

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to repeal §291.7 and amend §291.22.

Background and Summary of the Factual Basis for the Proposed Rules

Section 291.7 sets forth the filing fees required for a rate change application; an application for a certificate of public convenience and necessity (CCN); and an application for sale, assignment, or lease of a CCN, or notice of intent to sell, assign, lease, or rent a water or sewer system. This rule was promulgated based on Texas Water Code (TWC), Chapter 13, Subchapter L. House Bill (HB) 2694 was passed during the 82nd Legislature, 2011. HB 2694, §6.04 repealed TWC, Chapter 13, Subchapter L, thus eliminating the commission's ability to collect application fees for rate change requests; applications for CCNs; applications for sale, transfer or merger (STM) requests; and notices of intent to sell, assign, lease, or rent a water or sewer system. Therefore, the commission proposes to repeal §291.7 and not require any filing fees for a rate change application; an application for a CCN; an application for sale, assignment, or lease of a CCN; or a notice of intent to sell, assign, lease, or rent a water or sewer system.

Section 291.22 allows a governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside their respective boundaries to mail or hand deliver individual written notice to each affected ratepayer eligible to appeal a rate change within 30 days after the date of the final decision. HB 2694, §9.01

amended TWC, §13.043(i) by increasing this time frame from 30 to 60 days and by allowing the written notice to be e-mailed if the municipality or political subdivision has access to a ratepayer's e-mail address. The commission therefore proposes an amendment to §291.22 to increase the time frame for delivery of notice of a final rate decision by a municipality or political subdivision, and allow the notice to be e-mailed if the municipality or political subdivision has access to a ratepayer's e-mail address in order to achieve consistency with HB 2694, §6.04.

Section 291.22 also requires a utility to mail or hand deliver the statement of intent to change rates to the appropriate officer of each affected municipality. HB 2694, §9.02 amended TWC, §13.187(b), by allowing a utility to e-mail the statement of intent to change rates. Therefore, the commission proposes to amend §291.22 by allowing the statement of intent to change rates to be e-mailed in order to achieve consistency with HB 2694, §9.02. The commission also proposes an amendment to §291.22 to allow e-mail as an acceptable delivery method for the noticing of utility rate change applications in order to maintain internal consistency in commission rules regarding rate change notification.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes revisions to 30 TAC Chapter 293, Water Districts, and 30 TAC Chapter 297, Water Rights, Substantive.

Section by Section Discussion

§291.7, Filing Fees

The commission proposes to repeal §291.7 and not require any filing fees for a rate change application; an application for a CCN; an application for sale, assignment, or lease of a CCN; or a notice of intent to sell, assign, lease, or rent a water or sewer system. The commission proposes to repeal this section because HB 2694, 82nd Legislature, 2011, repealed TWC, Chapter 13, Subchapter L, which was the statutory basis for the rule. The repeal of the rule will ensure consistency with the statutory change.

§291.22, Notice of Intent To Change Rates

The commission proposes to amend §291.22(a) by allowing a utility to provide notice of a proposed rate change to all affected utility customers by e-mail, in addition to delivery by mail or hand delivery. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission proposes to amend §291.22(b) by allowing the governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision to e-mail individual written notice of a final decision on a rate change to each affected ratepayer eligible to appeal it, if the municipality or political subdivision has access to a ratepayer's e-mail address. The commission also proposes to amend this subsection by changing the number of days from 30 to 60 that the municipality or political subdivision has to provide such notice.

These amendments ensure consistency with HB 2694, §9.01. The commission proposes to amend §291.22(c) by allowing a utility to deliver notice of a proposed rate change by e-mail, in addition to mailing notices separately or with customer billings. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission proposes to amend §291.22(d) by allowing a utility to deliver a statement of intent to change rates by e-mail to the appropriate officer of each affected municipality, in addition to the options of mailing or delivering a copy of the statement of intent. The amendment ensures consistency with HB 2694, §9.02. The commission proposes to amend §291.22(e) by clarifying that the proof of notice in the form of an affidavit allows delivery by e-mail in addition to mail or personal delivery to customers and affected municipalities. This amendment ensures internal consistency in commission rules regarding notice as to rate changes. The commission proposes these amendments to implement TWC, §13.043(i) and §13.187(b), as amended by HB 2694, 82nd Legislature, 2011.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rulemaking. The agency will experience a decrease, although not significant, in fee revenue. Units of local

government could experience some cost savings as a result of reduced fees and e-mailing of notices.

