

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§291.160 - 291.162.

Sections 291.161 and 291.162 are adopted with changes to the proposed text as published in the August 28, 2009, issue of the *Texas Register* (34TexReg 5882). Section 291.160 is adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In 2009, the 81st Legislature passed Senate Bill (SB) 361, relating to the requirement that certain water service providers ensure emergency operations during an extended power outage. SB 361 amends Texas Water Code (TWC), Chapter 13, by adding §13.1395, Standards of Emergency Operation, and §13.1396, Coordination of Emergency Operations. TWC, §13.1395, requires that affected utilities prepare an emergency preparedness plan (EPP) that shows that the utility has the ability to provide emergency operations and submit that plan to the commission. TWC, §13.1396, outlines the coordination efforts among an affected utility, its county judge, and its office of emergency management as well as each retail electric provider that sells electric power to an affected utility and each electric utility that provides transmission and distribution service to an affected utility.

TWC, §13.1395, provides that a water service provider may use the commission's template to develop its EPP and must include one of eight means for maintaining 35 pounds per square inch (psi) of pressure during power outages that last longer than 24 hours as soon as it is safe and practicable following natural disasters. The statute also specifies that the commission has 90 days once the plan is submitted to review the plan and either approve it or recommend changes. Once the commission approves the plan, the water

service provider must operate in accordance with its plan and maintain any generators in accordance with manufacturer's specifications. TWC, §13.1395, also specifies that the commission will conduct inspections to ensure compliance and that waivers to these requirements are available under certain circumstances. Additionally, these additions to the TWC made by SB 361 give the commission the authority to regulate water service providers that have not previously been regulated by the TCEQ.

SB 361, Section 2(c), requires that each affected utility submit to the commission its EPP required by TWC, §13.1395, no later than March 1, 2010.

In its proposal the commission solicited comments on the appropriate sources and year of population data to determine the counties to which this rule applies. Further, the commission solicited comments on which counties adjacent to Harris County would be subject to this adopted rule. As discussed in the RESPONSE TO COMMENT section of this preamble, the commission received comments on the appropriate sources and year of data population as well as which counties adjacent to Harris County would be subject to this rulemaking from Lloyd Gosselink on behalf of San Jacinto River Authority (SJRA) and Schwartz, Page & Harding, L.L.P., (SPH) on behalf of its clients.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts amendments to 30 TAC Chapter 290, Public Drinking Water.

SECTION BY SECTION DISCUSSION

The commission adds new Subchapter L, Standards of Emergency Operations, including §§291.160 - 291.162, to include the requirements to implement TWC, §13.1395, as amended by SB 361.

The commission adopts new §291.160, Purpose, to give the purpose of the standards of emergency operations and to inform public water systems that they must comply with requirements for emergency operation in Chapter 290, Subchapter D.

The commission adopts new §291.161, Definitions, to add definitions necessary to implement TWC, §13.1395, as amended by SB 361. The commission adopts the definition of "affected utility" in §291.161(1) as providers or conveyors of potable or raw water service which furnish more than one customer and are located in counties with specific population and location criteria. The commission adopts the definition of "emergency operations" in §291.161(2) as maintaining pressure during 24-hour or longer power outages. The commission adopts the definition of "extended power outage" in §291.161(3) as a power outage lasting more than 24 hours. In response to comment, the commission adopts the definition of "population" in §291.161(4) as the population according to the most recent federal decennial census, which is a change to the proposed text.

The commission adopts new §291.162, Emergency Operation of an Affected Utility, to define the specific requirements of emergency operation plans including the contents, submission, implementation, revision, enforcement, waivers, and extensions. In response to comments, the commission adopts new §291.162(a) with changes to the proposed text to: 1) remove the proposed flow requirements included in the proposed text as the commission decided that the flow rate for maintaining 35 psi would be better defined in its shell form, TCEQ Form Number 20536; and 2) to require an affected utility to adopt and submit an EPP to the executive director. The commission adopts new §291.162(b) to require the executive director to review the plans within 90 days of receipt. The commission adopts new §291.162(c) to list the eight

options in TWC, §13.1395(c). The commission adopts new §291.162(d) to require that providers of surface water to wholesale customers include in their EPP provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each facility necessary to provide water to its wholesale customers. The commission adopts new §291.162(e) to allow the affected utility to use the plan template in §290.47(j), Appendix J. The commission adopts new §291.162(f) to require that the emergency generator be operated and maintained according to the manufacturer's specifications. The commission adopts new §291.162(g) to allow the executive director the ability to grant waivers for significant financial burden. The commission adopts new §291.162(h) to allow the affected utility to adopt and enforce limitations on water use during emergency operations. The commission adopts new §291.162(i) to allow the information submitted under this subchapter to remain confidential as allowed by TWC, §13.1395(1). The commission adopts new §291.162(j) to require EPPs for affected utilities that exist on December 1, 2009 to be submitted to the executive director no later than March 1, 2010. The commission adopts new §291.162(k) to require affected utilities created after the effective date of this rule to have an approved EPP before providing water to customers. The commission adopts new §291.162(l) to allow an affected utility to file a written request for an extension with the executive director. The commission adopts new §291.162(m) to allow the executive director to require a revised EPP under certain circumstances. These new provisions are required to implement TWC, §13.1395, as amended by SB 361.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined by that statute. A "major environmental rule" means a rule the

specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of this rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to require certain water utilities, providers, and conveyors to have EPPs for maintaining water pressure following a disruption in service caused by a natural disaster. These rules are not required by federal regulations.

This rulemaking sets out to clarify who the affected utilities are and how they may comply with the requirements. The adopted rules require water utilities, providers, and conveyors of potable or raw water to submit for commission approval EPPs demonstrating how they can maintain 35 psi following a natural disaster that causes an extended power outage, while providing for waivers for those who can show that the requirement would result in a significant financial burden to its customers.

