of types, sizes, and locations of retail public utilities and apartment complexes, manufactured home rental communities, condominium communities, and multiple-use facilities, the determination of “feasibility” is made by a retail public utility case-by-case. It is the commission’s opinion that an analysis of feasibility might include, but not necessarily be limited to, a review of such issues as the ability to gain easements or access to private property, the cost of maintaining, repairing, and**

**testing the meters, the financial condition of the utility, the size of the utility vs the size of the development, any cost participation by the developer of the property, geology, type of construction in the development, the placement of the meters, and who will be responsible for the distribution lines up to the meters. The commission further notes that the implementation of this rule is not designed to expand the authority of the commission.**

TMHA requested that the commission ensure that the standards imposed by proposed §291.127 are consistent with requirements found in 24 Code of Federal Regulations (CFR) Part 3280, imposed on manufactured housing by the federal government.

**RESPONSE: TMHA did not provide a specific cite, however, the commission assumes that TMHA is referring to 24 CFR §3280.607, which pertains to plumbing fixtures. These regulations do not pertain to or regulate the issue of maximum flow or gallonage standards for toilets. Therefore, the requirements are not inconsistent with the new rules. No change was made to the rules in response to this comment.**

TRWA, LCRA, and Zeppa commented that proposed §291.85(d) fails to implement the provisions of HB 924 and SB 1444, and can be read to directly contradict the changes to the law. They commented that the legislative revisions expressly authorize any district or nonprofit WSC to require a reasonable right of access for systemwide service through obtaining an easement as a prerequisite to providing retail water or sewer service, but that the proposed rule implies that a district or WSC is not entitled to request a public easement. LCRA recognized that the preamble explains that the authority for districts

and WSCs lies in statute, not in the new rule, however, commented that the rule as proposed has the potential to create confusion. TRWA, LCRA, and Zeppa suggested that all the new provisions of HB 924 and SB 1444 pertaining to districts and WSCs be incorporated into the final rule. In the alternative, LCRA requested that the commission reference TWC, §49.218(d) in the rules rather than in the preamble.

**RESPONSE:** The commission agrees that the language of the proposed rule may be unclear. To clarify, the commission changed the language in the rule adoption. First, the commission deleted the word “retail” before “public utility” in all places that the word appears in §291.85(d). Second, the commission deleted the proposed new language, “other than a district or water supply corporation” in §291.85(d)(1) and (2). Finally, the commission has added §291.85(d)(3), which provides, “A district or water supply corporation may require an applicant for service to grant an easement as allowed under applicable law.”

TRWA and Zeppa commented that HB 924 and SB 1444 include the purposes of “replace” and “upgrade” among the purposes for which WSCs and districts may secure easements. They commented that these should be considered important and necessary elements of water or sewer facility easements and suggested that they be added as purposes for which easements may be required by all public utilities.

**RESPONSE:** The referenced legislation only intended to provide these purposes among the purposes for which WSCs and districts may secure easements. It does not address the purposes

**for which public utilities may require easements. No change was made to the rule in response to this comment.**

TRWA and Zeppa further commented that they do not understand why the phrase “and/or” has been replaced with “or,” in §291.85(d) because many retail public utilities provide either water or sewer services exclusively, but there also are many providing both water and sewer services. TRWA and Zeppa commented that the current phrase “and/or” encompasses all scenarios for which easements will be necessary under Chapter 291 rules.

**RESPONSE: The commission agrees with this comment and revised the rule language to return to “and/or.”**

TRWA does not believe that Senate Bill 352 prohibits the assessment of reconnect fees for any utility service which is discontinued to enforce payment of solid waste disposal fees and requests that the commission not approved proposed 30 TAC §291.88(h)(D) which prohibits reconnect fees in this situation.

