

The Texas Commission on Environmental Quality (commission) proposes amendments to §§291.8, 291.15, 291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34, 291.41, 291.81, 291.87, 291.121, 291.122, 291.124, 291.125, and 291.127.

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

The commission proposes the amendments to implement House Bill (HB) 1152, HB 2388, and HB 3034, 78th Legislature, 2003. The proposed amendments would also implement Senate Bill (SB) 2, Article 10, 77th Legislature, 2001, with regard to aspects concerning regulation of utility rates and services.

HB 1152, an act relating to the authority of certain nonprofit water supply corporations and sewer service corporations to establish and enforce customer water conservation measures, amended Texas Water Code (TWC), §67.011 by adding subsection (a)(5) and subsection (b). Under new TWC, §67.011(a)(5), in a county with a population of less than 3.3 million, a corporation may establish and enforce reasonable customer water conservation practices and prohibit excessive or wasteful uses of potable water. Under new TWC, §67.011(b), a corporation may enforce customer water conservation practices under TWC, §67.011(a)(5) by assessing reasonable penalties as provided in the corporation's tariff. A penalty may be appealed in the same manner as provided for appeal of new customer service costs under TWC, §13.043(g). In an appeal, the commission shall approve a corporation's penalty if the commission determines that the penalty is clearly stated in the tariff, that the penalty is reasonable, and that the corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all the corporation's customers.

HB 2388, an act relating to the late payment of certain submetered or allocated water bills and the use of certain submetering equipment, amended TWC, §13.503(a) and (b) and added new §13.503(e).

Under amended subsection (a), language was added to require the commission to encourage submetering of individual rental or dwelling units by building owners to enhance the conservation of water resources. Under amended subsection (b), language was added to require commission rules that will allow an owner or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed 5% of the bill paid late. Under new subsection (e), the commission may authorize a building owner to use submetering equipment that relies on integrated radio-based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

HB 2388 also amended TWC, §13.5031 to allow a condominium owner or manager to charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed 5% of the bill paid late.

HB 3034, an act relating to the rates of certain retail public utilities, amended Chapter 966, §10.08(a), 77th Legislature, 2001, to state that the changes in law being made to TWC, Chapter 13 apply to a proceeding in which the commission has not issued a final order before the effective date of this article, provided, however, that this article does not apply to a public utility that provided utility service in only

24 counties on January 1, 2003. The bill also states that the provisions of TWC, Chapter 13 that were in effect before September 1, 2001 apply to those public utilities.

SB 2, Article 10 contains requirements applicable to water utility systems other than a utility that provided service in only 24 counties on January 1, 2003, including requirements concerning utility business locations, disclosure of affiliated interests, multiple system consolidation, regional rates, alternative ratemaking methodologies, billing comparisons, suspension of proposed rates, refunds, and contracts between certain affiliates.

#### SECTION BY SECTION DISCUSSION

The commission would implement HB 3034 with a proposed amendment to §291.8. Under subsection (b), the commission proposes to include new statutory language concerning the effective date of proposed rate changes for a utility that provided service in only 24 counties on January 1, 2003. Under proposed §291.8(b), in cases involving proposed rate changes, the effective date of the proposed change must be at least 60 days or 30 days for a utility that provided service in only 24 counties on January 1, 2003 after: 1) the date that an application and notice are received by the commission, provided the application and notice are determined to be administratively complete as filed; 2) the date that the application and notice are determined to be administratively complete for previously rejected applications and notices; or 3) the date that the notice is delivered to each ratepayer, whichever is later. The new language that is proposed to be added is the phrase “or 30 days for a utility that provided service in only 24 counties on January 1, 2003.”

The commission would implement HB 3034 with a proposed amendment to §291.15, concerning notices of wholesale water supply contracts. Under subsection (b)(9), the commission proposes to add the following language: “a disclosure of any affiliated interest between the parties to the contract, except that this requirement does not apply to a utility that provided service in only 24 counties on January 1, 2003.” The commission also proposes to amend §291.15 to make it more readable by reformatting subsection (b) into paragraphs and relocating to new subsection (c) the requirement concerning submittal of the certified copy of the contract. Finally, the commission proposes to correct the name of the division under proposed new subsection (c) by deleting the word “Utilities” and replacing it with the word “Supply.”

The commission would implement certain aspects of SB 2, Article 10 with a proposed amendment to §291.21, regarding tariffs and rate designs. Under new subsection (m), the commission proposes to allow a utility, except as provided in new subsection (o), to consolidate its tariff and rate design for more than one system if: 1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and 2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation. Under new subsection (n), the commission, except as otherwise provided in new subsection (o), where practicable, shall consolidate the rates by region for applications submitted with a consolidated tariff and rate design for more than one system.

The commission would implement HB 3034 with a proposed amendment to §291.21. Under new subsection (o), the commission proposes that subsections (m) and (n) do not apply to a utility that provided service in only 24 counties on January 1, 2003.

The commission also proposes to implement HB 3034 with a proposed amendment to §291.22, concerning notices of intent to change rates. Under subsections (a), (c), (d), and (e), the commission proposes to include the following sentence: “Utilities that provided service in only 24 counties on January 1, 2003 are required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.” Also under proposed subsection (a), the following exemption language is added with regard to billing comparison information in the notice of intent to change rates:

“Paragraphs (3) and (4) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003.”

The commission would implement certain aspects of SB 2, Article 10 with a proposed amendment to §291.22. Under subsection (a)(3), the commission proposes that a notice of intent to change rates must include a billing comparison showing the existing rate and the new computed water rate using: 1) 10,000 gallons of water; and 2) 30,000 gallons of water. Under proposed subsection (a)(4), the notice of intent must include a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services.

The commission would implement HB 3034 and certain aspects of SB 2, Article 10 with a proposed amendment to §291.24, concerning restrictions on contracting to purchase wholesale water service from

an affiliated supplier. Under proposed new subsection (b), except for a utility that provided service in only 24 counties on January 1, 2003, the owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless: 1) the wholesale service is provided for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; or 2) the executive director determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

The commission would implement certain aspects of SB 2, Article 10 with a proposed amendment to §291.26, concerning suspensions of proposed rate changes under certain conditions. Under proposed new subsection (c), if the commission receives the required number of protests that would require a contested case hearing, the commission may, pending the hearing and a final decision from the commission, suspend the date the rate change would be effective. The commission also proposes that the proposed rate may not be suspended for more than 150 days. Finally, under subsection (c), the commission proposes to add the HB 3034 exemption language by stating that this provision does not apply to a utility that provided service in only 24 counties on January 1, 2003.

The commission also proposes to implement HB 3034 and certain aspects of SB 2, Article 10 with a proposed amendment to §291.28, regarding actions on notice of rate changes. Under §291.28(1), the commission proposes to replace the phrase "within 60 days" with the phrase "before the 91st day" and to add the phrase "or the 61st day for a utility serving in 24 counties on January 1, 2003." With these revisions, the proposed first sentence under §291.28(1) reads: "If, before the 91st day after the

effective date of the rate change or the 61st day for a utility serving in 24 counties on January 1, 2003, 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.”

