

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§291.1, 291.14, 291.76, 291.92, 291.103, 291.110, 291.114, 291.128, 291.131, 291.142, and 291.143; the repeal of §§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12, 291.21 - 291.32, 291.34, 291.35, 291.41 - 291.45, 291.71 - 291.75, 291.80 - 291.91, 291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113, 291.115 - 291.125, 291.127, 291.129, 291.130, 291.132 - 291.138, 291.141, 291.146, 291.147, and 291.150 - 291.153; and new §291.129, *without changes* to the proposal as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4671) and, therefore, will not be republished. The amendment to §291.3 and new §291.130 are adopted *with changes* to the proposed text as published and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is adopted to implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013; and HB 294, 85th Texas Legislature, 2017.

The Public Utility Commission of Texas (PUC) Sunset Legislation, HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The specific intent of the adopted rulemaking is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities.

HB 294 adds additional criteria to Texas Water Code (TWC), §13.412(a) that will allow the commission to request the attorney general appoint a receiver to a water or sewer utility

that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or Texas Health and Safety Code (THSC), Chapter 341.

The adopted amendment to §291.76 facilitates the ability to convert the regulatory assessment fee (RAF) to an efficient, on-line reporting, invoicing, and payment structure within the confines of the commission's existing SUNSS, Basis2, and ePay applications. This conversion from a self-report, self-pay to a billed fee allows for the collection of delinquent fees, late fees, and penalty fees as directed by 30 TAC Chapter 12, Payment of Fees.

Concurrent with this adoption, and published in this issue of the *Texas Register*, the commission is adopting revisions to 30 TAC Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions; Chapter 37, Financial Assurance; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 80, Contested Case Hearings; Chapter 281, Applications Processing; Chapter 290, Public Drinking Water; and Chapter 293, Water Districts.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes included

appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where subsections, paragraphs, or subparagraphs were removed, subsequent subsections, paragraphs, or subparagraphs were re-lettered or renumbered accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

Subchapter A: General Provisions

§291.1, Purpose and Scope of This Chapter

The commission adopts amended §291.1 to remove all reference to rates and consumer protection and clarify that Chapter 291 applies to commission proceedings under TWC, §§11.036 – 11.041 and Chapter 13.

§291.2, Severability Clause

The commission adopts the repeal of §291.2 to conform with current commission's rule writing practices.

§291.3, Definitions of Terms

The commission adopts amended §291.3 to remove all paragraphs, with the exception of §291.3(2), (5), (10), (13) - (15), (23), (28), (29), (32), (34) - (36), (40), (42), (43), (52), (53), and (55). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission also adopts amended §291.3(3) to add "Public Utility Commission of Texas" to the definition of "Certificate of Convenience and Necessity" to clarify that the PUC is the agency that grants certificates

of convenience and necessity.

§291.4, Cooperative Corporation Rebates

The commission adopts the repeal of §291.4. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.5, Submission of Documents

The commission adopts the repeal of §291.5. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.6, Signatories of Applications

The commission adopts the repeal of §291.6. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.8, Administrative Completeness

The commission adopts the repeal of §291.8. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.9, Agreements To Be in Writing

The commission adopts the repeal of §291.9 to conform with current commission's rule writing practices.

§291.11, Informal Proceedings

The commission adopts the repeal of §291.11. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.12, Burden of Proof

The commission adopts the repeal of §291.12. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.14, Emergency Orders

The commission adopts amended §291.14 to remove all language, with the exception of §291.14(b), (b)(1), and (c) to implement HB 1600 and SB 567. The commission acknowledges that PUC and TCEQ share dual jurisdiction over some issues and intends to coordinate closely with PUC. The commission also adopts to combine existing §291.14(b) and (b)(1) to form one sentence in adopted §291.14(a).

Subchapter B: Rates, Rate-Making, And Rates/Tariff Changes

The commission adopts the repeal of Subchapter B, §§291.21 - 291.32, 291.34, and 291.35. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Subchapter C: Rate-Making Appeals

The commission adopts the repeal of Subchapter C, §§291.41 - 291.45. The language in repealed §291.44 is adopted as §291.130 with the removal of references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600

and SB 567. The purpose of moving the language in repealed §291.44 to Subchapter I is to combine all rules related to petitions for the sale or use of water under one subchapter.