Further, this rulemaking does not meet the statutory definition of a "major environmental rule" because the adopted rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole; therefore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). This section only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for treatment of water used in public water systems and is specifically required by state law; 2) does not exceed the requirements of state law under TWC, Chapter 13, Subchapter E; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program on treatment of water used in public water systems, but rather is adopted to be consistent with state law in order to ensure that emergency operations of water systems are commenced as soon as safe and practicable following the occurrence of a natural disaster; and 4) is not adopted solely under the general powers of the agency, but rather specifically under TWC, §13.041, which allows the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an analysis of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these adopted rules is to implement certain recently enacted legislation relating to the emergency preparedness of affected utilities. The adopted rules require an "affected utility" that is located within a county with a population of 3.3 million or more, or a county with a population of 400,000 or more that is adjacent to a county with a population of 3.3 million or more, to comply with emergency operations (SB 361). This rulemaking substantially advances this stated purpose by making the commission's rules consistent with the new statutory language. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this action does not affect private real property.

Promulgation and enforcement of these adopted rules will constitute neither a statutory nor a constitutional taking of private real property. The adopted regulations 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 the owner's right to property. More specifically, these rules implement legislation addressing the adoption of EPPs by "affected utilities" (SB 361). These provisions do not impose any burdens or restrictions on private real property. Therefore, the adopted rules 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 the 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). The specific intent of the adopted rules is to amend the rules to be consistent with recent legislative enactments (SB 361) to address the submission and review of EPPs by affected utilities, which is a procedural mechanism and is administrative in nature. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the consistency of this rulemaking with the coastal management program.

PUBLIC COMMENT

The commission held two public hearings for this rule on September 21, 2009 and September 22, 2009 in Harris County, Texas. The comment period closed September 28, 2009.

At the public hearings the commission received oral comments from Representative Bill Callegari; Bacon and Wallace, L.L.P., on behalf of its clients (Bacon & Wallace); the City of Baytown (Baytown); the City of Houston (Houston); Costello Engineers (Costello); Jacobs Engineering (Jacobs Engineering); Roy Moffitt Customized Fuel (Roy Moffitt); and Patrick F. Timmons, Jr., attorney at law, on behalf of HMW Special Utility District (HMW).

The commission received written comments from Allen Boone Humphries Robinson, L.L.P. (ABHR); Baytown; the City of Richmond (Richmond); the City of Sugar Land (Sugar Land); Dow Chemical Company (Dow); Houston; HMW; Jones and Carter (J&C); North Harris County Regional Water Authority (NHCRWA); Pate Engineers, Inc. (Pate); Roy Patricia Investments (RPI); SJRA: Southwest Water Company (Southwest); and SPH.

Richmond did not support the rulemaking. All other commenters generally supported the rulemaking; however, some commenters provided suggested language as discussed in the RESPONSE TO COMMENTS section.

RESPONSE TO COMMENTS

During his oral comments, Representative Callegari stated that the intent of the bill was to include Harris and Fort Bend Counties, and not to affect Montgomery County. He stated that the legislative process did not allow representatives to name particular counties that a bill affects; therefore, the bill was drafted to include these two counties based on population brackets. The legislative counsel's data showed that the population for Montgomery County was less than 400,000 at the time the bill was drafted. The bill was not intended to apply to Montgomery County, even if the population exceeded the threshold in the future. He stated this would be corrected in future legislation. Jacobs Engineering asked why the bill only affected Fort Bend and Harris Counties. SJRA and SPH commented that the proposed rules' population figures should be based on the most recent federal decennial census, which is the Year 2000 Census. SJRA and SPH further noted that the Code Construction Act defines "population" to mean "the population shown by the most recent federal decennial census" (see Texas Government Code, §311.005(3)). SJRA requested that the commission clarify that the term "population" is to be interpreted

in accordance with the Code Construction Act. Finally, SJRA noted that SB 361 applies to Harris County, but not to any other county, because, pursuant to the Year 2000 Census, no other county adjacent to Harris County had a population of "400,000 or more." SPH recommended that the commission remove Fort Bend County from its proposed rules until such time as that county officially crosses the population threshold contained in SB 361.

The commission agrees with SJRA and SPH's comment regarding the use of the term "population" as it applies to SB 361 because the legislation did not specifically require a different definition of "population." Therefore, absent express statutory language, the commission must follow the definition contained in the Code Construction Act. Based on the Year 2000 Census this rule applies only to Harris County and not to any other county, as no county adjacent to Harris County had a population of at least 400,000 in the Year 2000 Census. In response to comment, the commission added a definition for the term "population" in §291.161. It is the intent of the commission that this definition apply to the implementation of TWC, §13.1395 and not apply to "population" as that word is used elsewhere in Chapters 290 and 291, other than Chapter 291, Subchapter L, Standards of Emergency Operations.

HMW requested clarification on whether the commission will have a mechanism to notify affected utilities in Montgomery County of when they become subject to these regulations.

The commission responds that counties can identify themselves as being subject to this rule by consulting the most recent federal decennial census data. No changes were made in response to this comment.

HMW submitted a written comment on what mechanism the TCEQ will use to determine the future dates on which Montgomery County, and all other counties adjacent to Harris County, will become subject to the new statute's implementing rules. ABHR commented that the rule should be revised to clarify that water systems that become affected utilities after December 1, 2009 have a review time of 90 calendar days following the submission of its EPP.