The commission also proposes to implement certain aspects of SB 2, Article 10 with a proposed amendment to §291.29, regarding interim rates and refunds. Under proposed new subsection (c), the commission proposes to add language allowing the commission during a rate proceeding, for good cause, to require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate. Also, under new subsection (c), the commission proposes to add the HB 3034 exemption language by stating that this provision does not apply to a utility that provided service in only 24 counties on January 1, 2003. In order to account for the addition of proposed new subsection (c), the currently existing subsection (c) is proposed to be relettered as subsection (d). Also, currently existing subsection (d) is proposed to be revised to enhance readability by restructuring the language. Therefore, currently existing subsections (d) - (h) are proposed to be relettered as subsections (e) - (j). In addition, the commission proposes to reletter currently existing subsection (i) as subsection (k) and to add the previously mentioned HB 3034 exemption language.

The commission also proposes to implement certain aspects of SB 2, Article 10 with a proposed amendment to §291.31, regarding expenses not allowed to be counted as cost of service. Under subsection (b)(2), the commission proposes new subparagraph (J) that disallows the costs of purchasing

groundwater from any source if the source of the groundwater is located in a priority groundwater management area and a wholesale supply of surface water is available. In addition, the commission proposes to add the HB 3034 exemption language under new subparagraph (K).

The commission would implement HB 3034 and certain aspects of SB 2, Article 10 with a proposed amendment to §291.34, concerning alternative rate methods. Under subsection (a), the commission proposes to add the phrase “more affordable” and to add the HB 3034 exemption language, which states: “The commission may not utilize an alternate method of establishing rates based upon whether the rate is more affordable for a utility that provided utility service in only 24 counties on January 1, 2003.”

The commission proposes to implement HB 1152 with a proposed amendment to §291.41, which adds new subsection (j) to provide conditions for appealing a water conservation penalty. The proposed language states: “A customer of a water supply corporation may appeal to the commission a water conservation penalty. An appeal under Texas Water Code, §67.011(b) must be initiated by the customer within 90 days after written notice of the water conservation penalty amount is received from the water supply corporation per its tariff. The appeal must be accompanied by a \$100 filing fee as required by Texas Water Code, §5.235. The commission shall approve the water supply corporation’s water conservation penalty if: 1) the penalty is clearly stated in the tariff; 2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation’s current tariff; and 3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation’s customers.”

The commission also proposes to implement certain aspects of SB 2, Article 10 with a proposed amendment to §291.81, concerning customer relations. The commission proposes revisions to §291.81(d), regarding requirements for local offices. The commission proposes to reformat subsection (d) by dividing the subsection into paragraphs. The primary proposed change under paragraph (2) involves location of the utility's business location. To conform with SB 2, the commission proposes that, unless otherwise authorized by the executive director in response to a written request, each utility shall make available and notify customers of a business location where applications for service can be submitted and payments can be made to prevent disconnection of service or to restore service after disconnection for nonpayment, nonuse, or other reasons specified in 30 TAC §291.88. The business location must be located in each county where utility service is provided or not more than 20 miles from any residential customer if there is no location to receive payments in that county. Minor editorial changes are also proposed under paragraph (2), including insertion of the word "otherwise" just before "authorized" and replacing the word "pursuant" with "in response." Also to conform with SB 2, the commission proposes new paragraph (3) to address the waiver provisions, by adding the rule language: "Upon request by the utility, the requirement for a local office may be waived by the executive director if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers."

In §291.81(d), the commission proposes new paragraph (4) to address the HB 3034 exemption provision by adding the rule language: "Paragraphs (2) and (3) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003. Unless otherwise authorized by the executive director in response to a written request, such utility shall make available and notify

customers of a location within 20 miles of each of its utility service facilities where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title.”

The commission proposes an amendment to §291.87 by adding new subsection (b)(2), which provides a requirement relating to the bill due date. The proposed rule language states: “If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service must not be less than 30 days after issuance.”

The commission proposes to implement HB 2388 with amendments to §§291.121, 291.122, 291.124, 291.125, and 291.127. Under proposed §291.121 a new definition is added and an existing definition is revised. The proposed new definition of “Point-of-use submeter” is defined as “A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.” The definition of “Submetered utility service” is proposed to be revised by adding “water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters” at the end of the definition. The commission also proposes to renumber currently existing definitions in paragraphs (11) - (13) to account for the addition of a proposed new definition in paragraph (11).

In §291.122, Owner Registration and Records, subsection (e)(7)(B) is proposed to be revised by adding the phrase “or point-of-use submeters.”

In §291.124, Charges and Calculations, subsection (f) is proposed to be revised by deleting language referring to an obsolete date and by adding the word “immediately” prior to the phrase “provide notice.”

In §291.125, Billing, subsection (c), concerning submeter reading schedule, is proposed to be revised by adding the phrase “or point-of-use submeters must” and by deleting the word “shall.” Under subsection (g), concerning information on submetered service, paragraph (1) is proposed to be deleted. Also, currently existing paragraph (2) is proposed to be renumbered as paragraph (1) and revised to read: “the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters.” This proposed revision involves inserting the word “total” before the word “number” and replacing the word “metered” with the phrase “submetered or measured by point-of-use submeters.” Currently existing paragraphs (3) and (4) are proposed to be renumbered as paragraphs (2) and (3), respectively, to account for the proposed deletion of paragraph (1). Under subsection (i), concerning estimated bill, the phrase “or point-of-use submeter” is proposed to be added. Under subsection (k), concerning overbilling and underbilling, the phrase “or point-of-use submeter” is proposed to be added. New proposed subsection (m) is proposed to read: “Late fee. A one-time penalty not to exceed 5% may be applied to delinquent accounts. If such a penalty is applied, the bill must indicate the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease that states the percentage amount of such late penalty.”

Under §291.127, Submeters and Plumbing Fixtures, numerous revisions are proposed concerning point-of-use submeters. First, the title of this section is proposed to be amended to insert the phrase “or Point-of-Use Submeters.” References to point-of-use submeters are proposed to be added to the rule language under subsection (a) in paragraphs (1) - (5), (6)(C) and (E), (7)(A) and (B), (8)(B), (9), and (10). In addition, under subsection (a)(4), the following sentence is proposed to be added: “Point-of-use submeters must be calibrated as closely as possible to the condition of zero error and within the accuracy standards established by the American Society of Mechanical Engineers (ASME) for point-of-use and branch-water submetering systems.” Also, under subsection (a)(5), the phrase “or ASME standards for point-of-use submeters” is proposed to be added, and the word “reading” is proposed to be deleted. Under subsection (a)(8)(A), the phrase “or ASME standards for point-of-use submeters” is proposed to be added and a reference is proposed to be corrected. Under subsection (a)(7)(C), the phrase “or the point-of-use submeter meets ASME accuracy standards” is proposed to be added. Under subsection (a)(9), the phrase “or a point-of-use submeter does not meet ASME accuracy standards” is proposed to be added. Under subsection (a)(10), the first full sentence is proposed to be revised to refer to submeters and the American Water Works Association (AWWA), and the phrase “applicable to utilities under §291.89(e) of this title (relating to Meters)” is proposed to be deleted. Finally, subsection (a)(10) is also proposed to be amended to add the sentence: “For point-of-use meters, an owner shall comply with ASME’s meter testing requirements.”

