

The Texas Commission on Environmental Quality (commission) adopts amendments to §§291.8, 291.15, 291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34, and 291.81 and new §291.35. Section 291.35 is adopted *with change* to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3192). Sections 291.8, 291.15, 291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34, and 291.81 are adopted *without changes* to the proposed text and will not be republished.

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

During the 79th Legislature, 2005, the legislature passed House Bill (HB) 1358, HB 2301, and Senate Bill (SB) 1063. HB 1358 amended the Texas Water Code (TWC) by adding new §13.004. This new section of the TWC outlines the jurisdiction of the commission over certain water supply or sewer service corporations. HB 2301 amended TWC, §13.187(c), by clarifying that the regulatory authority may disallow nonsupported costs if the utility fails to timely provide documentation or other evidence to support the costs shown in a rate application.

SB 1063 amended §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001, by deleting the exception that a public utility that provided utility service in only 24 counties on January 1, 2003, was exempt from specific requirements. SB 1063 also amended §10.08(a) by specifying that the changes in law made by this article to Chapter 13 apply to a proceeding in which the agency has not issued a final order before September 1, 2001. Additionally, SB 1063 amended TWC, §13.145, Multiple Systems Consolidated Under Tariff, by adding a new subsection (b) which states, “This section does not apply to a public utility that provided utility service in only 24 counties on January 1, 2003.”

In addition to changes based on HB 1358, HB 2301, and SB 1063, the commission adopts amendments to §291.28 based upon concerns expressed by utility customers about the recovery of rate case expenses. The amendments will specify under what circumstances a utility may recover rate case expenses. This section of Chapter 291 implements TWC, §13.185(h), and TWC, §13.382, which relate to when a utility may recover rate case expense including attorney fees and expert witness fees incurred as a result of a rate change application.

#### SECTION BY SECTION DISCUSSION

##### *Subchapter A, General Provisions*

The commission adopts amendments to §291.8, Administrative Completeness, by deleting “. . . or 30 days for a utility that provided service in only 24 counties on January 1, 2003 . . .” in subsection (b).

The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission adopts amendments to §291.15, Notice of Wholesale Water Supply Contract, by deleting “. . . except that this requirement does not apply to a utility that provided service in only 24 counties on January 1, 2003 . . .” in subsection (b)(9). The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

##### *Subchapter B, Rates, Rate Making, and Rates/Tariff Changes*

The commission adopts amendments to §291.21, Form and Filing of Tariffs, by deleting the subsection (n) reference in subsection (o). Revised subsection (o) states: “Exception. Subsection (m) of this

section does not apply to a utility that provided service in only 24 counties on January 1, 2003.” The commission also adopts amended subsection (n) to correspond with the amendment to subsection (o). The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission adopts amendments to §291.22, Notice of Intent To Change Rates, by deleting the language, “A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to changes rates at least 30 days prior to the proposed effective date” in subsections (a), (c), (d), and (e). Additionally, the commission deletes “Paragraphs (3) and (4) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003” from subsection (a). These changes will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission adopts these amendments to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission adopts amendments to §291.24, Jurisdiction over Affiliated Interests, by deleting, “Except for a utility that provided service in only 24 counties on January 1, 2003 . . .” in subsection (b). This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission adopts amendments to §291.26, Suspension of Rates, by deleting “This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003” from subsection (c).

The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission adopts amendments to §291.28, Action on Notice of Rate Change Pursuant to Texas Water Code, §13.187(b), by deleting “. . . or the 61st day for a utility serving in 24 counties on January 21, 2003 . . .” in paragraph (1). This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission adopts this change to implement the amendment by SB 1063 to §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001.

The commission adopts amendments to §291.28(4) by adding the words “cost or” before the word “expenses” at the end of the paragraph. The commission adopts this amendment to implement HB 2301. Additionally, the commission adopts the addition of §291.28(7) - (9) to establish criteria by which the commission can determine the amount of reasonable and just rate case expense recovery allowed to a utility based upon concerns about rate case expenses expressed by utility customers.