As future decennial data become available, systems in adjacent counties will automatically fall under the requirements of these rules, and there will be a 90-day review period following submission of an EPP to the commission. Section 291.162(k) requires affected utilities established after the effective date of this rule to have EPPs approved and implemented prior to beginning construction; further, §291.162(b) includes a 90-day review time frame for water providers that become affected utilities after December 1, 2009. Existing water providers that become affected utilities due to population changes are not addressed within SB 361. At such time that the legislature clarifies future applicability parameters, the commission will respond accordingly. The commission made no change in response to this comment as Chapters 290 and 291 already include a 90-day review time frame for water providers that become affected utilities after December 1, 2009.

Representative Callegari stated that the intent of SB 361 was that water systems in other counties that provide water to Harris County were affected utilities. Baytown wanted to know whether its Chambers County station, which provides water to Harris County, was subject to SB 361. Baytown further commented that the proposed rules did not appear to apply to raw water sources outside of Harris and

Fort Bend Counties. Baytown commented that without this supply, the requirement of emergency power within those counties was essentially useless, because systems within Harris and Fort Bend Counties would have no water to treat. J&C requested clarification on whether a water provider located outside the applicable counties and providing service to those counties is considered an affected utility. ABHR commented that it supported Representative Callegari's position that SB 361 applies to water providers outside of Harris County providing water service to customers within those counties. ABHR requested the commission's clarification that the rules would apply only to such a system's facilities serving customers in Harris and Fort Bend Counties, but not to its entire system.

The commission responds that the rule only applies within counties that meet the population brackets set out in the statute and as defined by the Code Construction Act, Texas Government Code, §311.005(3). Based on the Year 2000 Census this rule applies only to Harris County and not to any other county, as no county adjacent to Harris County had a population of at least 400,000 in the Year 2000 Census. The commission's rule is intended to apply to affected utilities whose facilities and more than one customer are located within the bracketed counties. The adopted rules require water service providers that meet the definition of an affected utility to submit an EPP to the commission. Water service providers that are located in counties that do not fall within the population brackets are not required to submit EPPs under the provisions of SB 361. The commission made no changes in response to this comment.

Dow commented that the definition of affected utility is ambiguous and should be clarified. Dow further commented that the definition of retail public utility and customer are defined in §291.1, but these and other terms are not referenced in the definition of affected utility found in §290.38. Dow recommended

that the definition exempt noncommunity water systems from the amendments, as there is no impact to the community.

The commission responds that the definition of affected utility was taken from the language contained in SB 361. SB 361 affects noncommunity systems, and therefore, the commission does not have the authority to exempt those systems from this bill's requirements. In addition, the commission does not have the authority to revise the statutory language. However, one of the eight options in the EPP allows an affected utility to use any other alternative that is determined by the commission to be acceptable. In response to this comment, the commission amended §290.38(1) to incorporate by reference the Chapter 291 definitions not found elsewhere in Chapter 290 and renumbered the subsequent paragraphs accordingly.

SJRA requested clarification on whether the rule applies to wholesale raw water providers. Further, SJRA commented that the fiscal note did not discuss the financial impact of this rule on wholesale raw water providers. SJRA commented that the proposed rules should be defined to apply only to public water systems as defined in Subchapter D to include only those systems providing potable water services and the proposed rules under Chapter 291 should be interpreted to apply only to water utilities as defined in Chapter 291 to include only utilities providing potable water.

The commission responds that the language contained in SB 361, which amended TWC, §13.1395(a)(1) to define an affected utility as "a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water to more than one customer," included raw water service in its definition. The intent of SB 361 was to regulate, among others,

wholesale raw water providers to ensure that retail public utilities have sufficient water supplies during a natural disaster to ensure service is provided during emergency operations. The commission concurs that it did not specifically address impacts to wholesale raw water providers in its fiscal note. According to the water utilities database (WUD) (the commission's database of record for utilities, districts, and public water systems), no wholesale raw water providers were identified in Harris County. However, the commission has since conducted a fiscal analysis of the rule's impact to wholesale raw water providers and the amended fiscal note provided, in part as follows: "The proposed rules are not expected to have a significant fiscal impact on governmental entities that own or operate public water systems, but governmental entities that are raw water wholesalers could see costs increase significantly as a result of the proposed rules ... The proposed rules will require local governments in Harris County that wholesale raw water to more than one customer to prepare an EPP ensuring operation of their water systems at 35 psi during an extended power outage by one of the following options: automatically starting auxiliary generators or on-site electrical generation ... If ... governmental entities are able to enter into a mutual aid agreement, they should not experience any significant cost increases as a result of the proposed rules ... If these raw water wholesalers purchase generators to comply with EPP provisions, each of their pump stations will need to be evaluated separately to determine specific generator requirements. Staff estimates that the purchase and installation of emergency generators will cost these governmental entities approximately \$25,000 per million gallons per day (MGD) of raw water delivered. The average daily production of these governmental entities may be as much as 500 MGD from a single pump station, with a maximum pumping capacity of one billion gallons per day. At 500 MGD, raw water wholesalers could spend at a minimum \$12.5 million to purchase and install generators, which would have a significant fiscal impact on their operations ... Consumers of public water

utilities or raw water could see rates increase, which may be significant if raw water wholesalers have to recoup their generator costs. In return, consumers are expected to experience more rapid deployment of water services in emergency situations ... In general no significant fiscal impacts are anticipated for businesses or individuals as a result of the proposed rules unless they purchase water from an affected raw water wholesaler. Those that purchase water from a raw water wholesaler that must install emergency generators could see a significant increase in costs." No change was made in response to this comment.

SJRA commented that failure to include a fiscal note on wholesale raw water providers is a violation of the Administrative Procedure Act (see Texas Government Code, §2001.024(4)).