Administrative and grammatical changes are proposed throughout the sections to be consistent with Texas Register requirements and other commission rules, to conform with the Texas Legislative Council Drafting Manual, and to improve readability.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, no significant fiscal implications are anticipated for the agency or other units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments implement provisions of HB 1152, HB 2388, and HB 3034, 78th Legislature, 2003, and SB 2, Article 10, 77th Legislature, 2001, concerning regulation of utility rates and services. The proposed amendments would affect water supply corporations in counties with a population of less than 3.3 million and their customers; building owners, managers, and tenants of individual rental or dwelling units; and water utilities and their customers.

HB 1152 allows nonprofit water supply corporations in counties with a population of less than 3.3 million to establish and enforce reasonable customer water conservation practices. These water supply corporations would be able to prohibit excessive or wasteful water usage and assess reasonable penalties through the corporation's tariff to enforce water conservation. The amendments would provide that a reasonable penalty is one that does not exceed six times the minimum monthly bill in the water supply corporation's current tariff. The proposed amendments would further require that the water supply corporation deposit the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers. Penalties assessed by the water supply corporation may be appealed to the commission. The fee for appealing a penalty is \$100. It is not known how many water supply corporations would establish water conservation practices. Staff estimates that the

number of appeals would be low and that the commission may receive 10 - 12 appeals per year resulting in possible revenue of \$1,000 - \$1,200 annually. This revenue is not considered significant.

The proposed amendments contain requirements applicable to water utility systems other than utilities that provided service in only 24 counties on January 1, 2003. These requirements concern utility business locations, disclosure of affiliated interests, multiple system consolidation, regional rates, alternative ratemaking methodologies, billing comparisons, suspension of proposed rates, refunds, and contracts between certain affiliates.

The proposed rulemaking would require that local public utility offices be located within a certain distance area of their customer base unless doing so would result in rate increases for their customers. Units of local governments may be fiscally impacted by this requirement if they own a public utility and have to relocate an office. However, it is assumed that they would not do so unless it was economically feasible and did not result in a rate increase for their customers.

#### **PUBLIC BENEFITS AND COSTS**

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed amendments will be improved water and wastewater conservation, safeguards for utility customers, and compliance with state law.

The proposed amendments are not anticipated to result in significant fiscal implications for water supply corporations and their customers; building owners, managers, and tenants of individual rental or dwelling units; or water utilities and their customers.

The proposed amendments would allow for the use of point-of-use submeters in rental properties, condominiums, and multi-use facilities. A point-of-use submeter is a device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.

For those building owners who choose to install point-of-use submeters, there will be installation costs. Owners will also be responsible for implementing a system that adequately tracks tenant usage, bills such usage correctly, and addresses tenant disputes. The cost of installing submeters is estimated at \$150 - \$800 per unit depending on whether a single submeter or several point-of-use submeters are installed. It is assumed that for those owners who choose to implement such a system, any costs they incur would be compensated for in their rental agreements. Tenants may realize cost savings in their utility bills as studies have shown that tenants decrease water and wastewater consumption when they are billed directly for these utilities.

Owners or managers of apartment houses, manufactured home rental communities, or multiple-use facilities would be able to charge tenants a fee for late payment of a submetered water bill if the amount of the fee does not exceed 5% of the bill paid late. Condominium owners or managers would be able to charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed

5% of the bill paid late. These one-time penalties would not be applied unless agreed to by the tenant in a written lease agreement that states the percentage of the penalty.

Customers of nonprofit water supply corporations may have to comply with water and wastewater conservation practices. At this time, it is not known how many water supply corporations would implement conservation practices. The water supply corporations would be able to assess penalties for excessive or wasteful water usage. Those who wish to appeal the penalty to the commission will pay a fee of \$100.

The proposed amendments would provide for the following changes for utilities, except for those utilities that provided service in only 24 counties on January 1, 2003: 1) allow utilities to consolidate their tariff and rate designs for more than one system under certain conditions and require the commission to consolidate the rates by region, where practicable, for applications submitted with a consolidated tariff and rate design for more than one system; 2) require the disclosure of any affiliated interest between the parties of wholesale water supply contracts; 3) require that a notice of intent to change rates must include a billing comparison showing the existing rate and the new computed water rate using 10,000 gallons of water and 30,000 gallons of water; 4) require that a notice of intent to change rates must include a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons; and 5) require that the owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless certain conditions are met.

The proposed amendments also add new language allowing the commission to require a utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established and disallowing a utility from including the costs of purchasing groundwater as cost of service under certain conditions.

Allowing utilities to consolidate their tariffs and rate designs for more than one system will allow them to operate more efficiently and provide consistent rates for customers. The other provisions are intended to protect and inform consumers and are not expected to result in significant fiscal implications for affected utilities.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. The proposed amendments are intended to provide safeguards to utility customers and promote water conservation and are not expected to result in adverse fiscal implications for any water utilities that are small or micro-businesses.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a “major environmental rule” as defined in that statute. A “major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from 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 proposed rules concern regulation of utility rates and services, including relatively minor revisions regarding: 1) a utility that provided service in only 24 counties on January 1, 2003; 2) conditions for appealing a water conservation penalty; 3) point-of-use submeters; and 4) late fees. The proposed amendments incorporate new state legislative requirements and provide for regulatory consistency. Because of their relatively minor significance and impact, the proposed amendments will not adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This section only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This

rulemaking does not meet any of these four applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for utility rates and services; 2) does not exceed the requirements of state law, including TWC, Chapter 13; TWC, §67.011; or HB 3034, 78th Legislature, 2003; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program on utility rates and services, because there are no such delegation agreements or contracts concerning utility rates and services to which these rules apply; 4) is not proposed solely under the general powers of the agency, but also under TWC, Chapter 13, which was adopted to regulate the rates and services of retail public utilities; TWC, §67.011, which was adopted to address powers of corporations in certain counties; and HB 3034, 78th Legislature, 2003, an act exempting a utility that provided service in only 24 counties on January 1, 2003, from certain requirements relating to the rates of and services of utilities.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendments to Chapter 291 and performed an assessment of whether they constitute a takings under Texas Government Code, Chapter 2007. The primary purpose of the proposed amendments is to incorporate new state legislative requirements and provide for regulatory consistency in the regulation of utility rates and services by proposing relatively minor revisions regarding: 1) a utility that provided service in only 24 counties on January 1, 2003; 2) conditions for appealing a water conservation penalty; 3) point-of-use submeters; and 4) late fees. The proposed amendments would also provide non-substantive revisions, including typographical and formatting corrections to conform with Texas Register and agency requirements.

Promulgation and enforcement of the proposed amendments would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking because the proposed amendments neither relate to, nor have any impact on the use or enjoyment of private real property, and there would be no reduction in value of property as a result of this rulemaking. The rulemaking relates primarily to the relationships between water utility operators and their customers, establishment of rates, procedures for providing services, and billing for the services. The proposed rules would provide protection to both the utility operators and their customers. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the proposal is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking is neither identified in 31 TAC §505.11, nor will it affect any action or authorization identified in §505.11. Therefore, the rulemaking is not subject to the CMP.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., December 27, 2004 and should reference Rule Project Number 2004-016-291-WT. Copies of the proposed amendments can be obtained from the

commission's Web site at <http://www.tnrcc.state.tx.us/oprdrules/propadop.html>. For further information, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

## SUBCHAPTER A: GENERAL PROVISIONS

### §291.8, §291.15

#### STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendments are also proposed under TWC, Chapter 13, which was adopted to regulate rates and services of retail public utilities; and HB 3034, 78th Legislature, 2003, an act exempting a utility that provided service in only 24 counties on January 1, 2003, from certain requirements relating to the rates and services of utilities.