**The ability to levy fees is restricted to those contained on the utility’s tariff. A tariff contains schedules of all of its rates, tolls, charges, rules, and regulations pertaining to all of the entity’s utility service. Utility service includes the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the collection, transportation, treatment, or disposal of sewage.**

**SB352 amends THSC, §364.034 to allow a public or private utility to collect a fee for solid waste disposal fee within the bill for other utility services. Under the amendment the public or private utility may, in addition to suspending solid waste disposal service, suspend service of the utility.**

**TWC, §13.135 states that “{a} utility may not charge, collect, or receive any rate for utility service or impose any rule or regulation other than as provided in this chapter.” SB 352 does not amend TWC, Chapter 13.**

**TWC, §13.136(a) states that “{e}very utility shall file with each regulatory authority tariffs showing all rates that are subject to the original or appellate jurisdiction of the regulatory authority and that are in force at the time for any utility service, product, or commodity offered. Every utility shall file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished.” In this case, the utility is not providing solid waste disposal service but is merely acting as a collection agency for the solid waste disposal provider.**

**By definition in TWC, §13.002(17), “rate” means every compensation, tariff, charge, fare, too, rental, and classification or any items demanded, observed, charged, or collected whether directly or indirectly by any retail public utility for any service, product, or commodity described in TWC, §13.0029(23). TWC, §13.002(23) defines water and sewer utility as one owning or operating for compensation equipment or facilities for the transmission of potable water to the public. There is nothing in these definitions that could be construed to include a reconnection fee**

**for failure to pay a solid waste disposal fee.**

**Since SB 352 does not expand the authority in Chapter 13, there is nothing in Chapter 13 that would allow for the collection of any rate for reconnection due to non-payment of a service not rendered by the utility. The commission has made no changes to the proposed rules in response to this comment.**

TRWA commented that the provisions of SB 352 regarding the disconnection of utility service to enforce payment of SWD fees is permissive, depending on whether the county or other public agency and the utility have agreed to this enforcement measure in a contract.

**RESPONSE: The commission disagrees with this interpretation of SB 352. SB 352 amended THSC, §364.034(d)(2) to read as follows:**

**“...a public or private utility that bills and collects solid waste disposal service fees under this section may suspend service of that utility, in addition to the suspension of solid waste disposal service, to a person who is delinquent in the payment of the solid waste disposal fee until the delinquent fee is fully paid.”**

**The commission agrees that the disconnection of utility service is permissive, but §364.034(d)(2) does not appear to require that the authority for disconnection be included in the contract language. No change has been made to the rules in response to this comment.**

In testimony at the Commission Agenda on July 24, 2002, Zeppa commented that the language of SB2, §10.08(a) exempting most utilities from the changes in the law made by Article 10, SB2 should be inserted into the rules in §§291.22(a), 291.29(c), 291.31(b)(2)(J), 291.32 (e)&(f), and 291.81(d). In the example illustrating his comments, Zeppa only includes the second part of the exemption language of §10.08(a) to these rule provisions. Zeppa also comments that the exemption language should not be added to the proposed rules dealing with the 60-day notice period for investor owned utility rate cases since that revision is also in HB 2912 which has no corresponding exemption. Zeppa also comments that the statutory language “the proposed rate may not be suspended longer than 150 days” be inserted in §291.29(c), per SB 2, §10.06.

**Response: The commission is withdrawing the amendments to implement SB 2, Article 10. The commission agrees that the language in SB 2, §10.08 should be addressed in the rules, but acknowledges that there are differing legal interpretations which should be studied further before rules are adopted. Because the changes in the legislation are effective, utilities will need to follow the provisions in SB 2, Article 10 as applicable.**

#### STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; §13.137(b), which provides the commission with the authority to adopt rules waiving the requirement that a utility have a local business location where customers may make payments to prevent disconnection or restore

service; §13.182(d), which requires the commission to establish by rule a preference that rates under a consolidated tariff be consolidated by region; and §13.183, which provides the commission with the authority to approve rates under an alternative ratemaking methodology after certain requirements are met.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§291.8**

#### **STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; and §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

#### **§291.8. Administrative Completeness.**

(a) Notice of rate/tariff change, report of sale, acquisition, lease or rental or 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 or rental or merger or consolidation, and applications for certificates of convenience and necessity shall not be deemed to have been 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 will 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 the application and notice are determined to be administratively complete for previously rejected applications and notices; or

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

(c) In cases involving a proposed sale, acquisition, lease, or rental or 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.