The commission respectfully disagrees that it has violated the Administrative Procedure Act, Texas Government Code, §2001.024(4), by not addressing wholesale raw water providers. The commission did address the additional estimated cost to state and local governments as a result of administering this rule. Although the estimate may not have included every possible local entity, it nevertheless did address state and local impacts. Moreover, the commission's water utilities database lists no wholesale raw water providers in Harris County. Accordingly, the commission did not have data to analyze whether these local entities may have been impacted. No change was made in response to this comment.

SJRA stated that if the commission intended to regulate wholesale raw water providers, then the rule needs to be amended to clarify this intent. SJRA cited specific sections that the commission might need to amend.

The commission responds that §291.161(1) applies to an affected utility that does not meet the definition of a public water system. The commission further responds that the language contained in SB 361, which added TWC, §13.1395(a)(1), defined an affected utility as "a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water to more than one customer," included raw water service in its definition to capture any affected utilities that are not public water systems. No change was made in response to these comments.

SJRA commented that wholesale raw water service providers should not be required to maintain a minimum of 35 psi throughout their systems during emergency or normal operations and requests the commission's clarification on this issue.

The commission disagrees that the 35 psi requirement does not apply to raw water providers, as the definition of "emergency operations" includes the requirement to maintain 35 psi. An affected utility is required to submit an EPP that demonstrates its ability to provide emergency operations (TWC, §13.1395(b)(2)). "Emergency operations" is defined to include the operation of a water system during an extended power outage at a minimum water pressure of 35 psi (TWC, §13.1395(a)(2)). Accordingly, all affected utilities are required to maintain 35 psi. However, SB 361 also provides for waivers to systems for which the implementation would be a significant financial burden on its customers. No change has been made in response to this comment.

SJRA commented that the March 1, 2010 deadline, set out in §290.39(o)(1) for submitting EPPs, is only applicable to public water systems, and suggests giving a raw water provider a 12-month deadline from

rule adoption to submit such plans to the TCEQ.

The commission agrees that the March 1, 2010 deadline in §290.39(o)(1) specifically applies only to public water systems. However, Chapter 291 requires affected utilities that exist as of December 1, 2009, to submit an EPP to the executive director no later than March 1, 2010 (§291.162(j)). These deadlines are consistent with SB 361, which provides that each affected utility shall submit its EPP to the TCEQ no later than March 1, 2010. An affected utility may also request an extension to this deadline, not to exceed 90 days. No changes were made in response to this comment.

SJRA requests clarification that the proposed rules under Chapters 290 and 291 do not apply to the wholesale provision of raw water for industrial purposes.

The commission agrees that the proposed rules do not apply to the wholesale provision of raw water for industrial purposes. No changes were made in response to this comment.

SJRA commented that the fiscal note included in the notice package significantly underestimates the financial burden on many affected utilities by concluding that "the cost increases are not expected to be significant." SJRA noted that even if an affected utility obtains backup generators through a mutual aid agreement, regulated entities will need to spend significant financial resources in evaluating and planning for such needs, addressing transactional costs in developing necessary agreements, and implementing the developed EPP.

The commission responds that existing §290.45 requires all public water systems with at least 250

connections that do not meet elevated storage requirements to have emergency power in place.

Therefore, the commission focused its analysis of financial impact on affected utilities having less than 250 connections. The commission only considered the cost of the generator and its maintenance costs and did not consider transactional and design costs. No change was made in response to this comment.

HMW and J&C commented that average daily demand (ADD) was not defined by the regulation. ABHR provided suggested language defining ADD. J&C suggested a new definition for Average Daily Emergency Demand (ADED).

The commission agrees that the ADD is not clearly defined. The commission previously defined ADD by reference to American Water Works Association's (AWWA) 2000 Drinking Water Dictionary. SB 361 did not contain a reference to ADD. In response to these comments, the commission agrees to define ADD in its shell form, TCEQ Form Number 20536, using the AWWA's 2000 Drinking Water Dictionary definition as this term was not presented during the proposal phase. No changes have been made in response to these comments.

J&C recommended revisions to the definition of "auxiliary power" and suggested a new definition for "re-pumping system."

The commission responds that the proposed additional language to the definition of "auxiliary power" is unnecessary because SB 361 requires an affected utility to maintain operation of the water system at a minimum water pressure of 35 psi; therefore, a wholesaler's responsibility will

end at the point of delivery to the purchasing water system. The commission declines to revise its definition of "auxiliary power" as SB 361 does not support this change. The commission further declines to add a new definition for "re-pumping system" as this definition is outside the scope of this rulemaking. Finally, because this term was not presented at the proposal phase, public comment was not sought on this proposed revision. No change was made in response to this comment.

J&C recommended revisions to proposed §290.39(c)(4)(B) and (o)(2), and §290.45(h)(4) (renumbered to §290.45(h)(2)) to include groundwater and to remove references to wholesale customers, and instead to include all customers, both wholesale and retail.

The commission declines to revise these sections as SB 361 does not support broadening the applicability to groundwater or including all customers. No change was made in response to this comment.

J&C proposed amending §290.45(a)(7) to allow an affected utility the option of maintaining 35 psi or the minimum pressure needed to supply a re-pumping station during a natural disaster. J&C further suggests that an affected utility be allowed to provide a justification regarding the pressure drop in lieu of the revised EPP.

The commission declines to revise §290.45(a)(7) as SB 361 requires affected utilities to maintain 35 psi during a natural disaster and as the commission is not empowered to revise TWC, §13.1395.

The commission concurs with the commenter's second suggestion and, in response to this comment,

amended §290.45(a)(7) to include the option of providing justification regarding pressure drop.