The proposed rulemaking would revise Chapter 291 to implement certain provisions of HB 2694. The proposed rulemaking would repeal application fees currently collected from investor owned utilities for rate change requests; fees for applications for CCNs; fees for applications for STM requests; and fees for notice of intent to sell, assign, lease, or rent a water or sewer system. The proposed rulemaking also increases the time frame that municipalities or political subdivisions providing retail water or sewer service to customers outside their boundaries have when providing notice of a final rate change decision from 30 to 60 days. However, these municipalities or political subdivisions would be allowed to e-mail rate change notices to affected customers if e-mail addresses are available. In addition, an investor owned retail water or sewer utility would be allowed to e-mail a statement of intent to change rates and notice of utility rate change applications (instead of mailing or delivering such notices) to the appropriate office of municipalities served by the utility.

Agency Revenue

The proposed rulemaking is expected to decrease agency revenue in Account 153 - Water Resource Management Account by \$30,000 per year. The repeal of application fees currently collected from investor owned utilities for rate change requests, fees for

applications for CCNs, fees for applications for STM requests, and fees for notice of intent to sell, assign, lease, or rent a water or sewer system are not expected to have a significant fiscal impact on the agency.

Impact on Units of Local Government

Municipalities or political subdivisions providing retail water or sewer service to customers outside their boundaries will be required to give those customers notice of a final decision to change rates within 60 days, rather than 30 days. The proposed rules will allow these municipalities or political subdivisions to e-mail rate change notices to affected customers if e-mail addresses are available. Staff does not expect the additional number of days to result in significant increases in the number of appeals for these units of local government. If units of local government are able to obtain e-mail addresses for affected customers and provide notice by e-mail for rate changes, there may be decreased postage and delivery costs. Any cost savings for postage and delivery services is not expected to be significant.

Units of local government that plan to file a CCN or STM application should experience additional, although not significant, cost savings under the proposed rulemaking since they will no longer be required to pay filing fees for a CCN or STM application. Current application fees are \$100 per CCN application and \$50 to \$500 (depending on the number of connections being acquired) per STM application and per notice of intent to

sell, assign, lease, or rent a water or sewer system.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rulemaking is not expected to have a significant fiscal impact on individuals since savings under the proposed rulemaking is not expected to significantly reduce the cost of providing water or sewer service. However, the proposed rulemaking allows for delivery of notice of rate changes to be e-mailed which some affected individuals may prefer as a delivery option.

The proposed rulemaking repeals fees paid by investor owned utilities for rate change requests; fees for applications for CCNs; fees for applications for STM requests; and fees for notices of intent to sell, assign, lease, or rent a water or sewer system. Current application fees are \$100 per CCN application and \$50 to \$500 (depending on the number of connections being acquired) per STM application and per notice of intent to sell, assign, lease, or rent a water or sewer system. Current application fees for rate change requests are \$50 to \$500 depending on the number of connections. The elimination of these fees is not expected to significantly reduce the operating costs of

retail water or sewer providers.

The proposed rulemaking will also allow investor owned utilities to provide notice of rate changes by e-mail to affected municipalities instead of mailing or hand delivering the notices. However, any cost savings are not expected to be significant.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses providing retail water or sewer service under the proposed rulemaking. Small businesses that provide retail water or sewer services should experience the same cost reductions as those experienced by a large business. Some small businesses that currently receive mailed or hand delivered notice or rate changes may receive notice via e-mail.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rulemaking is required to comply with state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rulemaking is in effect.

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 rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225. "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.

First, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislation enacted in 2011 by the 82nd Legislature, specifically HB 2694, §§6.04, 9.01, and 9.02. HB 2694, §6.04 repealed TWC, Chapter 13, Subchapter L, which covered fees for rate changes and CCNs. The commission rule based upon TWC, Chapter 13, Subchapter L is therefore proposed to be

repealed. HB 2694, §9.01 provides an additional 30 days for a municipality or political subdivision to notify ratepayers of a rate increase, and allows such notice to be delivered by e-mail if the municipality or political subdivision has access to a ratepayer's e-mail address. The proposed rulemaking implements these changes. HB 2694, §9.02 allows a utility to notify ratepayers of its intent to change rates by e-mail. The proposed rule implements this change and also allows a utility to provide e-mail notice to ratepayers of a rate change application.

Second, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed 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 proposed rulemaking will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007.