The proposed amendments implement TWC, §13.144 and §13.187.

#### **§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 are not considered [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 shall [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 or 30 days for a utility that provided service in only 24 counties on January 1, 2003 after:

(1) (No change.)

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

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

(c) In cases involving a proposed sale, acquisition, lease, [or] rental<sub>1</sub> [or] merger<sub>1</sub> or consolidation of any water or sewer system required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an

application is received by the commission and public notice is provided, unless notice is waived for good cause shown.

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

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

(b) [Information.] The submission must include:

(1) the amount of water being supplied; [,]

(2) term of the contract; [,]

(3) consideration being given for the water; [,]

(4) purpose of use; [,]

(5) location of use; [,]

(6) source of supply; [,]

(7) point of delivery; [,]

(8) limitations on the reuse of water; [,]

(9) a disclosure of any affiliated interest between the parties to the contract, except that this requirement does not apply to a utility that provided service in only 24 counties on January 1, 2003; and

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

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

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

**§§291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34**

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendments are also proposed under TWC, Chapter 13, which was adopted to regulate rates and services of retail public utilities; and HB 3034, 78th Legislature, 2003, an act exempting a utility that provided service in only 24 counties on January 1, 2003, from certain requirements relating to the rates and services of utilities.

The proposed amendments implement TWC, §§13.145, 13.183, 13.187, and 13.343.

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

(a) Approved tariff. A utility may not [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 must [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 that [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 must [shall] be on the form the commission prescribes or another form acceptable to the commission.

(B) (No change.)

(2) Minor tariff changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county may [can] change rates for water or wastewater service without commission approval but shall [must] file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) - (B) (No change.)

(3) Tariff revisions and tariffs filed with rate changes. The utility shall file three copies of each revision or in the case of a rate change, the number required in the application form. Each revision must [shall] be accompanied by a cover page that [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) Rate schedule. Each rate schedule must clearly state the territory, subdivision, city, or county in which the [wherein said] schedule is applicable.

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

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, must [shall] contain sections setting forth:

(1) - (8) (No change.)

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must [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 must [shall] comply with all other sections in this chapter and must [shall] include only changes ordered. The effective date and/or wording of the tariffs must [shall] comply with the provisions of the order.

(e) (No change.)

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section must [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 must [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 shall file with the commission [must have] a copy of its current tariff that [which] has been authorized by the municipality [on file with the commission].

(h) Purchased water or sewage treatment provision.

(1) A utility that [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 must [shall] specify how it is calculated and affects customer billings.

(2) (No change.)

(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) (No change.)

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must [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 must [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 must [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) (No change.)

(i) Effective date. The effective date of a tariff change is the date of approval by the executive director unless otherwise stated in the letter transmitting the approval or the date of approval by the commission, unless otherwise specified in a commission order or rule. The effective date of a proposed rate increase under TWC, §13.187 [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 must [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) (No change.)

(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 [Sampling] fees not already included in rates;

(B) inspection [Inspection] fees not already included in rates;

(C) production [Production] fees or connection fees not already included in rates charged by a groundwater conservation district; or

(D) other [Other] governmental requirements beyond the control of the utility.

(3) (No change.)

(l) Temporary water rate.

(1) A utility's tariff may include a temporary water rate provision that [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 that [which] affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will [shall] allow the utility to recover from customers revenues that the utility would otherwise have lost due to mandatory water use reductions in accordance with the temporary water rate provision approved by the commission. If a utility obtains a portion of its water supply from another unrestricted water source or water supplier during the time the temporary water rate is in effect, the rate resulting from implementation of the temporary water rate provision must be adjusted to

account for the supplemental water supply and to limit over-recovery of revenues from customers. A temporary water rate provision may not [cannot] be implemented by a utility if there exists an available, unrestricted, alternative water supply that [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) (No change.)

(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(1)(3) (No change.)

(A) The utility shall [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 that [which] is required by the executive director in the temporary water rate application. The utility's

existing rates are not [will not be] subject to review in the proceeding and the utility is [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 [12 month] limitation in §291.23 of this title[,] (relating to Time between [Between] Filings[.]).

(B) The utility shall establish [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 shall [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 shall [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 are [will be] subject to review in addition to the temporary water rate provision.

(B) The utility shall establish [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 that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate into effect only after:

(A) (No change.)

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that [which] affect the utility's customers' use of utility services; and[,]

(C) (No change.)

(6) The utility may [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) (No change.)

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must [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 must [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 shall [must] stop charging a temporary water rate as soon as is practical after the order that [which] required mandatory water use reduction is ended, but in no case later than the end of the billing period that [which] was in effect when the order was ended. The utility shall [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) (No change.)

(m) Multiple system consolidation. Except as otherwise provided in subsection (o) of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(n) Regional rates. Except as otherwise provided in subsection (o) of this section, the commission, where practicable, shall consolidate the rates by region for applications submitted with a consolidated tariff and rate design for more than one system.

(o) Exemption. Subsections (m) and (n) of this section do not apply to a utility that provided service in only 24 counties on January 1, 2003.

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

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail or hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date. Paragraphs (3) and (4) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003. Notice must [shall] be provided on the notice form included in the commission's rate application package and must [shall] contain the following information:

(1) - (2) (No change.)

(3) a billing comparison showing the existing rate and the new computed water rate using 10,000 gallons of water and 30,000 gallons of water;

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

(5) [(3)] any other information that [which] is required by the executive director in the rate change application form.

(b) Notice requirements. The governing body of a municipality or a political subdivision that [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 that [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) Notice delivery requirements. 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. A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.

(d) Notice and statement of intent. 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. A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall [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. 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. A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.

(f) Standby fees [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) (No change.)

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

**§291.24. Jurisdiction over Affiliated Interests.**

(a) The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but not [in no way] limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

(b) Except for a utility that provided service in only 24 counties on January 1, 2003, the owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; or

(2) the executive director determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

**§291.26. Suspension of Rates.**

(a) The executive director or the commission may suspend the rate change if the utility has failed to properly complete the rate application, has included in the cost of service for the noticed rates rate case expenses other than those necessary to complete and file the application, or has failed to comply with the notice requirements and proof of notice requirements. The utility may [shall] not renotify its customers of a new proposed effective date until the utility receives written notification from the executive director that all deficiencies have been corrected.

(b) (No change.)

(c) If the commission receives the required number of protests that would require a contested case hearing, the commission may, pending the hearing and a final decision from the commission, suspend the date the rate change would be effective. The proposed rate may not be suspended for more than 150 days. This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003.

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

The commission may conduct a public hearing on any application.

(1) If, before the 91st day [within 60 days] after the effective date of the rate change or the 61st day for a utility serving in 24 counties on January 21, 2003, 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) (No change.)