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

**§§291.21, 291.22 291.28, 291.29, 291.31**

**STATUTORY AUTHORITY**

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; §13.182(d), which requires the commission to establish by rule a preference that rates under a consolidated tariff be consolidated by region; and §13.183, which provides the commission with the authority to approve rates under an alternative ratemaking methodology after certain requirements are met.

**§291.21. Form and Filing of Tariffs.**

(a) Approved tariff. No utility shall 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 shall 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 which 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 shall 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 can change rates for water or wastewater service without commission approval but must 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);

(vii) rate adjustments to implement authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs; or

(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.

(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 shall be accompanied by a cover page which 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) Each rate schedule must clearly state the territory, subdivision, city, or county wherein said schedule is applicable.

(5) Tariff sheets are to be numbered consecutively. Each sheet shall 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 are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, shall 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 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 shall 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 shall comply with all other sections in this chapter and shall include only changes ordered. The effective date and/or wording of the tariffs shall 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 these sections shall 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 shall include a copy of the order or ordinance authorizing the change. Each utility operating within the corporate limits of a municipality exercising original jurisdiction must have a copy of its current tariff which has been authorized by the municipality on file with the commission.

(h) Purchased water or sewage treatment provision.

(1) A utility which purchases water or sewage treatment may include a provision in its tariff to pass through to its customers changes in such costs. The provision shall 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 shall 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 shall 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 shall 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 §13.187 of the code 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 shall 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 CCN 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.

(I) Temporary water rate.

(1) A utility's tariff may include a temporary water rate provision which 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 which affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision shall allow the utility to recover from customers revenues 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

cannot be implemented by a utility if there exists an available, unrestricted, alternative water supply which 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)

$$TGC = cgc + \{prr\}(cgc)(r)/(1.0-r)\}$$

(A) The utility must 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 and the time frame for protests and any other information which is required by the executive director in the temporary water rate application. The utility's existing rates will not be subject to review in the proceeding and the utility will only be 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 must be able to prove 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 must 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 must 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 will be subject to review in addition to the temporary water rate provision.

(B) The utility must be able to prove 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 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 which affect the utility's customers' use of utility services; and,

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility can 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 shall contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate is implemented. The notice shall 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 must stop charging a temporary water rate as soon as is practical after the order which required mandatory water use reduction is ended but in no case later than the end of the billing period which was in effect when the order was ended. The utility must 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.

**§291.22. Notice of Intent To Change Rates.**

(a) 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 or hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Notice shall be provided on the notice form included in the commission's rate application package and shall 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) any other information which is required by the executive director in the rate change application form.

(b) The governing body of a municipality or a political subdivision which provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 30 days after the date of the final decision on a rate change. The commissioners court of an affected county which 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) Notices may be mailed separately, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed or hand delivered to the customers at least 60 days prior to the effective date of the rate increase.

(d) The applicant utility shall 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 must also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(e) Proof of notice in the form of an affidavit stating that proper notice was mailed to customers and affected municipalities, and stating the dates of such mailing, shall be filed with the

commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date.

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

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

- (1) for which a person has been appointed under Texas Water Code, §13.4132; or
- (2) for which a receiver has been appointed under Texas Water Code, §13.412; and
- (3) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application shall show 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.

**§291.28. 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, within 60 days 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 code and the provisions of this chapter. If the

proposed tariff complies with the 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 is required to 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 nonsupported 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 shall 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.

**§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 (TWC), §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 TWC, §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) 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.

(d) In making a determination under subsection (d) of this section:

(1) The commission or judge may limit its consideration of the matter to oral arguments of the affected parties and may:

(A) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;

(B) deny interim rate relief;

(C) require that all or part of the requested rate increase be deposited in an escrow account in accordance with rules set forth in §291.30 of this title (relating to Escrow of Proceeds Received Under Rate Increase); or

(2) The commission may remand the request for interim rates to SOAH for an evidentiary hearing on interim rates. The presiding judge will issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.