Subchapter D: Records and Reports

§291.71, General Reports

The commission adopts the repeal of §291.71. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.72, Financial Records and Reports--Uniform System of Accounts

The commission adopts the repeal of §291.72. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.73, Water and Sewer Utilities Annual Reports

The commission adopts the repeal of §291.73. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.74, Maintenance and Location of Records

The commission adopts the repeal of §291.74. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.75, Management Audits

The commission adopts the repeal of §291.75. With the transfer of these functions from

the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.76, Regulatory Assessment

The commission adopts amended §291.76(d) to provide clarification between the amount of RAF payable to the commission versus the amounts payable to the utility service provider by their customers for water and sewer invoices. The RAF rule does not apply to ancillary fees (e.g., late fees, tap fees, reclaimed water, etc.), the clarification in this revision should ensure proper calculation, reporting, and remittance of fees.

The commission adopts amended §291.76(e) to clarify the payment period as the previous calendar year.

The commission adopts amended §291.76(h) to clarify that retail water and sewer applies to both charges and the assessment collection.

The commission adopts amended §291.76(i) to specify the utility service provider must ensure retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's on-line portal.

The commission adopts §291.76(i)(1) to allow the commission to issue an invoice based on previously reported revenues and adjustment based on available information if the utility service provider does not report charges for water and sewer services to the commission by January 30th of each year.

The commission adopts §291.76(i)(2) to allow the commission to issue an invoice in an amount up to \$100 if the utility service provider has not previously reported charges for water and sewer services to the commission.

The commission adopts §291.76(i)(3) to clarify that utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline are not relieved of the requirement to ensure retail water and sewer charges are reported through the on-line portal. Once the utility service provider reports charges for water and sewer services to the commission through the on-line portal, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

The commission adopts amended §291.76(k) to clarify that assessment shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal.

Subchapter E: Customer Service and Protection

The commission adopts the repeal of Subchapter E, §§291.80 - 291.90. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required. Additionally, the requirements for each utility to maintain a current copy of Chapter 290, Subchapter D and Chapter 291 at each office location is no longer necessary because up-to-date versions of Chapters 290 and 291 are

readily available online.

Subchapter F: Quality of Service

§291.91, Applicability

The commission adopts the repeal of §291.91. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.92, Requirements by Others

The commission adopts amended §291.92 to remove subsection (b), because the subsection pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

Subchapter G: Certificates of Convenience and Necessity

§291.101, Certificate Required

The commission adopts the repeal of §291.101. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.102, Criteria for Considering and Granting Certificates or Amendments

The commission adopts the repeal of §291.102. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.103, Certificates Not Required

The commission adopts amended §291.103 to remove all language, with the exception of

§291.103(d)(1) and (1)(A) - (D). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.104, Applicant

The commission adopts the repeal of §291.104. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.105, Contents of Certificate of Convenience and Necessity Applications

The commission adopts the repeal of §291.105. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.106, Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications

The commission adopts the repeal of §291.106. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.107, Action on Applications

The commission adopts the repeal of §291.107. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.109, Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction

The commission adopts the repeal of §291.109. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.110, Foreclosure and Bankruptcy

The commission adopts amended §291.110 to remove all language, with the exception of §291.110(a), (c), and (e). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. Additionally, the commission adopts amended §291.110(b) to remove "is not required to provide the 120-day notice prescribed by §13.301 of the code" which also pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.111, Purchase of Voting Stock in Another Utility

The commission adopts the repeal of §291.111. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.112, Transfer of Certificate of Convenience and Necessity

The commission adopts the repeal of §291.112. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.113, Revocation or Amendment of Certificate

The commission adopts the repeal of §291.113. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.114, Requirement To Provide Continuous and Adequate Service

The commission adopts amended §291.114 to remove all language, with the exception of

§291.114(b) and (b)(1) - (3) to implement HB 1600 and SB 567. The commission acknowledges that PUC and TCEQ share dual jurisdiction over some issues and intends to coordinate closely with PUC. Additionally, the commission adopts amended §291.114(b)(1)(B) to replace "commission" with "Public Utility Commission of Texas" and remove the requirement that a retail public utility provide financial assurance in accordance with TCEQ's rules in Chapter 37, Subchapter O.