(3) If the commission does not receive sufficient customer complaints or if the executive director does not request a hearing within 120 days after the effective date, the utility's proposed tariff will be reviewed for compliance with the Texas Water Code [code] and the provisions of this chapter. If the proposed tariff complies with the Texas Water Code [code] and the provisions of this chapter, it shall be stamped approved by the executive director or his designated representative and a copy returned to the utility. The executive director may require the utility to notify its customers that sufficient complaints were not received to schedule a hearing and the proposed rates were approved without hearing.

(4) The executive director or commission may request additional information from any utility in the course of evaluating the rate/tariff change request, and the utility shall [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) (No change.)

(6) If the commission conducts a hearing, it may establish rates different from those currently being charged or proposed to be charged by the utility, but the total annual revenue increase resulting from the commission's rates may [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 Texas Water Code [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) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate. This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(d) [(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.

(e) [(d)] In making a determination under subsection (d) [(c)] of this section, [:]

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

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

(2) [(B)] deny interim rate relief; and

(3) [(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 [Under] Rate Increase).<sub>2</sub> [; or]

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

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

(h) [(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.

(i) [(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.

(j) [(h)] The retail public utility shall [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."

(k) [(i)] If the commission or judge establishes interim rates or an escrow account in a proceeding under Texas Water Code, §13.187 for a utility that provided service in only 24 counties on January 1, 2003, the commission shall [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) (No change.)

(b) Allowable expenses. Only those expenses that [which] are reasonable and necessary to provide service to the ratepayers may [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 may [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 are [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 is [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 is [shall be] allowed in the cost of service;

(C) (No change.)

(D) federal income taxes on a normalized basis (federal income taxes must [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 are [shall] not [be] allowed as a component of cost of service:

(A) - (G) (No change.)

(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;

(J) the costs of purchasing groundwater from any source if:

(i) the source of the groundwater is located in a priority groundwater management area; and

(ii) a wholesale supply of surface water is available; and

(K) subparagraph (J) of this paragraph does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(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) - (B) (No change.)

(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) (No change.)

(ii) Equity capital. The cost of equity capital must [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 must [shall] be based upon a fair return on its value.

(II) (No change.)

(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 [Original] cost is [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 was [shall have been] dedicated to public use, whether by the utility that [which] is the present owner or by a predecessor;

(ii) reserve [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 must [shall] be computed on a straight line basis over the expected useful life of the item or facility;

(iii) the [The] original cost of plant, property, and equipment acquired from an affiliated interest may [shall] not be included in invested capital except as provided in TWC, §13.185(e);

(iv) utility [Utility] property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital; and [.]

(B) working capital allowance to be composed of, but not limited to, the following:

(i) (No change.)

(ii) reasonable prepayments for operating expenses (prepayments to affiliated interests) are [shall be] subject to the standards set forth in TWC, §13.185(e); and

(iii) (No change.)

(3) Terms [terms] not included in rate base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base.

(A) Miscellaneous items. Certain items that [which] include, but are not limited to, the following:

(i) - (v) (No change.)

(B) Construction work in progress. Under ordinary circumstances, the rate base consists [shall consist] only of those items that [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) (No change.)

(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress may [shall] not be allowed for any portion of a major project that [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) - (B) (No change.)

(C) as a result of the sale, merger, etc.:

(i) (No change.)

(ii) regionalization of retail public utilities (meaning a pooling of financial, managerial, or technical resources that [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 that [which] is not financially stable and technically sound will become a part of a financially stable and technically sound utility;

(D) (No change.)

(E) the actual purchase price is reasonable in consideration of the condition of the plant, property, and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and[,] the amount of contributions in aid of construction in the system being acquired;

(F) in a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is where a stock transaction is followed by a transfer of assets in what is essentially a single sales transaction. A positive acquisition adjustment is allowed only in those cases where the multi-stage transaction was fully disclosed to the executive director in the application for approval of the initial stock sale. Any multi-stage sale occurring between September 1, 1997[,] and February 4, 1999 [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 by April 5, 1999 [within 60 days of the effective date of these rules]; and

(G) (No change.)

(2) The amount of the acquisition adjustment approved by the regulatory authority must [, 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) - (4) (No change.)

**§291.34. Alternative Rate Methods.**

(a) Alternative rate methods. To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The executive director may prescribe modified rate filing packages for these alternate methods of establishing rates. The commission may not utilize an alternate method of establishing rates based upon whether the rate is more affordable for a utility that provided utility service in only 24 counties on January 1, 2003.

(b) Single issue rate change. Unless a utility is using the cash needs method, it may request approval to increase rates to reflect a change in any one specific cost component. The following conditions [shall] apply to this type of request.

(1) - (3) (No change.)

(4) The utility shall provide notice as described in §291.22(a) - (e) of this title (relating to Notice of Intent To [to] Change Rates), and the notice must [shall] describe the cost component and reason for the increased cost.

(5) A utility exercising this option shall [is required to] submit a complete rate change application within three years following the effective date of the single issue rate change request.

(c) Phased and multi-step rate changes. In a rate proceeding, the commission may authorize a phased, stepped, or multi-year approach to setting and implementing rates to eliminate the requirement that a utility file another rate application.

(1) (No change.)

(2) Construction schedules and cost estimates for new facilities that [which] are the basis for the phased or multi-step rate increase must be prepared by a licensed professional engineer.

(3) (No change.)

(4) At the time each rate step is implemented, the utility shall [must] review actual costs of construction versus the estimates upon which the phase-in rates were based. If the revenues received from the phased or multi-step rates are higher than what the actual costs indicate, the excess amount must be reported to the executive director prior to implementing the next phase or step. Unless otherwise specified in a commission order or directed by the executive director, the utility may:

(A) - (B) (No change.)

(5) (No change.)

(6) A utility that requests and receives a phased or multi-step [multi step] rate increase cannot apply for another rate increase during the period of the phase-in rate intervals unless:

(A) - (B) (No change.)

(d) Cash needs method. The cash needs method of establishing rates allows a utility to recover reasonable and prudently incurred debt service, a reasonable cash reserve account, and other expenses not allowed under standard methods of establishing rates.

(1) (No change.)

(2) Under the cash needs method, the allowable components of cost of service are: allowable operating and maintenance expenses; depreciation expense; reasonable and prudently incurred debt service costs; recurring capital improvements, replacements, and extensions that [which] are not debt-financed; and a reasonable cash reserve account.

(A) Allowable operating and maintenance expenses. Only [: only] those expenses that [which] are reasonable and necessary to provide service to the ratepayers may [shall] be included in allowable operations and maintenance expenses and they must [shall] be based on the

utility's historical test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.

(B) Depreciation expense. Depreciation [: depreciation] expense may be included on any used and useful depreciable plant, property, or equipment that [which] was paid for by the utility and that [which] has a positive net book value on the effective date of the rate change.

(C) Debt service costs. Debt service costs are cash [Cash] outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve account in escrow or as required by the commission, Texas Water Development Board, or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:

(i) self-financed major capital asset purchases where the useful life of the asset is ten years or more. Hypothetical debt service costs may include the debt repayments using an amortization schedule with the same term as the estimated service life of the asset using the prime interest rate at the time the application is filed; and

(ii) prospective loans to be executed after the new rates are effective. Any pre-commitments, amortization schedules, or other documentation from the financial institution pertaining to the prospective loan must be presented for consideration.