HMW and Houston commented that a flow rate of "the greater of the average daily demand or 0.35 gallons per minute per connection" was not required by the statute. Houston commented that 0.35 gallons per minute per connection was not a valid number for large systems, whose maximum demand may be lower than that. Also, water systems that implement water use restrictions during power outages should not be required to maintain 0.35 gallons per minute per connection. J&C recommended changes to water production requirements for community and noncommunity systems to include the use of ADD, based on winter month demands, and suggested revisions to §290.45(h)(1)(A - D), including addressing a typographical error by revising "plan" to "plane" in §290.45(h)(1)(D), and recommended the removal of §290.45(h)(2)(A - D). HMW noted that it would be difficult to determine what the ADD is, given that summer water demands would be greater than winter demands, and other issues also may affect ADD. ABHR commented that the ADD requirement should apply to community and noncommunity systems.

The commission responds that it concurs with the comments that a flow rate was not required by the statute. In response to these comments, the commission removed the flow requirements from Chapters 290 and 291 because upon further consideration the commission decided that the flow rate for maintaining 35 psi would be better defined in its shell form, TCEQ Form Number 20536. The commission also renumbered the subsequent paragraphs accordingly.

J&C suggested revising proposed §290.45(h)(3) to change the maintenance requirements for generators and right angle drives, to change "auxiliary generator" to "auxiliary power," and to clarify content of leasing and contracting agreements. J&C further suggested revising proposed §290.45(h)(5) to change

"generators" to "auxiliary power facilities."

The commission responds that the language in renumbered §290.45(h)(1)(A), (B), and (G) was taken directly from SB 361 and therefore the commission declines to make the suggested revisions. Further, the commission clarifies that mutual aid agreements may include multiple affected utilities' combination of resources, including but not limited to water plant facilities, generators, and fuel, providing that the affected utilities meet the requirements in §290.45(h). Additionally, the commission clarifies that 30 TAC Chapter 117, Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas, Division 1, Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources, as amended, would also apply. No changes have been made in response to these comments.

HMW, Baytown, ABHR, and Houston requested clarification on when the EPP should be fully implemented and whether "implement" means that an affected utility must only have an EPP approved, or fully implement the plan. They noted that the time needed to complete the plan may be affected by supply of generators, designing, funding, and constructing an emergency power system. Additionally, ABHR commented that the rule should be clear that the implementation period cannot be arbitrarily postponed by setting unnecessarily long timelines for design, installation, construction and/or financing of facilities. Further, Houston commented that the TCEQ's draft rules incorrectly interpreted the definition of implementation, and suggested that this should mean that an affected utility should begin to seek funding and commence the design by the implementation deadline of July 1, 2010, and complete the installation and construction without unreasonable delay. Baytown requested that its plan be allowed to include timelines and benchmarks to design, fund, and construct the components of its back up water supply

system. HMW generally supported Baytown and added that water systems should be allowed a reasonable amount of time to implement their EPP. Jacobs Engineering noted that implementation will take longer than March 1, 2010 - July 1, 2010 to have construction complete. Some generators take 13 weeks from the order date until delivery. Jacobs Engineering further remarked that the implementation also included designing the civil and electrical modifications to the water plants. Representative Callegari acknowledged that July 1, 2010, was too soon for complete implementation. Representative Callegari commented that the July 1, 2010 date was not intended to be so binding or demanding as to create a financial hardship on affected utilities. Further, Representative Callegari stated that SB 361 intended for the EPP to be turned in by the implementation date; that the bill was intended to provide guidelines.

The commission agrees that, for the purposes of this rule, "implement" means initiating actions required to comply with an approved EPP. EPPs should include a reasonable time frame for completion of implementation. Full compliance date will be determined on a case-by-case basis by the agency. In response to these comments, the commission has revised §290.47(j), Appendix J to include a requirement that affected utilities include their proposed time frame for full implementation of the EPP.

Baytown commented that, because it is a surface water treatment facility, it will be required to have permanently mounted, automatically starting generators, and cannot avail itself of the eight options available to other affected utilities. Baytown requested language to allow manually started generators when a facility is staffed 24 hours a day, as the restarting of emergency power has to be carefully carried out, with large motor loads that need to be sequenced to turn on the raw water pumps, and will require multiple generators of different voltages. Baytown further noted that it understood that it must do this for

its distribution system, but disagreed that it should be required to have automatically starting generators on raw water supply pumps, when there were staff on site 24 hours a day. Pate commented that they do not believe it was the intent of SB 361 to disallow manually started auxiliary generators to meet the requirements of SB 361. Pate further commented that a solution could be to add an additional option to the eight already existing options. The additional option would explicitly allow the use of a manually starting generator, instead of requiring a burdensome exception process.

The commission disagrees that the rule needs to be amended, because the rule captures the intent of the bill. Affected utilities that are not required to supply, provide, or convey surface water to wholesale customers will have eight options, which include automatically starting generators and any other option the commission finds acceptable. Affected utilities that furnish surface water to wholesale customers are limited to two options, automatically starting generators or distributive generation facilities. The commission clarifies that the rules do not disallow manually started auxiliary generators for affected utilities that are not required to supply, provide, or convey surface water to wholesale customers. Therefore, an exception would not be required for manually starting generators. The commission made no changes in response to these comments.

Baytown questioned whether commission wanted affected utilities to submit information on every motor load (chemical feed pumps, heating and cooling systems, etc.).

The commission agrees that submitting information on every motor load is not required. Affected utilities are only required to provide information on that equipment that is required for production, treatment, and distribution of water in order to maintain emergency operations. No changes were

made in response to this comment.

Roy Moffitt and RPI were concerned that the rule did not require a fuel supply management plan. Fuel has a short shelf life of around 12 months, so municipal utility districts (MUDs) should invest in a fuel service program. They further stated that the commission should have considered regulations that require: 1) an adequate amount of fuel storage (either bulk on site or third-party tank farm); 2) a fuel maintenance program with proof of service records; and 3) an emergency fuel service agreement. Additionally, RPI suggested that the fuel contingency plan include a minimum of 10 days run time.