(e) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(f) 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.

(g) 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.

(h) The retail public utility must 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."

(i) If the commission or judge establishes interim rates or an escrow account in a proceeding under Texas Water Code, §13.187, the commission must make a final determination on the rates within 335 days after the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility in its application.

**§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 which are reasonable and necessary to provide service to the ratepayers shall 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 will 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 shall not be 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 shall be 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 shall be allowed in the cost of service;

(C) assessments and taxes other than income taxes;

(D) federal income taxes on a normalized basis (federal income taxes shall be computed according to the provisions of TWC, §13.185(f), if applicable);

(E) the 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 shall not be 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

(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 shall 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 shall 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:

(i) Original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor;

(ii) Reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation shall be computed on a straight line basis over the expected useful life of the item or facility;

(iii) The original cost of plant, property, and equipment acquired from an affiliated interest shall 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.

(B) 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 shall be 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 which 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 shall consist only of those items which 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 shall not be allowed for any portion of a major project which 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 which 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 which 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 the effective date of these rules is exempt from the requirement for executive director notification at the time of the approval of the initial sale, but must provide such notification within 60 days of the effective date of these rules; 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, shall 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.

**SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION**

**§§291.81, 291.82, 291.85, 291.87, 291.88**

**STATUTORY AUTHORITY**

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; and §13.137(b), which provides the commission with the authority to adopt rules waiving the requirement that a utility have a local business location where customers may make payments to prevent disconnection or restore service.

**§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 will 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 which 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 shall 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.) shall be labeled to indicate the size, design capacity, and any pertinent information which 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 will be available for commission inspection during normal working hours.

(5) Each utility shall maintain a current copy of the commission's substantive rules, Chapter 291 of this title (relating to Utility Regulations) 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 §§290.38 - 290.47 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 must advise the complainant of recourse through the Texas Commission on Environmental Quality Texas 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 shall 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 must 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. Unless authorized by the executive director pursuant 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 and at which it will accept customer payments or applications for service. Unless authorized by the executive director pursuant to a written request, each utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where payments can be made to restore service after disconnection for nonpayment, nonuse, or other reasons specified in

§291.88 of this title (relating to Discontinuance of Service).

**§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.

**§291.85. 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 Chapter 13.2502 of the Texas Water Code, \_\_\_\_\_ 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.

**§291.87. Billing.**

(a) Authorized rates. Bills shall 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. The due date of the bill for utility service shall 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 shall be not 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, shall constitute 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 shall be the next work day after the due date.

(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 made on 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 which 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 which shall 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 shall show all the following information, if applicable, and shall 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;

(O) the local telephone number or toll free number where the utility can be reached.

(3) 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 code 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 which 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 which will accurately reflect the cost of service to each class of customer.

(g) 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 shall be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount which was underbilled. The backbilling shall 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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 these sections.

(2) Notwithstanding any other section of this chapter, the customer shall not be required to pay the disputed portion of a bill which 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 shall 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 shall 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 shall 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 (relating to Discontinuance of Service).

(l) Notification of alternative payment programs or payment assistance. Any time a customer contacts 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 customer 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.

(m) Adjusted bills. There shall be 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 shall 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.

(n) 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 which 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.

(o) 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; or

(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.

(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 (relating to Discontinuance of Service) and §291.89(c) of this title (relating to Meters) 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.

(p) Payment with cash. When a customer pays any portion of a bill with cash, the utility must issue a written receipt for the payment.

(q) 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 Service 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 (relating to Meters);

(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.

(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 (relating to Meters) 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.

**SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY**

**§291.113**

**STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; and §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

**§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 if it finds that:

(1) The certificate holder has never provided, is no longer 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; or

(4) The certificate holder has failed to file a cease and desist action pursuant to 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.

(b) 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 certificate of public convenience and necessity under TWC, §13.242(c).

(c) 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.

(d) 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 without providing 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.

