

The Texas Commission on Environmental Quality (commission) proposes amendments to §§291.8, 291.15, 291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34, and 291.81. The commission also proposes to add new §291.35.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 proposes to amend §291.28 based upon concerns expressed by utility customers about the recovery of rate case expenses.

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

The commission proposes to amend §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 proposes 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 proposes to amend §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 proposes to amend subsection (n) to correspond with the amendment to subsection (o).

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

The commission proposes to amend §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 proposes to delete "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 proposes these amendments to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

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

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

The commission proposes to amend §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 proposes this change to implement the amendment by SB 1063 to §10.08(a), Chapter 966, Acts of the 77th Legislature, 2001.

The commission proposes to amend §291.28(4) by adding the words “cost or” before the word “expenses” at the end of the paragraph. The commission proposes this amendment to implement HB 2301. Additionally, the commission proposes to add §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 proposed 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 proposes to amend §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 proposes this amendment to implement the change to §10.08, Chapter 966, Acts of the 77th Legislature, 2001.

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

The commission solicits comments on the specific criteria appropriate for ascertaining costs to be added to the historical test year expenses as known and measurable.

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

The commission proposes to add 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 proposes this amendment to implement TWC, §13.004, as added by the 79th Legislature.

Subchapter E, Customer Service and Protection

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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for

the agency or any other unit of state or local government. The proposed rules in general would affect investor-owned water and sewer utilities and nonprofit water supply or sewer service corporations.

The proposed rules implement HB 1358, HB 2301, and SB 1063, 79th Legislature, 2005. The proposed rules also amend provisions relating to when a utility may recover rate case expenses, including attorney fees and expert witness fees, incurred as the result of a water utility rate change application.

HB 1358

The proposed rules provide that the commission has the same jurisdiction over a nonprofit water or sewer supply corporation that it has over investor-owned water and sewer utilities if the commission finds that the utility is failing to conduct annual or special meetings in compliance with state law or is operating in a manner that does not comply with the requirements for classification as a nonprofit water supply or sewer service corporation. If the water supply or sewer service corporation voluntarily converts to a special utility district, however, the commission's jurisdiction would end. These provisions are not expected to result in a significant increase in workload for the agency as it is assumed that utilities would generally be in compliance with state law and regulations.

HB 2301

The proposed rules clarify that the commission may disallow unsupported costs if a utility fails to timely provide documentation or other evidence to support the costs shown in a rate application. This clarification is not expected to result in any fiscal implications for the agency or affected utilities.

SB 1063

Any public utility that provided utility service in only 24 counties on January 1, 2003, is exempt from various business and rate provisions in the TWC. SB 1063 amended these provisions. The proposed rules would require all investor-owned utilities to operate under a single regulatory scheme with the exception of a single tariff system. One investor-owned utility would still be able to continue collecting a universal rate while all other utilities would be required to establish regional rates. As part of the proposed changes, the effective date for the proposed rate change for this utility would now be at least 60 days after the rate change application and notice are received and declared administratively complete by the commission instead of the current time frame of 30 days.

Rate Case Expenses

Finally, the proposed rules would provide that a utility may recover rate case expenses, including attorney and expert witness fees, incurred as a result of a rate change application if the expenses are reasonable and necessary, but under certain conditions, the amount of expenses collected by the utility may be reduced or eliminated.

Currently, utilities may recover rate case expenses if the commission determines that the expenses are reasonable and necessary. The proposed rules would reduce the amount of the rate case expenses paid to utilities by ratepayers if the increase in revenue generated by the determined rate is less than 51% of the increase in revenue that would have been generated by the proposed rate. In addition, utilities would not be able to recover rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the determined rate is less than or equal to the revenue

that would have been generated by the settlement offer. These provisions are intended to provide an incentive for settlement negotiations between the utilities and ratepayers, and may reduce the amount of rate case expenses paid to utilities if it is determined that the rate request was too high. Based upon previous years, the commission has two or three contested case rate hearings each year. The proposed rules may reduce the number of contested case hearings and if so, may reduce the costs associated with these hearings, though in general any cost savings are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and greater clarity in rules relating to rate cases.

In general, no significant fiscal implications are anticipated for affected water or sewer supply corporations, investor-owned utilities, or ratepayers as a result of the administration or enforcement of the proposed rules. There are approximately 700 investor-owned utilities and 800 water or sewer service corporations in Texas.

HB 1358

The proposed rules provide that the commission has the same jurisdiction over nonprofit water or sewer supply corporations that it has over investor-owned water and sewer utilities if the commission finds that the water or sewer supply corporation is failing to operate or conduct business in a manner inconsistent with state laws or rules. It is assumed that water or sewer supply corporations will comply

with state law and all other requirements and therefore no significant fiscal implications are anticipated. However, if the commission finds otherwise, and a water or sewer supply corporation does fall under the commission's jurisdiction, then any such utility wishing to file an application to change rates may be subject to additional legal costs if their application is protested. In addition, their rate change request may be denied.

