

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §291.3, Definitions of Terms; §291.21, Form and Filing of Tariffs; §291.26, Suspension of Rates; §291.32, Rate Design; §291.74, Maintenance and Location of Records; §291.81, Customer Relations; §291.83, Refusal of Service; §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; §291.93, Adequacy of Water Utility Service; §291.102, Criteria for Considering and Granting Certificates or Amendments; §291.106, Notice for Applications for Certificates of Convenience and Necessity; §291.112, Transfer of Certificate of Convenience and Necessity; §291.128, Petition or Appeal Concerning Wholesale Rate; §291.131, Executive Director's Determination of Probable Grounds; §291.132, Evidentiary Hearing on Public Interest; and §291.134, Commission Action to Protect Public Interest, Set Rates. Section 291.93 is adopted *with changes* to the proposed text as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6298). Sections 291.3, 291.21, 291.26, 291.32, 291.74, 291.81, 291.83, 291.85 - 291.89, 291.102, 291.106, 291.112, 291.128, 291.131, 291.132, and 291.134 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these amendments to conform with the drought contingency rules in 30 TAC Chapter 288, Subchapters B and C that were effective on February 21, 1999 and adopted pursuant to requirements in Senate Bill (SB) 1, 75th Legislature, 1997; to implement SB 1421, 76th Legislature, 1999; to clarify, simplify, and cure problems that have arisen in the interpretation of the former rules as part of the commission's regulatory reform effort, and to incorporate comments received as part of the commission's quadrennial review of its rules.

SB 1 included new provisions pertaining to drought-related issues and water conservation plans which were incorporated in Chapter 288 of this title (relating to Water Conservation Plans, Guidelines and Requirements). Several amendments conform terminology in this chapter with terminology adopted in Chapter 288, such as substituting “drought contingency plan” for “water rationing plan” and “water use restrictions” in place of “water rationing.” Some amendments implement SB 1421. Senate Bill 1421 amended the definition of “affected county” in §13.002 of the Water Code. Senate Bill 1421 also amended §13.241 of the Water Code to require the commission by rule to develop a standardized method for determining which of two or more retail public utilities or water supply or sewer service corporations that apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area is more capable financially, managerially, and technically of providing continuous and adequate service. Several amendments are in response to public comments received during the quadrennial review of this chapter. The balance of the amendments are in response to input from commission staff as part of the agency’s regulatory reform initiative. In addition to the specific changes discussed below, there are several minor changes adopted for clarification or consistency in terminology.

SECTION BY SECTION DISCUSSION

The following amendments implement SB 1421, 76th Legislature, 1999.

The amendment to §291.3(2) changes the definition of an “affected county” to simply be “a county any part of which is within 50 miles of an international border” to conform terminology with SB 1421.

The adopted new §291.102(g) is added, in accordance with SB 1421, to set general criteria for

determining which of two or more retail public utilities in an affected county is more capable financially, managerially and technically of providing continuous and adequate service. An assessment for making the determination will be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute.

The following amendments conform this chapter to the drought contingency rules in Chapter 288 of this title, that became effective on February 21, 1999.

The amendment to §291.3(48) changes the definition of “water rationing” to “water use restrictions.”

The amendment to §291.21(c)(7) requires that the tariff contain an approved drought contingency plan, instead of a water rationing plan, to match requirements established in §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers).

The adopted amendment to §291.32(b)(2)(A) clarifies that conservation rates can be used to conserve water supplies or for other reasons specified in an approved drought contingency plan. The term “drought contingency plan” replaces the term “water rationing plan.”

The amendments to §291.93(a)(2) substitute “drought contingency plan” for “water rationing plan”; substitutes “water use restrictions,” “restrictions” or “plan” in place of “water rationing” or “rationing”; clearly authorize the use of restrictions in accordance with the approved drought contingency plan required by §288.20 of this title; and replace specific time frames in the rules for submitting required reports in accordance with the approved drought contingency plan.

The following amendments are adopted in response to comments received during the commission's quadrennial review of its rules.

The amendment to §291.74 allows access to a utility's records between 8:00 a.m. and 5:00 p.m. Monday through Friday, except holidays, unless the utility provides a written request for alternate hours 72 hours in advance of any scheduled inspection.

