

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** November 20, 2009
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Richard A. Hyde, P.E., Deputy Director
Office of Permitting & Registration
Subject: Consideration of a Petition for Proposed Rulemaking
Docket No.: 2009-1778-RUL
Rule Project No. 2010-010-PET-NR

Who Submitted the Petition:

The petition was submitted on October 30, 2009 by Quadvest, Inc.; SJWTX, Inc.; Southern Utilities Company and Southwest Water Company (Petitioners).

What the Petitioner Requests:

The petitioners request a rulemaking to add an allowable component to rate base for investor owned utilities. The proposed rule would allow the original cost of an asset, less net salvage and accumulated depreciation at the date of retirement, of depreciable utility plant, property and equipment retired by the investor owned utility (IOU) to be included in rate base and in turn, used for establishing rate of return. For retired assets, the petition would allow for a rate of return to be received for the retired asset versus the current process which does not allow a rate of return after an asset is retired short of the full service life of the asset. The petitioners indicate that the proposed rulemaking would implement Senate Bill (SB) 2306 from the 81st Legislature, 2009, Regular Session, regarding the accounting treatment of accumulated depreciation for IOUs in utility ratemaking. The statute requires that rules adopted under this subsection must require the book cost less net salvage of depreciable utility plant to be charged in its entirety to the accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in Texas.

Recommended Action and Justification:

The executive director (ED) recommends denial of the petition because the commission is already planning a rulemaking for legislative implementation of SB 2306. Implementation of SB 2306 for this rulemaking is currently scheduled to be considered by the Commissioners for proposal on January 27, 2010 and adoption on June 16, 2010. The ED also recommends denial of the petition because the language suggested by the petitioners does not adequately implement the requirement of SB 2306 that the rule be consistent with accounting treatment of regulated electric and gas utilities in Texas which includes additional accounting controls.

Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule
- 30 TAC §20.15, which provides such procedures specific to the commission
- 30 TAC §291.31(c)(2), which defines invested capital, also referred to as rate base, and delineates the components of rate base

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Affected Public:

Investor owned utilities that provide retail water and/or sewer service to the public and their customers would be affected by this rulemaking.

Affected Agency Programs:

The Utilities & Districts Section, Water Supply Division, Office of Permitting and Registration would be affected by this rulemaking.

Agency Contacts:

Tammy Lee Holguin-Benter, Rule Project Manager, 239-6136, Water Supply Division
Brian MacLeod, Staff Attorney, 239-3578
Devon Ryan, Texas Register Coordinator, 239-6090

Attachment: Petition

cc: 5 copies to the Chief Clerk for distribution
Executive Director's Office
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