SB 1063

The proposed rules would require all investor-owned utilities to operate under a single regulatory scheme with the exception of a single tariff system. This proposed change is expected to affect one investor-owned utility and would provide that for cases involving rate changes, the effective date for the proposed rate change must be at least 60 days after the application and notice are received and declared administratively complete by the commission or the date the notice is delivered to each ratepayer, whichever is later. Currently, the time frame is 30 days for the one utility. The proposed changes would lengthen the effective date of any rate change by 30 days thereby delaying any increase in revenues obtained from the rate change. The proposed rules also allow the same utility to continue collecting a universal rate while other utilities would be required to establish regional rates. These changes are not expected to result in significant fiscal implications for the utility.

Rate Case Expenses

The proposed rules would allow for the reduction or elimination of expenses paid to utilities for contested case hearing rate cases under certain conditions. Based upon previous years, the commission has two or three contested case rate hearings each year. Rate case expenses, including attorney and

expert witness fees, are estimated to be between \$30,000 and \$70,000 for each case. Any future rate hearing expenses for utilities or cost savings for ratepayers would depend upon the outcome of the contested case rate hearings.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for investor-owned utilities or water or sewer supply corporations that are small or micro-businesses as a result of the proposed rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking 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 proposed 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 proposed changes are intended to impact only the economic and administrative regulation of water and sewer utilities. The proposed rules are not intended to have any impact on environmental regulation. Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The proposed 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 proposed rules will not be adopted solely under the general powers of the commission.

Based on the foregoing, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225. The commission invites public comment on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a takings pursuant to Texas Government Code, Chapter 2007. The intent of the proposed 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 proposed rules will constitute neither a statutory nor a constitutional taking of private real property. The proposed 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 proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed 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 proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on May 4, 2006, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-061-291-PR. Comments must be received by 5:00 p.m. on May

15, 2006. Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Doug Holcomb, Utilities and Districts Section, at (512) 239-4691.

SUBCHAPTER A: GENERAL PROVISIONS

§291.8, §291.15

STATUTORY AUTHORITY

The amendments are proposed 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 proposed 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) (No change.)

(b) In cases involving proposed rate changes, the effective date of the proposed change must be at least 60 days [or 30 days for a utility that provided service in only 24 counties on January 1, 2003] after:

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

(c) (No change.)

§291.15. Notice of Wholesale Water Supply Contract.

(a) (No change.)

(b) The submission must include:

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

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

(10) (No change.)

(c) (No change.)

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 are proposed 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 proposed 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) - (i) (No change.)

(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 [CCN] number and in which counties or cities it is effective.

(k) - (m) (No change.)

(n) Regional rates. [Except as otherwise provided in subsection (o) of this section, the] 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 [Subsections] (m) [and (n)] of this section does [do] not apply to a utility that provided service in only 24 counties on January 1, 2003. [,]

§291.22. Notice of Intent To Change Rates.

(a) Administrative requirements. In order to change rates, which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and

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

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

(b) (No change.)

(c) Notice delivery requirements. Notices may be mailed separately or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed or hand delivered to the customers at least 60 days prior to the effective date of the rate increase. [A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.]

(d) Notice and statement of intent. The applicant utility shall mail or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change. [A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.] If the utility is requesting a rate change from the

commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(e) Proof of notice. Proof of notice in the form of an affidavit stating that proper notice was mailed to customers and affected municipalities and stating the dates of such mailing, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date. [A utility that provided service in only 24 counties on January 1, 2003 is required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date.]

(f) - (h) (No change.)

§291.24. Jurisdiction over Affiliated Interests.

(a) (No change.)

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

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

§291.26. Suspension of Rates.

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

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

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

The commission may conduct a public hearing on any application.

(1) If, before the 91st day after the effective date of the rate change [or the 61st day for a utility serving in 24 counties on January 21, 2003], the commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing. If after hearing, the commission finds the rates currently being charged or

those proposed to be charged are unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.

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

(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 [nonsupported] expenses.

(5) - (6) (No change.)

(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) - (b) (No change.)

(c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate. [This provision does not apply to a utility that provided service in only 24 counties on January 1, 2003.]

(d) - (j) (No change.)

[(k) If the commission or judge establishes interim rates or an escrow account in a proceeding under Texas Water Code, §13.187 for a utility that provided service in only 24 counties on January 1, 2003, the commission shall make a final determination on the rates within 335 days after the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility in its application.]

§291.31. Cost of Service.

(a) (No change.)

(b) Allowable expenses. Only those expenses that 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) (No change.)

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

(A) - (H) (No change.)

(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) (No change.)

(ii) a wholesale supply of surface water is available_ [; and]

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

(c) - (d) (No change.)

§291.34. Alternative Rate Methods.

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

(b) - (d) (No change.)

§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 utility 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 proposed 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 proposed 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) - (c) (No change.)

(d) Local office.

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

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

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