The commission agrees fuel storage requirements are important. The proposed rule provides flexibility by allowing utilities the option of maintaining fuel on site, or making fuel readily available, to operate any required emergency power equipment during emergency operations. The adopted rules require an adequate amount of fuel be made available for systems that have emergency power equipment so that they can maintain emergency operations. However, the commission disagrees that it should regulate fuel storage under SB 361, as that bill does not require a fuel maintenance program with proof of service records or an emergency fuel service agreement. In its EPP the commission will require each affected utility to plan how it will continue to function following natural disasters lasting longer than 72 hours. The commission declines to make the commenters' change regarding the fuel storage requirement of 10 days without express authority from the legislature to do so. In response to these comments, the commission amended renumbered §290.45(h)(6) to replace the 72-hour fuel requirement with the amount of fuel necessary to maintain emergency operations. In addition, the commission amended §290.41(j), Appendix J, to require affected utilities to notify the commission of how they determine the quantity of fuel necessary, and

how they propose to continue maintaining emergency operations.

Houston stated the bill did not require 72 hours of fuel storage; it only required that affected utilities maintain power for 24 hours. Further, Houston commented that any increase in volume of fuel on site could trigger additional regulatory requirements such as spill prevention control and counter measure plans as listed in 40 Code of Federal Regulations Part 112 and 30 TAC Chapters 327 and 334. Southwest agreed that SB 361 did not include fuel requirements. Representative Callegari commented that there were two problems associated with fuel storage: ensuring sufficient quantity and preventing attendant problems with leakage and overflow. Sugar Land commented that the 72 hours of fuel storage requirements were not part of SB 361, were onerous, and would cause numerous operational issues and excessive, unnecessary costs. ABHR commented that the 72-hour fuel supply is not financially reasonable or practicable and instead suggested limiting the fuel storage requirement to a 48-hour period. Additionally, ABHR recommended requiring fuel storage only during to the Atlantic hurricane season, June 1 through November 30 of each year. Further, ABHR recommend that, when using natural gas, natural gas users not be required to maintain on-site storage fuel supplies. J&C recommended that the commission clarify that an affected utility may enter into a fuel supply agreement to meet the 72-hour fuel requirement and suggested revisions to renumbered §290.45(h)(6).

The commission agrees that the bill does not require 72 hours of fuel storage. The proposed rule does not require that the fuel, natural gas or otherwise, be maintained on site. In response to these comments, the commission amended renumbered §290.45(h)(6) to replace the 72-hour fuel requirement with the amount of fuel necessary to maintain emergency operations. In addition, the commission amended §290.47(j), Appendix J, to require affected utilities to notify the commission

of how they determine the quantity of fuel necessary, and how they propose to continue maintaining emergency operations. The commission disagrees that the rule should be amended to limit the fuel storage requirement to the Atlantic hurricane season.

J&C suggested revising §290.46(f)(5)(C) by removing the word "generators" and replacing it with the phrase "auxiliary power equipment."

The commission responds that SB 361 uses the term generators in its amendment to TWC, §13.1395. Therefore, as the use of this term tracks the legislation, no change has been made in response to this comment.

J&C suggested revising §290.47(j), Appendix J, by removing the word "generators" and replacing it with the phrase "auxiliary power equipment" and further recommended the removal of the language stating mutual aid agreements may not be approved in an area subject to the same natural disaster event. J&C also suggested language requiring affected utilities to evaluate the reliability of their contractual commitments be added to the rule.

The commission responds that SB 361 uses the term generator in its amendment to TWC, §13.1395. Therefore, as the use of this term tracks the legislation, the commission has made no change in response to this comment. In response to the comments regarding the mutual aid agreements, the commission amended §290.47(j), Appendix J, Plan Option 3, to clarify that the intent of SB 361 will be met by all parties in a mutual aid agreement when due consideration is given to where other water providers are located in the event that they are also affected by the same natural disaster.

The commission agrees that affected utilities should continually evaluate the reliability of contractual commitments. However, under the provisions of SB 361, this responsibility lies with the commission. Therefore, no change has been made in response to this comment.

Southwest commented that affected utilities generally support the 72-hour fuel requirement, but that conditions following a natural disaster may negate any or all of the agreements for the supply of fuel or at the least cause a portion of the fuel to be diverted to higher priority uses. It also stated that the rules created competition for fuel supplies and that the proposed 72-hour requirement applied after a 24-hour period of loss of power. This would mean that the fuel used inside the first 24 hours would not count towards the 72-hour supply. Therefore, the rule would really require affected utilities to maintain a 96-hour fuel supply.

The commission responds that the 72-hour fuel supply requirement is not in SB 361. These proposed rules would require affected utilities to maintain emergency operations during an extended power outage, starting as soon as it is safe and practicable following the occurrence of a natural disaster. In response to these comments, the commission amended renumbered §290.45(h)(6) to replace the 72-hour fuel requirement with the amount of fuel necessary to maintain emergency operations. In addition, the commission amended §290.47(j), Appendix J to require affected utilities to notify the commission of how they determine the quantity of fuel necessary, and how they propose to continue maintaining emergency operations.

Costello asked for clarification as to whether the 72 hours of fuel storage was meant to be under full load, or whether the intent was to have enough fuel to provide 72 hours of service. Jacobs Engineering

supported Costello and added that 72 hours of fuel storage under full load was very different than requiring enough fuel to provide 72 hours of service.

The commission agrees that this rule language is not clear. The commission revised the adopted rule language to clarify that "under load" did not mean "under full load," but rather the load required to provide emergency operations. In response to this comment, the commission amended renumbered §290.45(h)(6) and §290.47(j), Appendix J to clarify that the fuel requirement is the amount needed to maintain emergency operations, rather than under full load.

