

The Texas Commission on Environmental Quality (commission or TCEQ) adopts new §291.146 *with changes* to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1603).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The 79th Legislature, 2005, passed House Bill (HB) 841, which relates to municipally owned utilities that provide nonsubmetered master metered utility service to recreational vehicle parks. HB 841 amended Texas Water Code (TWC), §13.087, by defining “nonsubmetered master metered utility service” and by requiring municipally owned utilities to determine rates charged to recreational parks in the same manner as they do for other commercial businesses that serve transient customers.

This bill requires the commission to incorporate into the agency’s rules the definition of “nonsubmetered utility service” and to review complaints received by recreational vehicle parks. This bill also gives the commission the authority to take enforcement action against a municipally owned utility that charges a higher rate to a recreational vehicle park than to a commercial customer.

SECTION DISCUSSION

The commission adopts §291.146, Municipal Rates for Certain Recreational Vehicle Parks, to implement TWC, §13.087, as amended by the 79th Legislature. This new section defines “Nonsubmetered master metered utility service” as potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service. The new section gives the commission enforcement authority over municipally owned utilities that do not

determine rates charged to recreational parks in the same manner as they do for other commercial businesses that serve transient customers. The commission changed §291.146(c) from the proposed text as published in the March 10, 2006, issue of the *Texas Register* by substituting the word “Notwithstanding” for the phrase “With the exception of.” The commission made this change to ensure that the rule language maintained consistency with the language of HB 841.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for 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 environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This adoption does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure. The specific purpose of this rulemaking is to amend the commission rules in Chapter 291 to incorporate the requirements of HB 841 from the 79th Legislature, related to the rates charged by a municipally owned utility to certain recreational vehicle parks for potable water or wastewater service. The adopted rule incorporates the requirement in HB 841 that a municipally owned utility determine the rates for nonsubmetered master metered utility service to a recreational vehicle park on the same

basis the utility uses to determine the rates for other commercial businesses. The requirements of HB 841 relate to the utility rates charged by a municipally owned utility and are not related to environmental protection or the reduction of risk to human health.

Furthermore, even if the adopted rulemaking did meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Specifically, the adopted rule does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state 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.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule and performed an assessment of whether the adopted rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to amend the commission rules in Chapter 291 to incorporate the requirements of HB 841 from the 79th Legislature, related to the rates charged by a municipally owned utility to certain recreational vehicle parks for potable water or wastewater service. The adopted rule would substantially advance this stated purpose by incorporating the requirements of HB 841 related to municipal utility rates into the commission rules. There are no burdens imposed on private real property by the enactment of the rule because the rule addresses municipal utility rates and does not

affect private real property. Therefore, the adopted rule does not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The public comment period for this rulemaking closed at 5:00 p.m. on April 10, 2006. The commission did not receive any comments.

SUBCHAPTER J: ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

§291.146

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.102, which provides the commission the general powers to carry out duties under TWC; and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state. In addition, TWC, §13.041, states that the commission may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated in TWC, Chapter 13, or implied in TWC, Chapter 13, necessary and convenient to the exercise of this power and jurisdiction. Further, TWC, §13.041, states that the commission shall adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. Finally, TWC, §13.087, the section added by HB 841, states that the commission has jurisdiction to enforce this section.

The adopted rule implements TWC, §§5.102, 5.103, 13.041, and 13.087.

§291.146. Municipal Rates for Certain Recreational Vehicle Parks.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) **Nonsubmetered master metered utility service**--Potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.

(2) **Recreational vehicle**--Includes a:

(A) house trailer as that term is defined by Texas Transportation Code, §501.002; and

(B) towable recreational vehicle as that term is defined by Texas Transportation Code, §541.201.

(3) **Recreational vehicle park**--A commercial property on which service connections are made for recreational vehicle transient guest use and for which fees are paid at intervals of one day or longer.

(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park shall determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses, including hotels and motels, that serve transient customers and receive nonsubmetered master metered utility service from the utility.

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