Utility customers have expressed concern over the possibility that utilities may have an incentive to overreach in their rate applications if utilities believe that the customers ultimately will bear all rate case expenses. The purpose of this rule change is to set out clearly certain instances when, as a matter of law, rate case expenses will be considered unreasonable, unnecessary, and against the public interest.

In particular, two rules are adopted where rate case expenses will be disallowed as a matter of law.

The first (§291.28(8)) states that a utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate. The second (§291.28(9)) states that a utility may not recover any rate case expenses

incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer by all ratepayer parties. Section 291.28(7) was also added to make it clear that all rate case expenses will be evaluated to see if they are reasonable, necessary, and in the public interest on a case-by-case basis. Therefore, even if the criteria outlined in the new §291.28(8) or (9) are not met, the commission may still disallow all or a portion of rate case expenses in its discretion if they are not found to be reasonable, necessary, and in the public interest.

The commission adopts amendments to §291.29, Interim Rates, by deleting “This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003” from subsections (c) and (k). This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission adopts amendments to §291.31, Cost of Service, by deleting subsection (b)(2)(K) which reads, “subparagraph (J) of this paragraph does not apply to a utility that provided service in only 24 counties on January 1, 2003.” This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission solicited comments in the preamble to the proposed rule on the specific criteria appropriate for ascertaining costs to be added to the historical test year expenses as known and measurable. The commission did not receive any comments in response to this request.

The commission adopts amendments to §291.34, Alternative Rate Methods, by deleting “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” from subsection (a). This change will remove the exemption for utilities that provided service in only 24 counties on January 1, 2003. The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

The commission adopts new §291.35, Jurisdiction of Commission over Certain Water or Sewer Supply Corporations, to state that the commission has the same jurisdiction over certain water supply or sewer service corporations that it has over a water and sewer utility as specified in TWC, §13.004. The commission adopts this section to implement TWC, §13.004, as added by the 79th Legislature. The commission amended this section from proposal to adoption by changing the word “utility” in §291.35(b)(3) to “water supply or sewer service corporation.” The commission made this change to ensure the rule language stays consistent in subsection (b).

*Subchapter E, Customer Service and Protection*

The commission adopts amendments to §291.81, Customer Relations, by deleting the first sentence of subsection (d)(4). This will remove the exemption for utilities that provided service in only 24 counties

on January 1, 2003. The commission adopts this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

#### 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 definition of a “major environmental rule” as defined in the Texas Administrative Procedure Act. According to Texas Government Code, §2001.0225(g)(3), 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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.” Here, the primary specific intent of the adopted rulemaking is to implement HB 1358, HB 2301, and SB 1063, of the 79th Legislature, 2005, and to draft rules regarding rate case expense in utility rate cases. In relevant part, HB 2301 deals with disallowance of unsupported costs in a rate application. HB 1358 deals with the commission’s jurisdiction over certain water supply corporations (WSC) or sewer supply corporations. SB 1063 removes the exemption from certain requirements for rate change procedures for a public utility that provided service in only 24 counties on January 1, 2003.

These adopted changes are intended to impact only the economic and administrative regulation of water and sewer utilities. The adopted rules are not intended to have any impact on environmental regulation. Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in

Texas Government Code, §2001.0225(a). The adopted rules: 1) are specifically required by state law, namely TWC, Chapter 13; 2) do not exceed the express requirements of the TWC; 3) do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. There is no federal delegation regarding water and sewer rates or regarding the state's ability to regulate WSCs; and 4) the adopted rules will not be adopted solely under the general powers of the commission.

Based on the foregoing, the adopted rulemaking does not constitute a major environmental rule, and thus is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a takings pursuant to Texas Government Code, Chapter 2007. The intent of the adopted rulemaking is to implement HB 1358, HB 2301, and SB 1063, of the 79th Legislature, 2005, and to draft rules regarding rate case expense in utility rate cases. In relevant part, HB 2301 deals with disallowance of unsupported costs in a rate application. HB 1358 deals with the commission's jurisdiction over certain WSCs. SB 1063 removes the exemption from certain requirements for rate change procedures for a public utility that provided service in only 24 counties on January 1, 2003.