Costello stated that engineers interpreted the rule to mean that if they met the EPP, they were no longer required to have elevated storage. Costello did not believe this was the intent. J&C commented that elevated storage requirements can be used to meet the 72-hour fuel requirement. Houston, Pate, and ABHR recommended the commission automatically grant a waiver or exception to systems with an approved EPP. Houston and Pate opposed the inclusion of §290.45(g)(5)(A)(iv) in the rule. ABHR commented that the commission improperly interpreted SB 361 to allow elevated storage to be a method of compliance with SB 361. Houston commented that the commission should delete renumbered §290.45(h)(5) as its proposed rules were redundant.

The commission agrees that SB 361 requires the commission to implement the EPP requirement as an alternative to any rule requiring elevated storage. EPPs that are used in lieu of meeting elevated storage requirements must be prepared under the direct supervision of a licensed professional engineer. In response to these comments, the commission amended §290.45 to make the EPP an alternative to elevated storage requirements, provided the affected utility can meet the pressure and

flow requirements of Chapter 290, Subchapter D, under normal operating conditions. However, the commission will not grant automatic waivers or exceptions of elevated storage tank requirements upon EPP approval by the commission. The commission clarifies that such a change in pressure maintenance capacity is a significant change in accordance with §290.39(j). Accordingly, existing affected utilities are required to notify the executive director prior to making this change. Proposed new affected utilities who choose to meet the requirements of SB 361 in lieu of any rule regarding elevated storage requirements are required to include the proposed method of meeting the minimum pressure requirements in the engineering report required by §290.39(e)(1). No changes have been made in response to these comments.

Bacon & Wallace commented that the commission should consider allowing small MUDs to piggyback on larger MUDs' plans so they don't have to bear the cost that the plan imposes on their customers.

The commission has proposed rules that give affected utilities not providing surface water to wholesale customers' eight options for emergency operations. One of those options is the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other affected utilities. The commission made no changes in response to this comment.

Jacobs Engineering commented that there was no percentage of water needed to be sold to affected utilities that purchase water; for example, Houston was not required to provide a percentage of water to its purchasing water systems during emergencies. Jacobs Engineering also stated that the rule did not require wholesalers to provide certain capacities, and asked whether compliance would be strictly a contractual issue. NHRWA recommended that the commission modify its language to include water supply

requirements for wholesalers.

The commission currently evaluates the capacities of purchased water systems based on their actual capacities, if any, combined with what is specified in their purchase contracts. Wholesalers must meet the sum of their contractual obligations. The proposed rule does not require wholesalers to provide any capacities beyond those specified in their contractual obligations. Alternatively, if a wholesaler and purchaser agree, they can submit an EPP that uses the option to share auxiliary generator capacity. No changes were made in response to this comment.

Sugar Land commented that the rules should be implemented in two tiers with consideration given to the systems with professional staff versus those with contract operation firms; municipalities and water providers with employees should have less onerous requirements than those that rely on contract operations for managing their system during an emergency event.

The commission disagrees that a tiered system should be implemented. SB 361 does not include provisions for implementing rules in tiers. No changes were made in response to this comment.

Southwest requested that the term "as soon as safe and practicable" be revised to read "as soon as safe and practicable as determined by the affected utility's emergency preparedness and response plan or such document."

The commission responds that the determination of when it is safe and practicable will be determined on a case-by-case basis. The commission and the affected utility may use information

provided by the office of emergency management of each county and/or the Texas Division of Emergency Management, or other sources, to help assess the situation. The commission made no change in response to this comment.

Southwest requested clarification on §290.39(d) regarding whether EPPs needed to be prepared under the direction of a licensed professional engineer.

The commission does require that EPPs be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g), or is requesting to meet the requirements of TWC, §13.1395 as an alternative to any rule requiring elevated storage, or as determined by the commission on a case by case basis. In response to this comment, the commission has amended §290.39(c)(4)(A) and (o)(1) to add language that clarifies when EPPs are required to be submitted under the direction of a licensed professional engineer.

Southwest recommended that the Plan Content under §290.47(j), Appendix J should be written for the affected utilities use and should be straightforward without undue detail. Southwest stated that the 22 items listed under this section are not all applicable and go beyond the intent of the plan, which is to supply water under emergency power. Southwest also requested that the template be reviewed by a subcommittee of TCEQ personnel and representatives from the affected utilities. J&C questioned whether §290.47(j), Appendix J is the official template for the EPP and further commented that its understanding is that this template will be released on December 1, 2009.

The commission clarifies that not all items listed in §290.47(j), Appendix J are applicable to all affected utilities as §290.47(j), Appendix J merely outlines the minimum elements that may need to be considered in an affected utility's EPP. Section 290.47(j), Appendix J does not include a shell EPP, but the commission recognizes that an example would benefit the affected utilities and, in response to this comment, is developing a shell EPP (form 20536) that will be made available on the commission's website when complete. Form 20536 provides flexibility in the implementation of SB 361, allowing the commission to adjust it as needed without a separate rulemaking project. The commission will consider comments from the affected utilities regarding amendments to form 20536. The commission declines to form a subcommittee comprised of commission staff and representatives of affected utilities due to the short implementation requirements associated with SB 361, which require the rules to be adopted by December 1, 2009. No changes were made in response to these comments.

Richmond commented that this rule is unduly burdensome and they already have the required number of generators in place. Further, Richmond's plans include turning off its water treatments plants and evacuating with the public.

The commission responds that, at this time, based upon the Year 2000 Census data, counties other than Harris are not subject to the provisions of SB 361 or this rule. At such time that a system becomes an affected utility it can submit information showing that these rules would be a significant financial burden to its customers and request a waiver. One of the eight options in the EPP allows an affected utility to use any other alternative that is determined by the commission to be acceptable. No change was made in response to this comment.