§291.115, Cessation of Operations by a Retail Public Utility

The commission adopts the repeal of §291.115. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.116, Exclusiveness of Certificates

The commission adopts the repeal of §291.116. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.117, Contracts Valid and Enforceable

The commission adopts the repeal of §291.117. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.118, Contents of Request for Commission Order under the Texas Water Code,

§13.252

The commission adopts the repeal of §291.118. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.119, Filing of Maps

The commission adopts the repeal of §291.119. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.120, Single Certification in Incorporated or Annexed Areas

The commission adopts the repeal of §291.120. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Subchapter H: Utility Submetering and Allocation

The commission adopts the repeal of Subchapter H, §§291.121 – 291.125 and §291.127. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Subchapter I: Wholesale Water Petitions

The commission amends the title of Subchapter I to "Wholesale Water Petitions" to more closely reflect the subchapter's contents.

§291.128, Petition Concerning Wholesale Water

The commission adopts amended §291.128(1) to clarify the applicable sections in TWC, Chapter 11 and remove the reference to TWC, Chapter 12. The commission removes §291.128(2) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567; and renames the section to more closely reflect the

section's purpose.

§291.129, Definitions

The commission adopts the repeal of §291.129. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.129, Petition

The commission adopts §291.129. The language in adopted §291.129 is from repealed §291.130, with the exception of existing §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567.

§291.130, Petition or Appeal

The commission adopts the repeal of §291.130. The language in §291.130 is adopted as §291.129, with the exception of §291.130(c) which pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The purpose of moving the language in §291.130 to adopted §291.129 is so the general language in repealed §291.130 comes before the language in adopted §291.130 pertaining to specific petitions under TWC, §§11.036 - 11.041.

§291.130, Contents of Petition under Texas Water Code, §§11.036 - 11.041

The commission adopts §291.130. The language in adopted §291.130 is from repealed §291.44 with the following changes: removed the references to TWC, §12.013 which pertains to functions that transferred from the commission to the PUC in HB 1600 and SB

567; changed the reference from ratepayer to person, changed the reference from water supplier to entity, and removed the references to supply service in order to conform to TWC, §§11.036 - 11.041; included language to clarify that the petition includes the applicable requirements depending on which statutory provision is being invoked; and removed redundant language found in adopted §291.129. The purpose of moving the language from repealed §291.44 to adopted §291.130 is to combine all rules related to petitions for the sale or use of water under one subchapter.

§291.131, Executive Director's Review of Petition

The commission adopts amended §291.131 to remove all language, with the exception of §291.131(a). The language removed pertains to functions that were transferred from the commission to the PUC in HB 1600 and SB 567. The commission removes the reference to appeal and adds language to clarify TCEQ's authority under TWC, §§11.036 - 11.041. The commission also updates the references from §291.130 to adopted §291.129.

§291.132, Evidentiary Hearing on Public Interest

The commission adopts the repeal of §291.132. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 with the exception of TWC, §11.036 transferred from the commission to the PUC on September 1, 2014.

§291.133, Determination of Public Interest

The commission adopts the repeal of §291.133. With the transfer of these functions from

the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.134, Commission Action to Protect Public Interest, Set Rate

The commission adopts the repeal of §291.134. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.135, Determination of Cost of Service

The commission adopts the repeal of §291.135. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.136, Burden of Proof

The commission adopts the repeal of §291.136. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.137, Commission Order To Discourage Succession of Rate Disputes

The commission adopts the repeal of §291.137. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

§291.138, Filing of Rate Data

The commission adopts the repeal of §291.138. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required. The setting of rates pursuant to TWC, Chapter 11 transferred from the commission to the PUC on September 1, 2014.

Subchapter J: Enforcement, Supervision, and Receivership

§291.141, Supervision of Certain Utilities

The commission adopts the repeal of §291.141. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.142, Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver

The commission adopts §291.142(a)(2)(D) to include additional criteria that allows the commission or the executive director to request the attorney general appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13; or THSC, Chapter 341.

§291.143, Operation of a Utility by a Temporary Manager

The commission adopts amended §291.143(d) to change the term of the temporary manager from "one year" to "180 days" to be consistent with TWC, §5.505.