Promulgation and enforcement of these adopted rules will constitute neither a statutory nor a constitutional taking of private real property. The adopted procedures and regulations deal with the rate-making process, the recovery of rate case expense, and the regulation of WSCs. They do not

adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. There are no burdens imposed on private real property by the enactment of these rules. Therefore, the adopted amendments do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

#### PUBLIC COMMENT

The commission held a public hearing in Austin on May 4, 2006. The public comment period closed at 5:00 p.m. on May 15, 2006. The commission received comments from 99 individuals.

All commenters generally agreed with the proposed rules.

#### RESPONSE TO COMMENTS

Ninety-eight commenters stated that they are aware of the proposed rule changes which will affect the manner in which protests against proposed rate increases will be processed, and that they are in favor of the passage of all the changes.

**The commission acknowledges the commenters' support of the rule.**

One commenter requested that the commission give consideration to the consumer in determining how water rates are applied.

**The commission's current rules specify that the commission consider the consumer in determining how water rates are applied. Section 291.34 requires that the commission ensure that rates, operations, and services are just and reasonable to the consumers and to the utilities. No change to the rules was made in response to this comment.**

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§291.8, §291.15**

#### **STATUTORY AUTHORITY**

The amendments are adopted under TWC, §5.102, which provides the commission the general powers to carry out duties under the TWC; and TWC, §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, also 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.

The adopted rules implement TWC, §§5.102, 5.103, 13.041, 13.187, 13.004, 13.145(b); and §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001.

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

(a) Notice of rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and sale, assignment of, or lease of a certificate; and applications for certificates of

convenience and necessity shall be reviewed by the staff for administrative completeness within ten working days of receipt of the application. A notice or an application for rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and applications for certificates of convenience and necessity are not considered filed until received by the commission, accompanied by the filing fee, if any, required by statute or commission rules, and a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the executive director shall notify the applicant by mail of that determination. If the executive director determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected.

(b) In cases involving proposed rate changes, the effective date of the proposed change must be at least 60 days after:

(1) the date that an application and notice are received by the commission, provided the application and notice are determined to be administratively complete as filed;

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

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

(c) In cases involving a proposed sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an application is received by the commission and public notice is provided, unless notice is waived for good cause shown.

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

(a) 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) 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; 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 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, 291.35**

**STATUTORY AUTHORITY**

The amendments and new section are adopted under TWC, §5.102, which provides the commission the general powers to carry out duties under the TWC; and TWC, §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, also 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.

The adopted rules implement TWC, §§5.102, 5.103, 13.041, 13.187, 13.004, 13.145(b); and §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001.

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

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those

prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as noted in this subsection. A utility may charge the rates proposed under Texas Water Code (TWC), §13.187(a) (relating to Statement of Intent to Change Rates) after the proposed effective date, unless the rates are suspended or the commission or a judge sets interim rates. The regulatory assessment required in TWC, §5.235(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service that enters into an agreement in accordance with TWC, §13.250(b)(2), may collect charges for wastewater services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement. A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for certificates of convenience and necessity.

(A) Every public utility shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and

necessity to operate as a public utility. The tariff must be on the form the commission prescribes or another form acceptable to the commission.

(B) Every water supply or sewer service corporation shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a retail public utility.

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

(A) The executive director may approve the following minor changes to tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by the applicable sections;

(iii) implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water use imposed by a court, government agency, or other authority, or water use fee provision previously approved by the commission;

(iv) surcharges over a time period determined by the executive director to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or at the discretion of the executive director, other governmental requirements beyond the utility's control;

(v) addition of the regulatory assessment as a separate item or to be included in the currently authorized rate;

(vi) addition of a provision allowing a utility to collect wastewater charges in accordance with TWC, §13.250(b)(2);

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

(viii) addition of a production fee charged by a groundwater conservation district as a separate item calculated by multiplying the customer's total consumption, including the number of gallons in the base bill, by the actual production fee per thousand gallons.

(B) The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.

(3) Tariff revisions and tariffs filed with rate changes. The utility shall file three copies of each revision or in the case of a rate change, the number required in the application form. Each revision must be accompanied by a cover page that contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(4) Rate schedule. Each rate schedule must clearly state the territory, subdivision, city, or county in which the schedule is applicable.

(5) Tariff sheets. Tariff sheets must be numbered consecutively. Each sheet must show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers must be the same.