The amendment to §291.83(a)(3) requires that a utility provide service to a customer who is indebted to another utility as the result of a disputed bill if the customer makes a deposit, demonstrates having registered the dispute with the utility, and has made a payment equal to the customer's average monthly usage at current rates.

The amendments to §291.85(a) include a provision in paragraph (1) that allows a utility to require that an applicant for service provide written documentation that it has the legal right to occupy the premises. Documentation may include a lease, contract for deed, or a warranty deed. A purchase contract is not sufficient unless the applicant provides documentation that the sale has been closed. A provision in paragraph (3) increases the number of days for reconnecting service at a previous location from one to three working days, and a provision in paragraph (4) increases the number of days for connecting service where a tap is required from five to ten working days.

The amendment to §291.86(a)(2)(B) allows a utility to require a customer owned cut-off valve for new service at an existing tap.

The amendment to §291.87(g) allows a utility to backbill a customer for undercharges for up to 12 months instead of six months as previously allowed.

The amendment to §291.87(k)(1) requires that a customer with a disputed bill provide written notice and make a payment equal to the customer's average monthly usage at current rates prior to the date of proposed discontinuance in order for a customer to avoid discontinuance of service.

The amendment to §291.88(g) allows a utility until the end of the next working day to disconnect service after receiving a written request from the customer.

The amendment to §291.88(h) requires that a utility restore service within 36 hours, instead of 24 hours, after the service has been disconnected as a result of past due charges or other circumstances and the circumstances have been corrected.

The amendment to §291.89(a)(4) adds condominiums and manufactured housing communities to those facilities that could be considered a single commercial facility for the one meter requirement.

The amendment to §291.89(h) expands the definition of meter tampering to include removal or alteration of utility-owned equipment or locks, connection or reconnection of service without utility authorization, or connection into the service line of adjacent customers or of the utility.

The following amendments are adopted as part of the commission's regulatory reform effort to clarify, simplify, and cure problems that have arisen in the interpretation of the former rules.

The amendments to §291.3 define the terms “certificate,” “certificate of convenience and necessity,” and “certificate of public convenience and necessity.” The inclusion of these definitions caused the renumbering of existing definitions.

The amendment to §291.26(a) allows the executive director to suspend a rate change, if the utility has included in the cost of service for the noticed rates, rate case expenses, other than those necessary to complete and file the application.

The amendments to §291.102(a) clarify that copies of written responses to water or sewer service requests only need to be submitted from those systems to which written requests for service were made. The amendments also redesignate former subsection (a)(3) as subsection (b), causing the redesignation of the succeeding subsections.

The amendment to §291.106(b) clarifies that the distance for notice of an application for issuance of a new certificate of public convenience and necessity is measured from the corporate boundaries or the boundaries of the service areas in question.

The amendment to §291.112(c)(3) clarifies that the distance for notice of proposed sale, acquisition, lease, rental, merger, or consolidation and transfer of a certificate of convenience and necessity is measured from the corporate boundaries or the boundaries of the service areas in question.

The amendments to §291.112 deleted former subsection (c)(5) because it required that applications be processed in accordance with Chapter 263 of this title, which had been repealed. Also, the amendments added subsection (e) to limit the term of the executive director's approval for a sale to one year. At the end of the year, if the sale has not been made, the approval is void and a new application must be filed.

The following amendments are adopted in response to consumer complaints pertaining to a utility's interpretation of the former rules requiring the use of backflow prevention devices.

The amendment to §291.21(c)(5) requires that a utility's tariff contain copies of the customer service inspection forms required to be completed under §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) if the forms deviate from the form specified in §290.47(d) of this title (relating to Customer Service Inspection Certification).

The amendment to §291.81(a) adds a new paragraph (2) which requires that the utility give notice to each service applicant or customer who is required to have a customer service inspection performed. The notification must be in writing, include the right to obtain a second opinion, and include the right for the customer to use the least expensive acceptable backflow prevention assembly as defined in §290.44(h) of this title (relating to Water Distribution). The customer must receive a copy of the completed inspection form and information related to thermal expansion problems which may be created if a backflow prevention assembly is installed. The former paragraph (2) has been renumbered as (3) and each succeeding paragraph in the subsection has also been renumbered in sequence.