§291.146, Municipal Rates for Certain Recreational Vehicle Parks

The commission adopts the repeal of §291.146. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

§291.147, Temporary Rates for Services Provided for a Nonfunctioning System

The commission adopts the repeal of §291.147. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this section is no longer required.

Subchapter K: Provisions Regarding Municipalities

The commission adopts the repeal of Subchapter K, §§291.150 - 291.153. With the transfer of these functions from the commission to the PUC in HB 1600 and SB 567, this subchapter is no longer required.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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 adopted 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 PUC Sunset Legislation, HB 1600 and SB 567 (2013), transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and wastewater utilities. The intent of the adopted rulemaking associated with HB 1600 and SB 567 is to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities. HB 294 (2017) adds additional criteria to TWC, §13.412(a) that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341. The intent of the adopted rulemaking associated with HB 294 is to incorporate the additional criteria listed in TWC, §13.142(a) into §291.142. The intent of the adopted changes to §291.76 is to convert the RAF from a self-report, self-pay fee to a billed fee. The conversion from a self-report, self-pay fee to a billed fee will allow for the collection of delinquent fees, late fees, and penalty fees as directed by Chapter 12. The intent of these rules is not to protect the environment or reduce risks to human health from environmental exposure, but instead to amend and repeal the rules relating to economic

regulation of water and wastewater utilities; incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will 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 or with respect to a sector of the economy; therefore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 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 adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any express requirements of TWC, Chapter 5, 11, 12, or 13, which relate to the collection of fees, economic regulation of water and wastewater utilities, and the appointment of a receiver for water and wastewater utilities; 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 a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule" this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007.

The commission adopts these rules for the following purposes: 1) to amend and repeal obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities as those functions have transferred from the TCEQ to the PUC; 2) to incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) the conversion of the RAF from a self-report, self-pay fee to a billed fee.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). Texas Government Code, §2007.003(b)(5) provides an exemption for the discontinuation or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. The adopted rulemaking is a discontinuance of the economic regulation of water and wastewater utilities within the TCEQ, which, if it provides any unilateral expectation, provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the amendment and repeal of obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does

not apply to this portion of the adopted rulemaking.

Further, the commission determined that amending and repealing obsolete TCEQ rules in Chapter 291 relating to the economic regulation of water and wastewater utilities; incorporating additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and the conversion of the RAF from a self-report, self-pay fee to a billed fee will 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 adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. The specific intent of the adopted rulemaking is to: 1) transfer functions relating to the economic regulation of water and wastewater utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567; 2) incorporate additional criteria that allows the commission to request that the attorney general bring a suit for the appointment of a receiver for a water or wastewater utility that violates a final judgment of a district court in a suit brought by the attorney general under TWC, Chapter 7 or 13 or THSC, Chapter 341; and 3) to convert the RAF from a self-report, self-pay fee to a billed fee. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on August 7, 2018. The comment period closed on August 13, 2018. The commission received comments on Chapter 291 from Bickerstaff Heath Delgado Acosta LLP (Bickerstaff). Bickerstaff suggested changes to the rules.

Response to Comments

Comment

Bickerstaff commented that the last sentence of §291.130(d), which states, "{i}n the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction" be deleted or revised as it is unclear what the commission considers to be "within the commission's jurisdiction" or outside of the commission's jurisdiction as it relates to a

petition filed under TWC, §11.041.

Response

The commission disagrees with the recommendation to delete the sentence, "in the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction." The last sentence does not need to be clarified to explain the commission's jurisdiction within TWC, §11.041. No changes were made to the rules in response to this comment.

Comment

Bickerstaff commented that TWC, §11.041(b) requires the commission to hold a hearing, and on completion of that hearing, "render a written decision" regarding the complaint. Bickerstaff commented that all of the items listed in TWC, §11.041 are within the commission's jurisdiction to decide, and the commission is obligated to consider and render a decision on each of the elements, even if the executive director does not provide testimony or evidence on each element.

Response

The commission agrees with these comments. The commission will issue a final decision on each of the elements in TWC, §11.041(a) within its jurisdiction. No changes were made to the rules in response to this comment.