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

(1) a table of contents;

(2) a list of the cities and counties, and subdivisions or systems, in which service is provided;

(3) the certificate of convenience and necessity number under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms required to be completed under §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) if the form used deviates from that specified in §290.47(d) of this title (relating to Appendices);

(6) the extension policy;

(7) an approved drought contingency plan as required by §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers); and

(8) the form of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the application number, date of the order, a list of tariff sheets filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's model tariff or any modifications of a rule in the model tariff must be clearly noted. All tariff sheets must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariffs must comply with the provisions of the order.

(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section must be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Tariffs must be filed to reflect changes in rates or regulations set by other regulatory authorities and must include a copy of the order or ordinance authorizing the change. Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the commission a copy of its current tariff that has been authorized by the municipality.

(h) Purchased water or sewage treatment provision.

(1) A utility that purchases water or sewage treatment may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated and affects customer billings.

(2) This provision must be approved by the commission in a rate proceeding. A proposed change in the method of calculation of the provision must be approved in a rate proceeding.

(3) Once the provision is approved, any revision of a utility's billings to its customers to allow for the recovery of additional costs under the provision may be made only upon issuing notice as required by paragraph (4) of this subsection. The executive director's review of a proposed revision is an informal proceeding. Only the commission, the executive director, or the utility may request a hearing on the proposed revision. The recovery of additional costs is defined as an increase in water use fees or in costs of purchased water or sewage treatment.

(4) A utility that wishes to revise utility billings to its customers pursuant to an approved purchased water or sewer treatment or water use fee provision to allow for the recovery of additional costs shall take the following actions prior to the beginning of the billing period in which the revision takes effect:

(A) submit a written notice to the executive director; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the change, the present calculation of customer billings, the new calculation of customer billings, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water) (purchased sewer) (water use fee) adjustment clause to recognize (increases) (decreases) in the (water use fee) (cost of purchased) (water) (sewage treatment). The cost of these charges to customers will not exceed the (increased) (decreased) cost of (the water use fee) (purchased) (water) (sewage treatment)."

(5) Notice to the commission must include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.

(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.

(i) Effective date. The effective date of a tariff change is the date of approval by the executive director unless otherwise stated in the letter transmitting the approval or the date of approval by the commission, unless otherwise specified in a commission order or rule. The effective date of a proposed rate increase under TWC, §13.187 is the proposed date on the notice to customers and the commission, unless suspended and must comply with the requirements of §291.8(b) of this title (relating to Administrative Completeness).

(j) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, one copy of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rules and regulations relating to or affecting the rates, utility service or extension of service or product, or commodity furnished and shall specify the certificate of convenience and necessity number and in which counties or cities it is effective.

(k) Surcharge.

(1) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(2) If specifically authorized for the utility in writing by the executive director or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase

in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(A) sampling fees not already included in rates;

(B) inspection fees not already included in rates;

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

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

(3) A utility shall use the revenues collected pursuant to a surcharge only for the purposes noted and handle the funds in the manner specified according to the notice or application submitted by the utility to the commission, unless otherwise directed by the executive director. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the executive director.

(1) Temporary water rate.

(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other

authority orders mandatory water use reduction measures that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover from customers revenues that the utility would otherwise have lost due to mandatory water use reductions in accordance with the temporary water rate provision approved by the commission. If a utility obtains a portion of its water supply from another unrestricted water source or water supplier during the time the temporary water rate is in effect, the rate resulting from implementation of the temporary water rate provision must be adjusted to account for the supplemental water supply and to limit over-recovery of revenues from customers. A temporary water rate provision may not be implemented by a utility if there exists an available, unrestricted, alternative water supply that the utility can use to immediately replace, without additional cost, the water made unavailable because of the action requiring a mandatory reduction of use of the affected water supply.

(2) The temporary water rate provision must be approved by the commission in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions through a limited rate proceeding. The formula for a temporary water rate provision under this paragraph is:

Figure: 30 TAC §291.21(l)(3) (No change.)