(D) Recurring capital improvements, replacements, and extensions that [which] are not debt-financed. Capital assets, repairs, or extensions that [which] are a part of the normal business of the utility may be included as allowable expenses. This does not include routine capital expenses that [which] are specifically debt-financed.

(E) Cash reserve account. A [a] reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, must [shall] be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the executive director. The utility shall account for these funds separately and report to the commission as required by the executive director. Unless the utility requests an exception in writing and the exception is explicitly allowed by the executive director in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund accompanied by a written explanation that [which] explains the method used to calculate the amounts to be refunded. Each customer must [shall] receive the same refund amount. These reserves are not for the personal use of the management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the executive director.

(3) If the revenues collected exceed the actual cost of service, defined in paragraph (2) of this subsection [subsection (d)(2) of this section], during any calendar year, these excess cash

revenues must be placed in the cash reserve account described in paragraph (2)(D) of this subsection [subsection (d)(2)(D) of this section] and are [become] subject to the same restrictions.

(4) If the utility demonstrates to the executive director that it has reduced expenses through its efforts, and has improved its financial, managerial, and technical capability, the executive director may allow the utility to retain 50% of the savings that [which] result for the personal use of the management or ownership of the utility rather than pass on the full amount of the savings through lower rates or refund all of the amounts saved to the customers.

(5) If a utility elects to use the cash needs method, it may not elect to use the utility method for any rate change application initiated within five years after beginning to use the cash needs method. If after the five-year period, the utility does elect to use the utility method, it may not include in rate base, or recover the depreciation expense, for the portion of any capital assets paid for by customers as a result of including debt service costs in rates. It may, however, include in rate base, and recover through rates, the depreciation expense for capital assets that [which] were not paid for by customers as a result of including debt service costs in rates. The net book value of these assets may be recovered over the remaining useful life of the asset.

## **SUBCHAPTER C: RATE-MAKING APPEALS**

### **§291.41**

#### **STATUTORY AUTHORITY**

This amendment is proposed under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendment is also proposed under TWC, §67.011, which was adopted to address powers of corporations in certain counties.

The proposed amendment implements TWC, §67.011.

#### **§291.41. Appeal of Rate-making Pursuant to the Texas Water Code, §13.043.**

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned [municipally-owned] utility, but does include privately owned [privately-owned] utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and accompanied by the filing fee as required by [the] Texas Water Code, §5.235 and by serving a copy of the petition on all parties to the original proceeding. The

appeal must be initiated within 90 days after the date of notice of the final decision of the governing body.

(b) An appeal under [the] Texas Water Code, §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing an original and four copies of a petition for review with the commission and by filing a copy of the petition with the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) - (4) (No change.)

(5) a utility owned by an affected county, if the ratepayers' [ratepayer's] rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries; and [.]

(6) (No change.)

(d) In an appeal under [the] Texas Water Code, §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

(1) - (4) (No change.)

(5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or

(6) (No change.)

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service.

An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility and accompanied by the filing fee as required by [the] Texas Water Code, §5.235.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under Texas Water Code, §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service. The appeal must be accompanied by a \$100 filing fee as required by [the] Texas Water Code, §5.235.

(1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amounts due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that [which] exceed the amount determined in the commission's order shall be repaid to the applicant with interest at a rate determined by the commission within 30 days of the signing of the order.

(2) - (3) (No change.)

(h) (No change.)

(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is [shall be] just and reasonable. Rates must [shall] not be unreasonably preferential, prejudicial, or discriminatory but must [shall] be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer shall initiate an appeal under Texas Water Code, §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The appeal must be accompanied by a \$100 filing fee as required by Texas Water Code, §5.235. The commission shall approve the water supply corporation's water conservation penalty if:

(1) the penalty is clearly stated in the tariff;

(2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and

(3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

**SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION**

**§291.81, §291.87**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendments are also proposed under TWC, Chapter 13, which was adopted to regulate rates and services of retail public utilities; and HB 3034, 78th Legislature, 2003, an act exempting a utility that provided service in only 24 counties on January 1, 2003, from certain requirements relating to the rates and services of utilities.

The proposed amendments implement TWC, §13.137.

**§291.81. Customer Relations.**

(a) Information to customers.

(1) (No change.)

(2) The utility shall notify each service applicant or customer who is required to have a customer service inspection performed. This notification must be in writing and include the applicant's

or customer's right to get a second customer service inspection performed by a qualified inspector at their expense and their right to use the least expensive backflow prevention assembly acceptable under §290.44(h) of this title (relating to Water Distribution) if such is required. The utility shall [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 that [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 must [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.) must [shall] be labeled to indicate the size, design capacity, and any pertinent information that [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 must [will] be available for commission inspection during normal working hours.

(5) Each utility shall maintain a current copy of the commission's substantive rules of this chapter[, 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 Chapter 290, Subchapter D [§§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) (No change.)

(2) In the event the complainant is dissatisfied with the utility's report, the utility shall [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) (No change.)

(4) The utility shall keep a record of all complaints for a period of two years following the final settlement of each complaint. The record of complaint must [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 shall [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 [Office].

(1) Unless otherwise authorized by the executive director in response [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].

(2) Unless otherwise authorized by the executive director in response [pursuant] to a written request, each utility shall make available and notify customers of a business location [within 20 miles of each of its utility service facilities] where applications for service can be submitted and payments can be made to prevent disconnection of service or to restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title (relating to Discontinuance of Service). The business location must be located:

(A) in each county where utility service is provided; or

(B) not more than 20 miles from any residential customer if there is no location to receive payments in that county.

(3) Upon request by the utility, the requirement for a local office may be waived by the executive director if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers.

(4) Paragraphs (2) and (3) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003. Unless otherwise authorized by the executive director in response to a written request, such utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title.

**§291.87. Billing.**

(a) Authorized rates. Bills must [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.

(1) The due date of the bill for utility service may [shall] not be less than 16 days after issuance unless the customer is a state agency [State Agency]. If the customer is a state agency [State

Agency], the due date for the bill may not be [shall be not] less than 30 days after issuance unless otherwise agreed to by the state agency [State Agency]. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, constitutes [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 is [shall be] the next work day after the due date.

(2) If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service may not be less than 30 days after issuance.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either \$5.00 or 10% for all customers may be charged for [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 that [which] the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility

from collecting late fees for a specified period if it determines that the utility has charged late fees on payments that [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 that may [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) (No change.)

(2) The customer's bill must include [shall show all] the following information, if applicable, and must [shall] be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) - (O) (No change.)

(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 Texas Water Code [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 that [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 that [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 must [shall] be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount that [which] was underbilled. The backbilling may [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) (No change.)

(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) - (3) (No change.)

(j) (No change.)

(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 §291.88 of this title [these sections].

(2) Notwithstanding any other section of this chapter, the customer may [shall] not be required to pay the disputed portion of a bill that [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 will [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 will [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 may [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 customers contact [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 customers [customer] in English and in Spanish<sub>2</sub> if requested<sub>2</sub> 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 is [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 must [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) - (4) (No change.)

(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 that [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; or [.]

(C) (No change.)

(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 shall [must] issue a written receipt for the payment.

(q) (No change.)