Comment

Bickerstaff commented that what is outside the commission's authority or jurisdiction is the ability to set a rate for the water should the commission determine the petitioner is entitled to the water, is willing and able to pay a just and reasonable rate, the water supplier has available water not contracted to others, and the water supplier either refused or failed to supply the water, or the price or rental demanded by the water supplier is not reasonable and just or is discriminatory. Bickerstaff commented that the PUC has the jurisdiction to fix a reasonable rate or price for the water as provided by TWC, §12.013, and although PUC may participate under TWC, §11.041, it does not limit TCEQ's jurisdiction over the four elements listed in TWC, §11.041.

Response

The commission agrees with Bickerstaff's comment stating that the ability to set a rate is outside the commission's jurisdiction. The commission is required to hold a hearing and render a written decision under TWC, §11.041. No changes were made to the rules in response to this comment.

Comment

Bickerstaff comments that alternatively, the sentence should be clarified to state that the executive director will not provide evidence or testimony to fix the rate for the water, which is reserved for the PUC.

Response

The commission disagrees that the last sentence should be clarified to explain the commission's jurisdiction. No changes were made to the rules in response to this comment.

SUBCHAPTER A: GENERAL PROVISIONS

§§291.1, 291.3, 291.14

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.1. Purpose and Scope of This Chapter.

This chapter is intended to govern the procedure for the institution, conduct and determination of commission proceedings under Texas Water Code (TWC), §§11.036 - 11.041 and Chapter 13. This chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status.

§291.3. Definitions of Terms.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county to which Texas Local Government Code, Chapter 232, Subchapter B, applies.

(2) Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Department of Insurance, Division of Workers' Compensation, and institutions for higher education) which makes rules or determines contested cases.

(3) Certificate of Convenience and Necessity--A permit issued by the Public Utility Commission of Texas which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area.

(4) Code--The Texas Water Code.

(5) Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by

individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

(6) Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(7) Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(8) Nonfunctioning system--A retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §291.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §291.143 of this title (relating to Operation of a Utility by a Temporary Manager).

(9) Person--Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

(10) Potable water--Water that is used for or intended to be used for human consumption or household use.

(11) Public utility--The definition of public utility is that definition given to "Water and sewer utility" in this section.

(12) Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(13) Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(14) Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(15) Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in Texas Water Code, §15.602.

(16) Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the Texas Water Code to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(17) Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(18) Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the system due to emergency conditions or drought.

(19) Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§291.14. Emergency Orders.

(a) The commission or executive director may also issue orders under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) to appoint a temporary manager under Texas Water Code, §5.507 and §13.4132.

(b) If an order is issued under this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

SUBCHAPTER A: GENERAL PROVISIONS

§§291.2, 291.4 - 291.6, 291.8, 291.9, 291.11, 291.12

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.2. Severability Clause.

§291.4. Cooperative Corporation Rebates.

§291.5. Submission of Documents.

§291.6. Signatories to Applications.

§291.8. Administrative Completeness.

§291.9. Agreements To Be in Writing.

§291.11. Informal Proceedings.

§291.12. Burden of Proof.

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

§§291.21 - 291.32, 291.34, 291.35

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.21. Form and Filing of Tariffs.

§291.22. Notice of Intent to Change Rates.

§291.23. Time between Filings.

§291.24. Jurisdiction over Affiliated Interests.

§291.25. Rate Change Applications, Testimony and Exhibits.

§291.26. Suspension of Rates.

§291.27. Request for a Review of a Rate Change by Ratepayers Pursuant to the Texas Water Code, §13.187(b).

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

§291.29. Interim Rates.

§291.30. Escrow of Proceeds Received under Rate Increase.

§291.31. Cost of Service.

§291.32. Rate Design.

§291.34. Alternative Rate Methods.

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

SUBCHAPTER C: RATE-MAKING APPEALS

§§291.41 - 291.45

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.41. Appeal of Rate-making Pursuant to the Texas Water Code, §13.043.

§291.42. Contents of Petition Seeking Review of Rates Pursuant to the Texas Water Code, §13.043(b).

§291.43. Refunds during Pendency of Appeal.

§291.44. Contents of Pleadings Seeking Review of Rates for Sales of Water under the Texas Water Code, §§11.036 - 11.041 and 12.013.

§291.45. Rates Charged by a Municipality to a District.

SUBCHAPTER D: RECORDS AND REPORTS

§§291.71 - 291.75

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

§291.71. General Reports.

§291.72. Financial Records and Reports--Uniform System of Accounts.