The commission proposed this rulemaking for the specific purpose of implementing legislation enacted by the 82nd Legislature in 2011. The proposed rulemaking repeals §291.7 and amends §291.22. The commission's analysis revealed that repealing §291.7 would achieve consistency with the statutory changes made by HB 2694. The repeal impacts the commission financially, but does not impact private real property financially. The commission's analysis also revealed that amending §291.22 would achieve consistency with TWC, §13.043(i) as amended in 2011 by HB 2694. The rulemaking would require that a municipality or political subdivision provide notice to ratepayers eligible to appeal a rate-making decision by those entities within 60 days, rather than 30 days. The proposed rulemaking would allow the entity to provide electronic notice to ratepayers if the entity has access to a ratepayer's e-mail address. The notice requirement applies to governmental entities rather than to private citizens.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real

private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by amending the definition as proposed, the commission has determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 20, 2012, at 2:00 p.m. in Building E, Room 201 S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-039-293-OW. The comment period closes March 26, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at

http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information,
please contact Justin Taack, Water Supply Division, at (512) 239-1122.

SUBCHAPTER A: GENERAL PROVISIONS

[\$291.7]

Statutory Authority

The repeal is proposed under Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §13.041(b), which establishes the commission's authority to adopt and enforce rules relating to Water Rates and Services.

The proposed repeal implements House Bill 2694, §6.04, 82nd Legislature, 2011.

[\$291.7. Filing Fees.]

[Each application, petition, or complaint that is intended to institute a proceeding before the commission shall be accompanied by the appropriate filing fee as required by Texas Water Code, §5.701 and §13.4521, and costs of mailing notice, if any.]

[(1) A rate change application filed with the commission under Texas Water Code, §13.187, must be accompanied by the appropriate filing fee as follows:]

[(A) fewer than 100 connections - \$50;]

[(B) 100 - 200 connections - \$100;]

[(C) 201 - 500 connections - \$200; or]

[(D) more than 500 connections - \$500.]

[(2) An application for a certificate of public convenience and necessity under Texas Water Code, §13.244, must be accompanied by an application fee of \$100.]

[(3) An application for sale, assignment, or lease of a certificate of convenience and necessity under Texas Water Code, §13.251, or notice of intent to sell, assign, lease, or rent a water or sewer system under Texas Water Code, §13.301, must be accompanied by the appropriate fee as follows (one fee will suffice for both applications):]

[(A) fewer than 100 connections - \$50;]

[(B) 100 - 200 connections - \$100;]

[(C) 201 - 500 connections - \$200; or]

[(D) more than 500 connections - \$500.]

[(4) The fees required in paragraphs (1) - (3) of this section are in lieu of the \$100 filing fee required by Texas Water Code, §5.701, which should accompany all

other applications and petitions. A filing fee is not required for appeals or complaints filed under Texas Water Code, §13.043(b) or §13.187(e).]

SUBCHAPTER B: RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

§291.22

Statutory Authority

The amendment is proposed under Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §13.041(b), which establishes the commission's authority to adopt and enforce rules relating to Water Rates and Services.

The proposed amendment implements House Bill 2694, §9.01 and §9.02, 82nd Legislature, 2011.

§291.22. Notice of Intent to [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, e-mail, or hand delivery to all affected utility customers at least 60 days prior to

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

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

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

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

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

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

(b) Notice requirements. The governing body of a municipality or a political subdivision that provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail, e-mail, or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 60 [30] days after the date of the final decision on a rate change. The governing body of a municipally owned utility or political subdivision may provide the notice electronically if the municipality or political subdivision has access to a ratepayer's e-mail address. The commissioners court of an affected county that provides water or sewer service shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal within 30 days after the date of the final decision on a rate change. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notice delivery requirements. Notices may be mailed separately, e-mailed, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed, e-mailed, or hand delivered to the customers at least 60 days prior to the effective date of the rate increase.

(d) Notice and statement of intent. The applicant utility shall mail, e-mail, or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 60 days prior to the effective date of the proposed change.

If the utility is requesting a rate change from the commission for customers residing outside the municipality, it shall also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed, e-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, e-mailed, or delivered to customers and affected municipalities and stating the dates of such delivery [mailing], shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the United States mail at least 60 days before the effective date.

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

(g) Emergency rate increase in certain circumstances. After receiving a request, the commission or executive director may authorize an emergency rate increase under Texas Water Code, §5.508 and §13.4133 and Chapter 35 of this title (relating to

Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for a utility:

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

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

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

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