TGC = temporary gallonage charge  
cgc = current gallonage charge  
r = water use reduction expressed as a decimal fraction (the pumping restriction)  
pr = Percentage of revenues to be recovered expressed as a decimal fraction  
(i.e. 50% = 0.5)

$$TGC = cgc + [(pr)(cgc)(r)/(1.0-r)]$$

(A) The utility shall file a temporary water rate application prescribed by the executive director and provide customer notice as required in the application, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the classes of customers affected, the rates affected, information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, the time frame for protests, and any other information that is required by the executive director in the temporary water rate application. The utility's existing rates are not subject to review in the proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §291.23 of this title (relating to Time between Filings).

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary

expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision using the formula in paragraph (3) of this subsection or any other method acceptable to the commission to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, it shall submit financial data to support its existing rates as well as the temporary water rate provision even if no other rates are proposed to be changed. The utility shall complete a rate application and provide notice in accordance with the requirements of §291.22 of this title (relating to Notice of Intent To Change Rates). The utility's existing rates are subject to review in addition to the temporary water rate provision.

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the commission in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

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

(A) the temporary water provision has been approved by the commission and included in the utility's approved tariff in a prior rate proceeding;

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

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

(6) The utility may readjust its rates using the temporary water rate provision as necessary to respond to modifications or changes to the original order requiring mandatory water use reductions by reissuing notice as required by paragraph (7) of this subsection. The executive director's review of the proposed implementation of an approved temporary water rate provision is an informal proceeding. Only the commission, the executive director, or the utility may request a hearing on the proposed implementation.

(7) A utility that wishes to place a temporary water rate into effect shall take the following actions prior to the beginning of the billing period in which the temporary water rate takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the executive director; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate is implemented. The notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Texas Commission on Environmental Quality to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from (\$ per 1,000 gallons to \$ per 1,000 gallons)."

(8) A utility shall stop charging a temporary water rate as soon as is practical after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall notify its customers of the date that the temporary water rate ends and that its rates will return to the level authorized before the temporary water rate was implemented.

(9) If the commission initiates an inquiry into the appropriateness or the continuation of a temporary water rate, it may establish the effective date of its decision on or after the date the inquiry is filed.

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

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

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

(n) Regional rates. The commission, where practicable, shall consolidate the rates by region for applications submitted with a consolidated tariff and rate design for more than one system.

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

**§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. Notice must be provided on the notice form included in the commission's rate application package and must contain the following information:

(1) the utility name and address, current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the new rates may not apply to service received before the effective date of the new rates;

(2) information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, and the time frame for protests;

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

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

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

(b) Notice requirements. The governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail 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 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.

(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. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate

application filed with the commission to the municipality. The commission may also require that notice be mailed 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.

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

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

(1) for which a person has been appointed under Texas Water Code, §13.4132; or

(2) for which a receiver has been appointed under Texas Water Code, §13.412; and

(3) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application must include the proposed tariff and other information requested by the executive director. The request may be made with a request to change one or more of the utility's other rates.

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

(a) The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but not limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

(b) The owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless:

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

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

**§291.26. Suspension of Rates.**

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

(b) The effective date of any rate change may be suspended by the commission or the executive director if the utility does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity.

(c) If the commission receives the required number of protests that would require a contested case hearing, the commission may, pending the hearing and a final decision from the commission, suspend the date the rate change would be effective. The proposed rate may not be suspended for more than 150 days.

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

The commission may conduct a public hearing on any application.

(1) If, before the 91st day after the effective date of the rate change, the commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing. If after hearing, the commission finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.

(2) If a hearing is scheduled, the commission may require the utility to provide notice of the time and place of the hearing to its customers through a billing insert or separate mailing.

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

(4) The executive director or commission may request additional information from any utility in the course of evaluating the rate/tariff change request, and the utility shall provide that information within 20 days of receipt of the request, unless a different time is agreed to. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the commission may disallow the unsupported costs or expenses.

(5) If the commission sets a rate different from that proposed by the utility in its notice of intent, the utility shall include in its first billing at the new rate a notice to the customers of the rate set by the commission including the following statement: "The Texas Commission on Environmental Quality, after public hearing, has established the following rates for utility service:".

