

The Texas Commission on Environmental Quality (commission or TCEQ) proposes new §291.146.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 proposes to add new §291.146, Municipal Rates for Certain Recreational Vehicle Parks, to implement TWC, §13.087, as amended by the 79th Legislature. This proposed 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 proposed 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government.

The proposed rule implements HB 841, 79th Legislature, which requires all municipally owned utilities that provide nonsubmetered master metered utility service to recreational vehicle parks to determine their rates for recreational vehicle parks in the same manner used for other commercial businesses that serve transient customers. The rulemaking would grant jurisdiction to the agency to take enforcement action against a municipally owned utility that charges a higher rate to a recreational vehicle park than to similar commercial customers. The rulemaking defines nonsubmetered 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 rulemaking would not affect agency revenues or costs. The agency would be required to review complaints received from recreational vehicle parks and take any necessary enforcement action. Any additional costs for the agency to review complaints or take enforcement action would be absorbed using current agency resources. Other units of state government are not expected to be affected by the proposed rule as they do not own or operate municipal water utilities. Local governments that own their own municipal water utilities would be prevented from charging recreational vehicle parks rates that are different from similar businesses. Of the estimated 1,920 cities in Texas, approximately 962 have a municipally owned utility. Any reduction in revenue for the utilities is not projected to be

significant. Any reduction in revenue would be dependent upon the level of water consumption and the current disparity between rates charged for the recreational vehicle parks and similar businesses that serve transient customers. It is unknown how many recreational vehicle parks are located in areas serviced by municipal water utilities.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be billing rate protection for recreational vehicle parks serviced by municipal water utilities. The commission would be granted enforcement authority to ensure that recreational vehicle parks are billed at the same rates as similar businesses that serve transient customers.

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The proposed rule is expected to result in cost savings for any recreational vehicle park serviced by a municipally owned water utility. Of the estimated 1,920 cities in Texas, approximately 962 have a municipally owned utility. It is unknown how many recreational vehicle parks are located in areas serviced by municipal water utilities. It is projected that the rulemaking would protect the recreational vehicle parks from being charged rates that are higher than other similar businesses and could result in financial savings for the affected recreational vehicle parks. Any savings realized would be dependent upon consumption and the current disparity between rates charged for the recreational vehicle parks and similar businesses that serve transient customers.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed rulemaking would result in no additional costs for small and micro-businesses. Small and micro-businesses would experience the same potential cost savings as industry. It is believed that the majority of businesses that own and operate recreational vehicle parks and would be affected by the rulemaking are small and 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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is 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 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 proposal 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 proposed 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 proposed 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 proposed 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.

The commission invites public comment on the draft regulatory analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed an assessment of whether the proposed 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 proposed 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 proposed rule does not constitute a takings under Texas Government Code, Chapter 2007.

The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed 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 proposed rule is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Holly Vierk, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-059-291-PR. Comments must be received by 5:00 p.m., April 10, 2006. For further information, please contact Lisa Mejia, Utilities & Districts Section, (512) 239-6117.

SUBCHAPTER J: ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

§291.146

STATUTORY AUTHORITY

The new section is proposed 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 proposed new 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) With the exception of any other provision of this chapter, the commission has jurisdiction to enforce this section.