§291.73. Water and Sewer Utilities Annual Reports.

§291.74. Maintenance and Location of Records.

§291.75. Management Audits.

SUBCHAPTER D: RECORDS AND REPORTS

§291.76

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.701, concerning Fees, which the commission is authorized to collect.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.701.

§291.76. Regulatory Assessment.

(a) For the purpose of this section, utility service provider means a public utility, water supply or sewer service corporation as defined in Texas Water Code (TWC), §13.002, or a district as defined in TWC, §49.001.

(b) Except as otherwise provided, a utility service provider which provides potable water or sewer utility service shall collect a regulatory assessment from each retail customer and remit such fee to the commission under the provisions of this section.

(c) A utility service provider is prohibited from collecting a regulatory assessment from the state or a state agency or institution.

(d) The regulatory assessment amount payable to the commission shall be based on the following:

(1) for a public utility as defined in TWC, §13.002, 1.0% of the charge for retail water and sewer service;

(2) for a water supply or sewer service corporation as defined in TWC, §13.002, 0.5% of the charge for retail water and sewer service;

(3) for a district as defined in TWC, §49.001, 0.5% of the charge for retail water and sewer service.

(e) The amount payable to the commission shall be based on the amounts actually collected by the utility service provider during the previous calendar year.

(f) The amount payable shall be based on water and sewer service charges to retail customers only, and shall not be based on:

(1) associated delinquent, penalty, or interest charges;

(2) tap fees, standby fees, impact fees, extension fees, capital improvement surcharges, itemized solid waste collection fees, or other unrelated charges; or

(3) wholesale charges from one utility service provider to another.

(g) The utility service provider may include the assessment as a separate line item on a customer's bill or include it in the retail charge.

(h) The utility service provider shall be responsible for keeping proper records of the annual retail water and sewer charges and assessment collections and provide such records to the commission upon request.

(i) By January 30th of each year, the utility service provider must ensure the retail water and sewer charges for the 12 months of the previous calendar year are reported through the commission's designated format.

(1) If the utility service provider does not report charges for water and sewer services to the commission by January 30th of each year, the commission may issue an invoice based on previously reported revenues and adjustment based on available information.

(2) If the utility service provider has not previously reported charges for water and sewer services to the commission, the commission may issue an invoice in an amount up to \$100.

(3) Utility service providers who do not report charges for water and sewer services to the commission by the January 30th deadline, and who pay an invoice generated by paragraph (1) or (2) of this subsection, are not relieved of the requirement to ensure retail water and sewer charges are reported through the designated format. Once the utility service provider reports charges for water and sewer services to the commission through the designated format, the commission will invoice the utility service provider for the appropriate amount or issue a refund for any overpayment.

(j) The utility service provider shall pursue collection of the assessment from the customer in the same manner and with the same diligence that it pursues collection of other service charges.

(k) Assessments collected in the 12 months prior to January 1st of each year shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal, and shall be made payable to the Texas Commission on Environmental Quality. If assessments are not received by the invoice due date, penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees).

(l) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(m) A utility service provider is exempt from the provisions of this section if the provider:

(1) does not own and has no responsibility for operation and maintenance of the facilities necessary in providing water and sewer utility service, including distribution and collection systems;

(2) does not maintain a security interest in the facilities necessary in providing water and sewer utility service;

(3) has no authority to set the retail customer's rates; and

(4) does not make policy decisions regarding water and sewer services.

(n) If it appears that utility service provider has violated this section, the commission may request a civil suit to be brought in a court of competent jurisdiction for injunctive or other appropriate relief.

(1) At the request of the commission, the attorney general shall bring and conduct the suit in the name of the state.

(2) The suit may be brought in Travis County or in the county in which the defendant resides.

SUBCHAPTER E: CUSTOMER SERVICE AND PROTECTION

§§291.80 - 291.90

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.80. Applicability.

§291.81. Customer Relations.

§291.82. Resolution of Disputes.

§291.83. Refusal of Service.

§291.84. Applicant and Customer Deposit.

**§291.85. Response to Requests for Service by a Retail Public Utility Within Its
Certificated Area.**

§291.86. Service Connections.

§291.87. Billing.

§291.88. Discontinuance of Service.

§291.89. Meters.

§291.90. Continuity of Service.