(e) 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.

(f) 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.

(g) For the purpose of implementing this section, the value of real property 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 for the taking, damaging, or loss of personal property, including the retail public utility's business, is just and adequate shall at a minimum include: the 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 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 and expenses of the retail public utility; 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 commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time. If there were no current customers in the area decertified and no immediate loss of revenues or if there are other valid reasons determined by the commission, installment payments as new customers are added in the decertified area may be an acceptable method of payment.

(i) On the request of a municipality with a population of more than 1.3 million served by a public utility, the commission at any time after notice and hearing may revoke the public utility's certificate of public convenience and necessity if it finds that the public utility:

(1) has never provided, is no longer providing, or has failed to provide continuous and adequate service as defined in §291.93 of this title (relating to Adequacy of Water Service) or §291.94 of this title (relating to Adequacy of Sewer Service) in the municipality requesting the revocation; or

(2) has been grossly or continuously mismanaged or has grossly or continuously not complied with applicable statutes, commission rules, or commission orders.

(j) If the certificate is revoked under subsection (i) of this section, the municipality that requested the revocation shall operate the decertified public utility for an interim period necessary for the municipality to gain commission approval to acquire the decertified public utility's facilities and to transfer the decertified public utility's certificate of public convenience and necessity. The municipality must apply in accordance with commission rules.

(k) The monetary amount to be paid for the facilities of a public utility decertified under subsection (i) of this section shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified public utility and the municipality. 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 municipality.

(l) For the purpose of implementing subsection (k) of this section, the value of real property shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain.

(m) The commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time.

**SUBCHAPTER H: UTILITY SUBMETERING AND ALLOCATION**

**§291.122, §291.127**

**STATUTORY AUTHORITY**

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC; and §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

**§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) 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 begins 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) An owner of an apartment house on which construction begins after January 1, 2003, and which 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) 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 begins 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 onsite 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:

(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); 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 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 onsite manager's office, the owner shall make the records available for inspection at the onsite 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 onsite manager's office, the owner shall provide copies of the records to the onsite manager within 15 days of receiving a written request from a tenant or the executive director.

(3) If there is no onsite 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 paragraphs (1), (2), or (3) of this subsection.

**§291.127. Submeters and Plumbing Fixtures.**

(a) Submeters.

(1) Same type submeters required. All submeters throughout a property shall 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 necessary for the measurement of water to tenants and to common areas, if applicable.

(3) Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from service, it shall be properly tested and calibrated before being placed in service again.

(4) Accuracy requirements for submeters. Submeters shall 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.

(5) Location of submeters. Submeters shall be installed in accordance with applicable plumbing codes and AWWA standards for water meters, and shall be readily accessible to the tenant and to the owner for reading, testing, and inspection where such activities will cause minimum

interference and inconvenience to the tenant.

(6) Submeter records. The owner shall maintain a record on each submeter which includes:

- (A) an identifying number;
- (B) the installation date (and removal date if applicable);
- (C) date(s) the submeter was calibrated or tested;
- (D) copies of all tests; and
- (E) the current location of the submeter.

(7) 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 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

(B) have the submeter removed and tested and promptly advise the tenant of the test results.

(8) Billing for submeter test.

(A) The owner shall not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards.

(B) The owner shall not bill the tenant for testing costs if there is no evidence the 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 and evidence as described in subsection (a)(7)(A) of this section was provided to the tenant.

(9) Bill adjustment due to submeter error. If a submeter does not meet AWWA accuracy standards and the tenant was overbilled, an adjusted bill shall be rendered in accordance with §291.125(k) of this title (relating to Billing). The owner shall not charge the tenant for any underbilling that occurred because the submeter was in error.

(10) Submeter testing facilities and equipment. An owner shall comply with the meter testing requirements applicable to utilities under §291.89(e) of this title (relating to Meters).

(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 must adhere to the following standards.

(1) Texas Health and Safety Code (THSC), §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.

(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 1.6-gallon toilets that meet the standards prescribed by THSC, §372.002.

(c) 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.