(6) If the commission conducts a hearing, it may establish rates different from those currently being charged or proposed to be charged by the utility, but the total annual revenue increase resulting from the commission's rates may not exceed the greater of the annual revenue increase provided in the customer notice or revenue increase that would have been produced by the proposed rates except for the inclusion of reasonable rate case expenses. The commission may reclassify a portion of a utility's proposed rates as a capital improvement surcharge if the revenues are to be used for capital improvements or are to service debt on capital items.

(7) A utility may recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest.

(8) A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.

(9) A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.

**§291.29. Interim Rates.**

(a) The commission or judge may on a motion by the executive director or by the appellant under Texas Water Code, §13.043(a), (b), or (f), as amended, establish interim rates to remain in effect until a final decision is made.

(b) At any time after the filing of a statement of intent to change rates under Texas Water Code, §13.187, as amended, the executive director may petition the commission or judge to set interim

rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates.

(c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(d) Interim rates may be established by the commission or judge in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

(e) In making a determination under subsection (d) of this section, the commission or judge may limit its consideration of the matter to oral arguments of the affected parties and may:

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

(2) deny interim rate relief; and

(3) require that all or part of the requested rate increase be deposited in an escrow account in accordance with §291.30 of this title (relating to Escrow of Proceeds Received under Rate Increase).

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

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

(h) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments.

(i) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.

(j) The retail public utility shall provide a notice to its customers including the interim rates set by the commission or judge with the first billing at the interim rates with the following wording: "The commission (or judge) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established."

**§291.31. Cost of Service.**

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes may be considered.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest

expense are not allowed as an expense for cost of service except as provided in Texas Water Code (TWC), §13.185(e));

(B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation is allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property is allowed in the cost of service;

(C) assessments and taxes other than income taxes;

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

(E) reasonable expenditures for ordinary advertising, contributions, and donations; and

(F) funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A) - (F) of this paragraph;

(H) costs, including, but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission;

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines; and

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

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

(ii) a wholesale supply of surface water is available.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital must be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital must be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital, also referred to as rate base. The rate of return is applied to the rate base. Components to be included in determining the rate base are as follows:

(A) original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service:

(i) original cost is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor;

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

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

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

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

(i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service;

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

(iii) a reasonable allowance up to one-eighth of total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).

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

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

- (i) accumulated reserve for deferred federal income taxes;
- (ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;
- (iii) contingency and/or property insurance reserves;
- (iv) contributions in aid of construction; and
- (v) other sources of cost-free capital, as determined by the commission.

(B) Construction work in progress. Under ordinary circumstances, the rate base consists only of those items that are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

(i) the inclusion is necessary to the financial integrity of the utility; and

(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress may not be allowed for any portion of a major project that the utility has failed to prove was efficiently and prudently planned and managed.

(d) Recovery of positive acquisition adjustments.

(1) For utility plant, property, and equipment acquired by a utility from another retail public utility as a sale, merger, etc. of utility service area for which an application for approval of sale has been filed with the commission on or after September 1, 1997, and that sale application closed thereafter, a positive acquisition adjustment will be allowed to the extent that the acquiring utility proves that:

(A) the property is used and useful in providing water or sewer service at the time of the acquisition or as a result of the acquisition;

(B) reasonable, prudent, and timely investments will be made if required to bring the system into compliance with all applicable rules and regulations;

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

(i) the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so that customers of the acquiring utility's other systems could receive higher quality or more reliable water or sewer service;

(ii) regionalization of retail public utilities (meaning a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service) was achieved; or

(iii) the acquiring system will become financially stable and technically sound as a result of the acquisition, or the system being acquired that is not financially stable and technically sound will become a part of a financially stable and technically sound utility;

(D) any and all transactions between the buyer and the seller entered into as a part or condition of the sale are fully disclosed to the executive director and were conducted at arm's length;

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

(F) in a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is where a stock transaction is followed by a transfer of assets in what is essentially a single sales transaction. A positive acquisition adjustment is allowed only in those cases where the multi-stage transaction was fully disclosed to the executive director in the application for approval of the initial stock sale. Any multi-stage sale occurring between September 1, 1997 and February 4, 1999 is exempt from the requirement for executive director notification at the time of the approval of the initial sale, but must provide such notification by April 5, 1999; and

(G) the rates charged by the acquiring utility to its preacquisition customers will not increase unreasonably because of the acquisition.