SPH commented that the statement in §290.47(j), Appendix J that mutual aid agreements "may not be approved if the other water service provider is located in an area subject to the same natural disaster event as the affected utility" should be removed. SPH also commented that commission staff indicated at the first public hearing in Harris County that they would not approve any mutual aid agreements. The comment indicated that mutual aid agreements should instead be encouraged, especially as that may be the only option for some affected utilities to comply with SB 361.

The commission responds that the provision referenced above was included in §290.47(j), Appendix J because the TCEQ's experience following natural disasters has indicated that multiple water systems that are located near each other are frequently affected equally by a natural disaster and the corresponding loss of power. Therefore, it may not be of benefit to an affected utility to have a mutual aid agreement with a nearby affected utility or other water system. The commission's staff will consider all mutual aid agreements and will be reviewing the locations of the affected utilities that have entered into such an agreement during its review. Each EPP will be reviewed on an individual basis. If the commission determines that it meets the requirements of SB 361 by providing adequate protection for emergency operations without relying on affected utilities in the vicinity that may also be affected by the natural disaster, and therefore be unable to respond in accordance with the terms of the mutual aid agreement, it will be deemed adequate until demonstrated otherwise. The commission reviewed the transcript record of the Houston public hearing and was not able to find the source of the mutual aid rejection comment. However, the commission clarifies that it will consider all mutual aid agreements submitted as part of an EPP. No changes have been made in response to these comments.

SPH requested clarification as to whether the proposed §290.45(g)(5)(A)(iv) would require two affected utilities that individually have less than 2,500 connections and who operate as a single system with more than 2,500 connections through a mutual aid agreement during emergencies be required to conduct hydraulic modeling.

The commission clarifies that §290.45(g)(5)(A)(iv) does not impact all affected utilities. This rule only applies to public water systems that are affected utilities and are requesting alternative pressure maintenance capacity requirements. Two affected utilities that are each less than 2,500 connections and operate as a single system with more than 2,500 connections only during emergency operations are not considered to have a permanently open interconnect in accordance with §290.45(b)(1)(D)(i). These affected utilities will not be evaluated as a single system and thus will not be required to conduct hydraulic modeling as part of their EPP unless they are proposing to meet the SB 361 requirements in lieu of any rule requiring elevated storage, or have obtained or plan to request an alternative capacity requirement. No changes have been made in response to these comments.

SPH asked whether water systems that purchase water but do not have any production, storage, service pump, or pressure maintenance capacity should be considered affected utilities, since they would derive no benefit from facilities such as purchased or leased generators, hardened electrical lines, or right angle drives.

The commission responds that the requirements of the rule apply to purchase water systems. Under

this rule, these systems have the option of using wholesale emergency power capacity to meet the provisions of SB 361 which allows the sharing of auxiliary generator capacity with one or more affected utilities. Further, the commission responds that a copy of the purchase water contract or agreement will need to be included as part of the EPP. No changes have been made in response to these comments.

SUBCHAPTER L: STANDARDS OF EMERGENCY OPERATIONS

§§291.160 - 291.162

STATUTORY AUTHORITY

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC. 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 or implied by 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 new rules implement TWC, §13.1395.

§291.160. Purpose.

Texas Water Code, Chapter 13, Subchapter E, §13.1395, prescribes the duties of the commission relating to standards for emergency operations of affected utilities. The statute requires that the

commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage. This subchapter sets forth requirements and implementation of emergency operation planning of affected utilities as defined in this subchapter. Public water systems must comply with the emergency operations requirements as defined in Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems).

§291.161. Definitions.

For the purposes of this subchapter, the following definitions apply.

(1) Affected utility--Any retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer:

(A) In a county with a population of 3.3 million or more; or

(B) In a county with a population of 400,000 or more adjacent to a county with a population of 3.3 million or more.

(2) Emergency operations--The operation of a water system during an extended power outage at a minimum water pressure of 35 pounds per square inch.

(3) Extended power outage--A power outage lasting for more than 24 hours.

(4) Population--The population shown by the most recent federal decennial census.

§291.162. Emergency Operation of an Affected Utility.

(a) An affected utility shall adopt and submit to the executive director for its approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.

(b) The executive director shall review an emergency preparedness plan submitted by an affected utility. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan.

(c) An emergency preparedness plan shall provide for one of the following:

(1) the maintenance of automatically starting auxiliary generators;

(2) the sharing of auxiliary generator capacity with one or more affected utilities;

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(5) the use of on-site electrical generation or distributed generation facilities;

(6) hardening the electric transmission and distribution system serving the water system;

(7) for existing facilities, the maintenance of direct engine or right angle drives; or

(8) any other alternative determined by the executive director to be acceptable.

(d) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(e) The affected utility may use the template in Appendix J of §290.47 of this title (relating to Appendices) to assist in preparation of the plan.

(f) An emergency generator used as part of an approved emergency preparedness plan must be operated and maintained according to the manufacturer's specifications.

(g) The executive director may grant a waiver of the requirements of this section to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(h) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(i) Information provided by an affected utility under this subchapter is confidential and is not subject to disclosure under Texas Government Code, Chapter 552.

(j) Affected utilities that are existing as of December 1, 2009, shall submit the emergency preparedness plan to the executive director no later than March 1, 2010.

(k) Affected utilities which are established after the effective date of this rule must have emergency preparedness plans approved and implemented prior to providing water to customers.

(l) An affected utility may file with the executive director a written request for an extension, not to exceed 90 days, of the date by which the affected utility is required under this subchapter to submit the affected utility's emergency preparedness plan or the date the affected utility is required to implement the plan.

(m) If an affected utility fails to provide a minimum of 35 pounds per square inch throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.