The amendments to §291.83(c) add a new paragraph (6), that requires a utility to provide service where the service applicant or customer chooses to use a type of backflow prevention assembly approved under §290.44(h) of this title (relating to Water Distribution) even if the assembly is not the one preferred by the utility. Under the amendments, former paragraph (6) was renumbered as (7).

The amendment to §291.85(a)(2) requires a utility to make available to a service applicant an application for service and information about customer service inspections, and to accept from the applicant the completed application along with a completed customer service inspection form.

The amendment to §291.93(a)(5) requires each retail public utility to include cross-connection control as a means of protecting public health and requires the utility to receive prior approval for a cross-connection control program which exceeds the minimum requirements of §290.44(h) of this title (relating to Water Distribution). The amendment provides that a utility may be required to fund any expenses above the costs associated with the minimum requirements without customer reimbursement.

The following amendments are adopted to clarify when a public interest hearing versus a cost of service hearing is appropriate.

The amendment to §291.128 makes this section applicable to petitions for the review of rates charged for the resale of water regardless of whether there is a contract or not.

The amendments to §291.131 change the section title from “Executive Director's Determination of Probable Grounds” to “Executive Director's Review of Petition or Appeal” and add subsections (b), (c), and (d) that allow the executive director to forward petitions to review a rate that is charged pursuant to a written contract to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing on public interest or, where there is no contract, to SOAH for an evidentiary hearing on the rate. The amendments also provide that if the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge (ALJ) will abate the hearing until the dispute is resolved by a court of proper jurisdiction.

The amendment to §291.132 is proposed to be amended to remove the 120-day requirement for an ALJ to prepare a proposal for decision.

The amendments to §291.134 require the seller to provide a cost of service study and other information necessary to support the appealed rates within 90 days after the appeal is forwarded to SOAH. The amendments limit discovery prior to the evidentiary hearing on the rate to matters relevant to the evidentiary hearing on the rate. The amendments also require the ALJ to include a recommendation on the rate in the proposal for decision.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. “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. The rule amendments do not change the basic requirements in the current rules. The rules incorporate new legislative requirements, address comments received during the commission's quadrennial review of its rules, and clarify, simplify, and cure problems that have arisen in the interpretation of the former rules. The changes will not 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. Further, this rulemaking does not meet the applicability criteria of a "major environmental rule" because the amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the changes are not adopted solely under the general rulemaking authority of the commission but also under Texas Water Code, §§11.272, 11.036, 11.041, 12.013, 13.043(f), 13.136, 13.137, and 13.187(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rule amendments pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments is to implement applicable requirements of SB 1421, 76th Legislature, 1999, relating to utility regulations, to conform language with the drought contingency rules in Chapter 288, to respond to public comments received during the quadrennial review of Chapter 291 and to revise the rules as part of the agency's regulatory reform initiative. The rule amendments substantially advance the stated purpose by incorporating the applicable requirements of SB 1421, the drought contingency rules, and the recommendations made through public comments and by

commission staff. Promulgation and enforcement of these amendments will not burden private real property because the actions that are required by the amendments relate primarily to the relationships between water utility operators and their customers, concerning establishment of rates, procedures for providing services, and billing for the services. The rules will provide protection to both the utility operators and their customers. Therefore, this rulemaking will not constitute a takings under Chapter 2007 of the Texas Government Code.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will the rules affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the rulemaking is not subject to the CMP.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed on July 31, 2000. Only Tecon Water Companies, Inc., (Tecon) submitted written comments. During the comment period, commission staff discovered some additional discrepancies between the proposed Chapter 291 rules and existing Chapter 288 rules.

ANALYSIS OF COMMENTS

Concerning §291.26, Tecon objected to adding the phrase "...has included in the cost of service for the noticed rates rate case expenses other than those necessary to complete and file the application,

....” The commenter wanted to know which costs were specifically excluded and did not see any reason why this change should be added to the rule.