**SUBCHAPTER H: UTILITY SUBMETERING AND ALLOCATION**

**§§291.121, 291.122, 291.124, 291.125, 291.127**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendments are also proposed under TWC, Chapter 13, which was adopted to regulate rates and services of retail public utilities.

The proposed amendments implement TWC, §13.503 and §13.5031.

**§291.121. General Rules and Definitions.**

(a) (No change.)

(b) Application. The provisions of this subchapter [shall] apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis.

(c) Definitions. The following words and terms, when used in this subchapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Apartment house** - A building or buildings containing five or more dwelling units that [which] are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rental paid at intervals of one month or longer.

(3) **Customer service charge** - A customer service charge is a rate that [which] is not dependent on the amount of water used through the master meter.

(4) (No change.)

(5) **Dwelling unit base charge** - A [dwelling unit base charge is a] flat rate or fee charged by a retail public utility for each dwelling unit recorded by the retail public utility.

(6) - (7) (No change)

(8) **Multiple use facility** - A commercial or industrial park, office complex, or marina with five or more units that [which] are occupied primarily for nontransient use and are rented at intervals of one month or longer.

(9) (No change.)

(10) **Owner** - The legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; a condominium association; or any individual, firm, or corporation that purports to be the landlord of tenants in an apartment house, manufactured home rental community, or multiple use facility.

(11) **Point-of-use submeter** - A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.

(12) [(11)] **Submetered utility service** - Water utility service that is master metered for the owner by the retail public utility and individually metered by the owner at each dwelling unit; [or] wastewater utility service based on submetered water utility service; water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters.

(13) [(12)] **Tenant** - A person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and, if rent is paid, who is obligated to pay for the occupancy under a written or oral rental agreement.

(14) [(13)] **Utility service** - For purposes of this subchapter, utility service includes [shall] only [include] drinking water and wastewater.

**§291.122. Owner Registration and Records.**

(a) (No change.)

(b) Water quantity measurement. Except as provided by subsections (c) and (d) of this section, a manager of a condominium or the owner of an apartment house, manufactured home rental community, or multiple use facility, on which construction began [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) - (2) (No change.)

(c) Plumbing system requirement. An owner of an apartment house on which construction began [begins] after January 1, 2003, and that [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) Installation of individual meters. On the request by the property owner or manager, a retail public utility shall install individual meters owned by the utility in an apartment house, manufactured home rental community, multiple use facility, or condominium on which construction began [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 on-site [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 and include:

(1) - (5) (No change.)

(6) for allocated billing:

(A) (No change.)

(B) the total number of occupants or equivalent occupants if an equivalency factor is used under §291.124(e)(2) of this title (relating to Charges and Calculations); and

(C) the square footage of the tenant's dwelling unit or rental space and the total square footage of the apartment house, manufactured home rental community, or multiple use facility used for billing if dwelling unit size or rental space is used; [.]

(7) for submetered billing:

(A) the calculation of the average cost per gallon, liter, or cubic foot;

(B) if the unit of measure of the submeters or point-of-use submeters differs from the unit of measure of the master meter, a chart for converting the tenant's submeter measurement to that used by the retail public utility;

(C) - (D) (No change.)

(8) - (10) (No change.)

(f) (No change.)

(g) Availability of records.

(1) If the records required under subsection (e) of this section are maintained at the on-site [onsite] manager's office, the owner shall make the records available for inspection at the on-site [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 on-site [onsite] manager's office, the owner shall provide copies of the records to the

on-site [onsite] manager within 15 days of receiving a written request from a tenant or the executive director.

(3) If there is no on-site [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 paragraph [paragraphs] (1), (2), or (3) of this subsection.

**§291.124. Charges and Calculations.**

(a) Prohibited charges. Charges billed to tenants for submetered or allocated utility service may [shall] only include bills for water or wastewater from the retail public utility and must [shall] not include any fees billed to the owner by the retail public utility for any deposit, disconnect, reconnect, late payment, or other similar fees.

(b) Dwelling unit base charge. If the retail public utility's rate structure includes a dwelling unit base charge, the owner shall bill each dwelling unit for the base charge applicable to that unit. The owner may [shall] not bill tenants for any dwelling unit base charges applicable to unoccupied dwelling units.

(c) (No change.)

(d) Calculations for submetered utility service. The tenant's submetered charges must [shall] include the dwelling unit base charge and customer service charge, if applicable, and the gallonage charge and must [shall] be calculated each month as follows:

(1) water utility service: the retail public utility's total monthly charges for water service (less dwelling unit base charges or customer service charges<sub>2</sub> if applicable), divided by the total monthly water consumption measured by the retail public utility to obtain an average water cost per gallon, liter<sub>2</sub> or cubic foot, multiplied by the tenant's monthly consumption or the volumetric rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

(2) wastewater utility service: the retail public utility's total monthly charges for wastewater service (less dwelling unit base charges or [the] customer service charges, [charge] if applicable), divided by the total monthly water consumption measured by the retail public utility, multiplied by the tenant's monthly consumption or the volumetric wastewater rate charged by the retail public utility to the owner multiplied by the tenant's monthly water consumption;

(3) service charge for manufactured home rental community: a manufactured home rental community may charge a service charge in an amount not to exceed 9% of the tenant's charge for submetered water service; and

(4) final [Final] bill on move-out for submetered service: if [. If] a tenant moves out during a billing period, the owner may calculate a final bill for the tenant before the owner receives the bill for that period from the retail public utility. If the owner is billing using the average water or wastewater cost per gallon, liter, or cubic foot as described in paragraph (1) of this subsection, the owner may calculate the tenant's bill by calculating the tenant's average volumetric rate for the last three months and multiplying that average volumetric rate by the tenant's consumption for the billing period.

(e) Calculations for allocated utility service.

(1) Before an owner may allocate the retail public utility's master meter bill for water and sewer service to the tenants, the owner shall first deduct:

(A) (No change.)

(B) common area usage such as installed landscape irrigation systems, pools, and laundry rooms, if any, as follows:

(i) - (iv) (No change.)

(2) To calculate a tenant's bill:

(A) for an apartment house, the owner shall multiply the amount established in paragraph (1) of this subsection [subsection (e)(1) of this section] by:

(i) (No change.)

(ii) the number of occupants in the tenant's dwelling unit using a ratio occupancy formula divided by the total number of occupants in all dwelling units at the beginning of the retail public utility's billing period using the same ratio occupancy formula to determine the total. The ratio occupancy formula will reflect what the owner believes more accurately represents the water use in units that [which] are occupied by multiple tenants. The ratio occupancy formula that [which] is used must assign a fractional portion per tenant of no less than that on the following scale:

(I) dwelling unit with one occupant [occupants] = 1.2

(II) dwelling unit with two occupants = 1.6;

(III) dwelling unit with three occupants = 2.2; or

(IV) (No change.)

(iii) the average number of occupants per bedroom, which shall be determined by the following occupancy formula. The formula must [shall] calculate the average

number of occupants in all dwelling units based on the number of bedrooms in the dwelling unit according to the scale below, notwithstanding the actual number of occupants in each of the dwelling unit's bedrooms or all dwelling units:

(I) dwelling unit with an efficiency = 1;

(II) dwelling unit with one bedroom = 1.6;

(III) dwelling unit with two bedrooms = 2.8;

(IV) (No change.)