SUBCHAPTER F: QUALITY OF SERVICE

§291.91

Statutory Authority

The repeal of the section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the section implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.91. Applicability.

SUBCHAPTER F: QUALITY OF SERVICE

§291.92

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendment implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.92. Requirements by Others.

The application of commission rules shall not relieve the retail public utility from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY

**§§291.101, 291.102, 291.104 - 291.107, 291.109, 291.111 - 291.113,
291.115 - 291.120**

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013

§291.101. Certificate Required.

§291.102. Criteria for Considering and Granting Certificates or Amendments.

§291.104. Applicant.

§291.105. Contents of Certificate of Convenience and Necessity Applications.

§291.106. Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications.

§291.107. Action on Applications.

§291.109. Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.

§291.111. Purchase of Voting Stock in Another Utility.

§291.112. Transfer of Certificate of Convenience and Necessity.

§291.113. Revocation or Amendment of Certificate.

§291.115. Cessation of Operations by a Retail Public Utility.

§291.116. Exclusiveness of Certificates.

§291.117. Contracts Valid and Enforceable.

§291.118. Contents of Request for Commission Order under the Texas Water Code, §13.252.

§291.119. Filing of Maps.

§291.120. Single Certification in Incorporated or Annexed Areas.

SUBCHAPTER G: CERTIFICATES OF CONVENIENCE AND NECESSITY

§§291.103, 291.110, 291.114

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.103. Certificates Not Required.

A utility or water supply corporation is exempt from the requirement to possess a certificate of convenience and necessity in order to provide retail water service if it:

(1) has less than 15 potential service connections;

(2) is not owned by or affiliated with a retail public utility or any other provider of potable water service;

(3) is not within the certificated area of another retail public utility;
and

(4) is not within the corporate boundaries of a district or municipality
unless it receives written authorization from the district or municipality.

§291.110. Foreclosure and Bankruptcy.

(a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the commission in writing of that fact not later than the tenth day after the date on which the utility receives the notice.

(b) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

(c) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the commission in writing.

§291.114. Requirement To Provide Continuous and Adequate Service.

After notice and hearing, the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Texas Water Code, §16.341, to:

(A) provide specified improvements in its service in a defined area if:

(i) service in that area is inadequate as set forth in §291.93 and §291.94 of this title (relating to Adequacy of Water Utility Service; and Adequacy of Sewer Service); or

(ii) is substantially inferior to service in a comparable area; and

(iii) it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the Public Utility Commission of Texas to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided

continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the retail public utility's ability to operate the system in accordance with applicable laws and rules;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service; or

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider.

SUBCHAPTER H: UTILITY SUBMETERING AND ALLOCATION

§§291.121 - 291.125, 291.127

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.121. General Rules and Definitions.

§291.122. Owner Registration and Records.

§291.123. Rental Agreement.

§291.124. Charges and Calculations.

§291.125. Billing.

§291.127. Submeters or Point-of-Use Submeters and Plumbing Fixtures.

SUBCHAPTER I: WHOLESALE WATER PETITIONS

§§291.128 - 291.131

Statutory Authority

The amendments and new rules are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; TWC, §11.036 concerning the sale of conserved or stored water; and TWC, §11.041 concerning complaints for the denial of water.

The adopted amendments and new rules implement House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.128. Petition Concerning Wholesale Water.

This subchapter sets forth substantive guidelines and procedural requirements concerning a petition filed pursuant to Texas Water Code, §§11.036 - 11.041.

§291.129. Petition.

(a) The petitioner must file a written petition with the commission accompanied by the filing fee required by the Texas Water Code. The petitioner must serve a copy of the

petition on the party against whom the petitioner seeks relief and other appropriate parties.

(b) The petition must clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks. The petitioner must attach any applicable contract to the petition.

§291.130. Contents of Petition under Texas Water Code, §§11.036 - 11.041.