(2) The amount of the acquisition adjustment approved by the regulatory authority must be amortized using a straight line method over a period equal to the weighted average remaining useful life of the acquired plant, property, and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(3) The authorization for and the amount of an acquisition adjustment can only be determined as a part of a rate change application.

(4) The acquisition adjustment can only be included in rates as a part of a rate change application.

**§291.34. Alternative Rate Methods.**

(a) Alternative rate methods. To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities. The executive director may prescribe modified rate filing packages for these alternate methods of establishing rates.

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

(1) The proposed effective date of the single issue rate change request must be within 24 months of the effective date of the last rate change request in which a complete rate change application was filed.

(2) The change in rates is limited to those amounts necessary to recover the increase in the specific cost component and the increase will be allocated to the rate structure in the same manner as in the previous rate change.

(3) The scope of a single issue rate proceeding is limited to the single issue prompting a change in rates. For capital items this includes depreciation and return determined using the rate of return established in the prior rate change proceeding.

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

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

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

(1) A utility may request to use the phased or multi-step rate method:

(A) to include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with commission regulations in the utility's rate base and operating expenses in the revenue requirement when facilities are placed in service;

(B) to provide additional construction funds after major milestones are met;

(C) to provide assurance to a lender that rates will be immediately increased when facilities are placed in service;

(D) to allow a utility to move to metered rates from unmetered rates as soon as meters can be installed at all service connections;

(E) to phase in increased rates when a utility has been acquired by another utility with higher rates;

(F) to phase in rates when a utility with multiple rate schedules is making the transition to a system-wide rate structure; or

(G) when requested by the utility.

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

(3) Unless otherwise specified in the commission order, the next phase or step cannot be implemented without verification of completion of each step by a licensed professional engineer, agency inspector, or agency subcontractor.

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

(A) refund or credit the overage to the customers in a lump sum; or

(B) retain the excess to cover shortages on later phases of the project. Any revenues retained but not needed for later phases must be proportioned and refunded to the customers at the end of the project with interest paid at the rate on deposits.

(5) The original notice to customers must include the proposed phased or multi-step rate change and informational notice must be provided to customers and the executive director 30 days prior to the implementation of each step.

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

(A) the utility can prove financial hardship; or

(B) the utility is willing to void the next steps of the phase-in rate structure and undergo a full cost of service analysis.

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

(1) A utility may request to use the cash needs method of setting rates if:

(A) the utility is a nonprofit corporation controlled by individuals who are customers and who represent a majority of the customers; or

(B) the utility can demonstrate that use of the cash needs basis:

(i) is necessary to preserve the financial integrity of the utility;

(ii) will enable it to develop the necessary financial, managerial, and technical capacity of the utility; and

(iii) will result in higher quality and more reliable utility service for customers.

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

(A) Allowable operating and maintenance expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable operations and maintenance expenses and they must be based on the utility's historical test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.

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

(C) Debt service costs. Debt service costs are cash outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve

account in escrow or as required by the commission, Texas Water Development Board, or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:

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

(ii) prospective loans to be executed after the new rates are effective.

Any pre-commitments, amortization schedules, or other documentation from the financial institution pertaining to the prospective loan must be presented for consideration.

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

(E) Cash reserve account. A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, must be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the executive director. The

utility shall account for these funds separately and report to the commission as required by the executive director. Unless the utility requests an exception in writing and the exception is explicitly allowed by the executive director in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund accompanied by a written explanation that explains the method used to calculate the amounts to be refunded. Each customer must receive the same refund amount. These reserves are not for the personal use of the management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the executive director.

(3) If the revenues collected exceed the actual cost of service, defined in paragraph (2) of this subsection, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in paragraph (2)(D) of this subsection and are subject to the same restrictions.

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

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

**§291.35. Jurisdiction of Commission over Certain Water or Sewer Supply Corporations.**

(a) Notwithstanding any other law, the commission has the same jurisdiction over a water supply or sewer service corporation that the commission has under this chapter over a water and sewer utility if the commission finds, after notice and opportunity for hearing, that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Texas Water Code (TWC), §67.007; or

(2) is operating in a manner that does not comply with the requirements for classification as a nonprofit water supply or sewer service corporation prescribed by TWC, §13.002(11) and (24).