(iv) a factor using a combination of square footage and occupancy in which no more than 50% is based on square footage. The square footage portion must [shall] be based on the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house; or

(v) the individually submetered hot or cold water usage of the tenant's dwelling unit divided by all submetered hot or cold water usage in all dwelling units; [.]

(B) a condominium manager shall multiply the amount established in paragraph (1) of this subsection [subsection (e)(1) of this section] by any of the factors under subparagraph (A) of this paragraph or may follow the methods outlined in the condominium contract;

(C) for a manufactured home rental community, the owner shall multiply the amount established in paragraph (1) of this subsection [subsection (e)(1) of this section] by:

(i) (No change.)

(ii) the area of the individual rental space divided by the total area of all rental spaces; and [.]

(D) for a multiple use facility, the owner shall multiply the amount established in paragraph (1) of this subsection [subsection (e)(1) of this section] by:

(i) - (ii) (No change.)

(3) [Partial month's bill for move-in or move-out.] If a tenant moves in or out during a billing period, the owner may calculate a bill for the tenant. If the tenant moves in during a billing period, the owner shall prorate the bill by calculating a bill as if the tenant were there for the whole month and then charging the tenant for only the number of days the tenant lived in the unit divided by the number of days in the month multiplied by the calculated bill. If a tenant moves out during a billing

period before the owner receives the bill for that period from the retail public utility, the owner may calculate a final bill. The owner may calculate the tenant's bill by calculating the tenant's average bill for the last three months and multiplying that average bill by the number of days the tenant was in the unit divided by the number of days in that month.

(f) Conversion to approved allocation method. An [Within 365 days after the effective date of this subchapter, an] owner using an allocation formula other than those approved in subsection (e) of this section shall immediately provide notice as required under §291.123(c) of this title (relating to Rental Agreement) and either:

(1) - (3) (No change.)

**§291.125. Billing.**

(a) - (b) (No change.)

(c) Submeter reading schedule. Submeters or point-of-use submeters shall be read within three days of the scheduled reading date of the retail public utility's master meter or according to the schedule in the rental agreement if the owner is billing using the retail public utility's rate.

(d) Billing period.

(1) - (2) (No change.)

(e) Multi-item bill. If issued on a multi-item bill, charges for submetered or allocated utility service must [shall] be separate and distinct from any other charges on the bill.

(f) Information on bill. The bill must [shall] clearly state that the utility service is submetered or allocated, as applicable, and must [shall] include all of the following:

(1) - (2) (No change.)

(3) total amount due for dwelling unit base charge(s) or customer service charge(s) [charges] or both, if applicable;

(4) - (8) (No change.)

(g) Information on submetered service. In addition to the information required in subsection (f) of this section, a bill for submetered service must [shall] include all of the following:

[(1) the date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;]

(1) [(2)] the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters [metered];

(2) [(3)] the cost per gallon, liter, or cubic foot for each service provided; and

(3) [(4)] total amount due for a service charge charged by an owner of a manufactured home rental community, if applicable.

(h) Due date. The due date on the bill may [shall] not be less than 16 days after it is mailed or hand delivered to the tenant, unless the due date falls on a federal holiday or weekend, in which case the following work day will [shall] be the due date. The owner shall record the date the bill is mailed or hand delivered. A payment is delinquent if not received by the due date.

(i) Estimated bill. An estimated bill may be rendered if a master meter, [or] submeter, or point-of-use submeter has been tampered with, cannot be read, or is out of order; and in such case, the bill must [shall] be distinctly marked as an estimate and the subsequent bill must [shall] reflect an adjustment for actual charges.

(j) Payment by tenant. Unless utility bills are paid to a third-party [third party] billing company on behalf of the owner, or unless clearly designated by the tenant, payment must [shall] be applied first to rent and then to utilities.

(k) Overbilling and underbilling. If a bill is issued and subsequently found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment must [shall] be calculated for all of that tenant's bills that included overcharges. If the overbilling [over billing] or underbilling [under billing] affects all tenants, an adjustment must [shall] be calculated for all of the tenants' bills. If the tenant was undercharged, and the cause was not due to submeter or point-of-use submeter error, the owner may calculate an adjustment for bills issued in the previous six months. If the total undercharge is \$25 [\$25.00] or more, the owner shall offer the tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may [shall] not be back billed [backbilled] to a current tenant.

(l) Disputed bills. In the event of a dispute between a tenant and an owner regarding any bill, the owner shall investigate the matter and report the results of the investigation to the tenant in writing. The investigation and report must [shall] be completed within 30 days from the date the tenant gives written notification of the dispute to the owner.

(m) Late fee. A one-time penalty not to exceed 5% may be applied to delinquent accounts. If such a penalty is applied, the bill must indicate the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease that states the percentage amount of such late penalty.

**§291.127. Submeters or Point-of-Use Submeters and Plumbing Fixtures.**

(a) Submeters or point-of-use submeters.

(1) Same type submeters or point-of-use submeters required. All submeters or point-of-use submeters throughout a property must [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 or point-of-use submeters necessary for the measurement of water to tenants and to common areas, if applicable.

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

(4) Accuracy requirements for submeters and point-of-use submeters. Submeters must [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. Point-of-use submeters must be calibrated as closely as possible to the condition of zero error and within the

accuracy standards established by the American Society of Mechanical Engineers (ASME) for point-of-use and branch-water submetering systems.

(5) Location of submeters and point-of-use submeters. Submeters and point-of-use submeters must [shall] be installed in accordance with applicable plumbing codes and AWWA standards for water meters or ASME standards for point-of-use submeters, and must [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 and point-of-use submeter records. The owner shall maintain a record on each submeter or point-of-use submeter which includes:

(A) (No change.)

(B) the installation date (and removal date, if applicable);

(C) date(s) the submeter or point-of-use submeter was calibrated or tested;

(D) (No change.)

(E) the current location of the submeter or point-of-use submeter.

(7) Submeter or point-of-use submeter test on request of tenant. Upon receiving a written request from the tenant, the owner shall either:

(A) provide evidence, at no charge to the tenant, that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months and determined to be within the accuracy standards established by the AWWA for water meters or ASME standards for point-of-use submeters; or

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

(8) Billing for submeter or point-of-use submeter test.

(A) The owner may [shall] not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards for water meters or ASME standards for point-of-use submeters.

(B) The owner may [shall] not bill the tenant for testing costs if there is no evidence that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months.

(C) The owner may bill the tenant for actual testing costs (not to exceed \$25) if the submeter meets AWWA accuracy standards or the point-of-use submeter meets ASME accuracy standards and evidence as described in paragraph (7)(A) of this subsection [subsection (a)(7)(A) of this section] was provided to the tenant.

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

(10) Submeter or point-of-use submeter testing facilities and equipment. For submeters, an [An] owner shall comply with the AWWA's meter testing requirements [applicable to utilities under §291.89(e) of this title (relating to Meters)]. For point-of-use meters, an owner shall comply with ASME's meter testing requirements.

(b) Plumbing fixtures. After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager shall [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; and [.]

(3) not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service, the owner or manager shall:

(A) (No change.)

(B) install 1.6-gallon toilets that meet the standards prescribed by Texas Health and Safety Code [THSC], §372.002.

(c) Plumbing fixture not applicable. Subsection (b) of this section does not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.