(a) A person seeking relief under the Texas Water Code (TWC), §§11.036 - 11.041 should include in a written petition to the commission, the following information, as applicable to the section of the TWC under which the petitioner seeks relief:

- (1) the petitioner's name;
- (2) the name of the entity from which water is received or sought;
- (3) an explanation of why the petitioner is entitled to receive or use the water;
- (4) that the petitioner is willing and able to pay a just and reasonable price for the water;

(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

(b) Water suppliers seeking relief under TWC, §§11.036 - 11.041 should include in a written petition for relief to the commission, the following information:

(1) the petitioner's name;

(2) the name of the ratepayers to whom water is rendered;

(3) an explanation of why the petitioner is entitled to the relief requested;

(4) that the petitioner is willing and able to supply water at a just and reasonable price; and

(5) that the price demanded by the petitioner for the water is just and reasonable and is not discriminatory.

(c) If the petition for relief is accompanied by the deposit stipulated in the TWC, the executive director shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.

(d) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition. In the hearing, the executive director's participation will be limited to presenting evidence and testimony relating to the portions of the petition within the commission's jurisdiction.

§291.131. Executive Director's Review of Petition.

When a petition is filed, including a petition subject to the Texas Water Code (TWC), §11.041, the executive director shall determine within ten days of the filing of the petition whether the petition contains all of the information required by this subchapter. For purposes of this section only, the executive director's review of probable grounds shall be limited to a determination whether the petitioner has met the requirements of §291.129 of this title (relating to Petition). If the executive director determines that the petition does not meet the requirements of §291.129 of this title, the executive director shall inform the petitioner of the deficiencies within the petition and allow the petitioner

the opportunity to correct these deficiencies. If the executive director determines that the petition does meet the requirements of §291.129 of this title, the executive director shall forward the petition to the State Office of Administrative Hearings for an evidentiary hearing under TWC, §§11.036 - 11.041 as applicable.

SUBCHAPTER I: WHOLESALE WATER OR SEWER SERVICE

§§291.129, 291.130, 291.132 - 291.138

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.129. Definitions.

§291.130. Petition or Appeal.

§291.132. Evidentiary Hearing on Public Interest.

§291.133. Determination of Public Interest.

§291.134. Commission Action to Protect Public Interest, Set Rate.

§291.135. Determination of Cost of Service.

§291.136. Burden of Proof.

§291.137. Commission Order To Discourage Succession of Rate Disputes.

§291.138. Filing of Rate Data.

SUBCHAPTER J: ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

§§291.141, 291.146, 291.147

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.141. Supervision of Certain Utilities.

§291.146. Municipal Rates for Certain Recreational Vehicle Parks.

§291.147. Temporary Rates for Services Provided for a Nonfunctioning System.

SUBCHAPTER J: ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

§291.142, §291.143

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted amendments implement House Bill 294 passed by the 85th Texas Legislature, 2017.

§291.142. Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver.

(a) The commission or the executive director, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that:

(1) has discontinued or abandoned operations or the provision of services;

or

(2) is being referred to the attorney general for the appointment of a receiver under Texas Water Code (TWC), §13.412 for:

(A) having expressed an intent to abandon or abandoned operation of its facilities;

(B) having violated a final order of the commission;

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission; or

(D) violates a final judgment issued by a district court in a suit brought by the attorney general under:

(i) TWC, Chapter 7;

(ii) TWC, Chapter 13; or

(iii) Texas Health and Safety Code, Chapter 341.

(b) The commission or the executive director may appoint a person under this section by emergency order under Chapter 35 of this title (relating to Emergency and

Temporary Order and Permits; Temporary Suspension or Amendment of Permit Conditions). A corporation may be appointed a temporary manager.

(c) Abandonment includes, but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

§291.143. Operation of a Utility by a Temporary Manager.

(a) By emergency order under Texas Water Code (TWC), §5.507 and §13.4132, the commission or the executive director may appoint a person under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC, §13.412.

(b) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The temporary manager shall serve a term of 180 days, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission;

(3) the temporary manager is discharged from his responsibilities by the commission; or

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general.

(e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The

temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(h) The temporary manager shall report to the executive director on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the executive director.

(i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

SUBCHAPTER K: PROVISIONS REGARDING MUNICIPALITIES

§§291.150 - 291.153

Statutory Authority

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeal of the sections implements House Bill 1600 and Senate Bill 567 passed by the 83rd Texas Legislature, 2013.

§291.150. Jurisdiction of Municipality: Surrender of Jurisdiction.

§291.151. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.

§291.152. Notification Regarding Use of Revenue.

§291.153. Fair Wholesale Rates for Wholesale Water Sales to a District.