(b) The commission's jurisdiction provided by this section ends if:

(1) the water supply or sewer service corporation voluntarily converts to a special utility district operating under TWC, Chapter 65;

(2) the time period specified in the commission order expires; or

(3) the water supply or sewer service corporation demonstrates that for the past 24 consecutive months it has conducted annual meetings as required by TWC, §67.007 and has operated in a manner that complies with the requirements for membership and nonprofit organizations as outlined in TWC, §13.002(11) and (24).

**SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION**

**§291.81**

**STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.102, which provides the commission the general powers to carry out duties under the TWC; and TWC, §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, also 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.

The adopted amendment implements TWC, §§5.102, 5.103, 13.041, 13.187, 13.004, 13.145(b); and §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001.

**§291.81. Customer Relations.**

- (a) Information to customers.

(1) Upon receipt of a request for service or service transfer, the utility shall fully inform the service applicant or customer of the cost of initiating or transferring service. The utility shall clearly inform the service applicant which service initiation costs will be borne by the utility and which costs are to be paid by the service applicant. The utility shall inform the service applicant if any cost information is estimated. Also see §291.85 of this title (relating to Response to Requests for Service by a Retail Public Utility Within Its Certificated Area).

(2) The utility shall notify each service applicant or customer who is required to have a customer service inspection performed. This notification must be in writing and include the applicant's or customer's right to get a second customer service inspection performed by a qualified inspector at their expense and their right to use the least expensive backflow prevention assembly acceptable under §290.44(h) of this title (relating to Water Distribution) if such is required. The utility shall ensure that the customer or service applicant receives a copy of the completed and signed customer service inspection form and information related to thermal expansion problems that may be created if a backflow prevention assembly or device is installed.

(3) Upon request, the utility shall provide the customer or service applicant with a free copy of the applicable rate schedule from its approved tariff. A complete copy of the utility's approved tariff must be available at its local office for review by a customer or service applicant upon request.

(4) Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants,

etc.) must be labeled to indicate the size, design capacity, and any pertinent information that will accurately describe the utility's facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and must be available for commission inspection during normal working hours.

(5) Each utility shall maintain a current copy of the commission's substantive rules of this chapter at each office location and make them available for customer inspection during normal working hours.

(6) Each water utility shall maintain a current copy of Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems), at each office location and make them available for customer inspection during normal working hours.

(b) Customer complaints. Customer complaints are also addressed in §291.82 of this title (relating to Resolution of Disputes).

(1) Upon receipt of a complaint from a customer or service applicant, either in person, by letter or by telephone, the utility shall promptly conduct an investigation and report its finding(s) to the complainant.

(2) In the event the complainant is dissatisfied with the utility's report, the utility shall advise the complainant of recourse through the Texas Commission on Environmental Quality complaint

process, and that such process can be initiated by contacting the Consumer Assistance Coordinator, Water Supply Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. The commission encourages all complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(3) Each utility shall make an initial response to the executive director within 15 days of receipt of a complaint from the commission on behalf of a customer or service applicant. The commission or the executive director may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission or the executive director may require continuation or restoration of service.

(4) The utility shall keep a record of all complaints for a period of two years following the final settlement of each complaint. The record of complaint must include the name and address of the complainant, the date the complaint was received by the utility, a description of the nature of the complaint, and the adjustment or disposition of the complaint.

(c) Telephone number. For each of the systems it operates, the utility shall maintain and note on the customer's monthly bill either a local or toll free telephone number (or numbers) to which a customer can direct questions about their utility service.

(d) Local office.

(1) Unless otherwise authorized by the executive director in response to a written request, each utility shall have an office in the county or immediate area (within 20 miles) of a portion of its utility service area in which it keeps all books, records, tariffs, and memoranda required by the commission.

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

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

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

(3) Upon request by the utility, the requirement for a local office may be waived by the executive director if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers. Unless otherwise authorized by the executive director in response to a written request, such utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where applications for service can be submitted and

payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title.