The commission disagrees with this comment and believes that the change should be added to the rules. The costs that are excluded are any and all costs associated with a hearing that may be held in connection with the application because of customer or staff protests. Many applications for a rate change are processed administratively and, therefore, do not require a hearing or the associated expense. Consequently, to include any expenses in the revenue requirement for anything other than those necessary to complete and file the application would have the effect of the customers paying for costs that were not incurred. If a hearing is held, §291.28(6) allows the utility to add on any expenses associated with that hearing. The utility is therefore able to add those expenses into its cost of service if a hearing is held.

The commission has made no change in response to this comment.

Concerning §291.81(a)(2), the commenter requested information related to the proposed changes. Specifically, the commenter asked for the following information: 1) what information is required; 2) how the proposed change affects their ability to control backflow contamination to their system when customers or contractors break their mains; and 3) if this warning affects their liability in any way.

In response to the first request, a backflow prevention device creates a closed system in the customer’s home. When all lines in the home are full, hot water can expand and increase the pressure inside the home to the point that a hot water heater without an operable pressure relief

valve can explode. This provision specifically addresses those cases where the utility is requiring that a customer install a backflow prevention device. In these cases, the customers should be informed of the danger involved and the methods for ensuring that the pressure can be released before building to dangerous levels.

In response to the second request, this provision does not apply to instances where there is a break in the utility's mains.

In response to the third request, the issue of liability is a private legal matter that cannot be addressed in the rules.

The commission has made no change in response to this comment.

Concerning §291.93(1)(A), the commenter questioned replacing the term “water rationing plans” with “drought contingency plans.” The commenter stated that implementing a drought contingency plan to temporarily reduce water consumption due to equipment failure is misleading to customers. The commenter suggested that the name of the plan be changed to “Drought Contingency/Water Rationing Plan”. The commenter contends that monetary increases are the only effective way to monitor and/or control water conservation during emergencies. The commenter also requested that investor-owned utilities (IOUs) be allowed a 90-day extension to obtain tariff approval for these plans.

While the commenter refers to §291.93(1)(A), the comments made address changes in §291.93(2)(A).

Chapter 288 of this title (relating to Water Conservation Plans) addresses the requirements for drought contingency plans. A water rationing plan is specifically included as a part of a drought contingency plan. This language was added to ensure that Chapter 291 was consistent with the language in Chapter 288. The intent is for regulated entities to have to comply with the provisions of only one chapter.

The commission agrees with the commenter that using the name “drought contingency plan” can be confusing to the customers. However, during the proposal stage for amendment of Chapter 288 in 1998, there was significant discussion involving the name of the drought contingency plan. Chapter 288 is not limited only to droughts but also is intended to address all emergency situations.

The commission does not agree that a monetary increase is the only way to control consumption. As an example, customer education information has been shown to have a positive effect on consumption. While IOUs have not been granted the statutory authority to impose fines and penalties, current §291.32(b) of this title (relating to Rate Design) allows IOUs to apply for and implement conservation rates including inclining block rates (tier rates) which increase the amount the customer pays per gallon as their consumption increases. Additionally, IOUs are allowed to issue warnings when customers are not complying with legally imposed requirements to restrict water usage. If the customer fails to comply with those warnings, the IOU may be authorized to install flow restrictors or terminate service to that customer for a period of time.

The commenter's request for a 90-day extension cannot be approved or denied as a part of these rules. The requirements for filing a drought contingency plan are found in Chapter 288.

Additionally, IOUs have been notified at least twice in the last year of the need to file their plan, the deadline for filing the plan, and the procedure for getting their tariff amended to include the plan.

The commission has made no change in response to this comment.

Concerning §291.93(5)(C), the commenter asked for a definition of "documented health hazards" and the phrase "funded by the utility without reimbursement."

Section 291.93(5)(C) refers to requirements in §290.44(h) of this title (relating to Water Distribution). Documented health hazards are currently defined in §290.44(h) as being those listed in American Water Works Association Manual M14. However, there are changes to Chapter 290 of this title (relating to Public Drinking Water) pending approval by the commission. If adopted as proposed, a list of documented health hazards will be in a table to be found in §290.47, Appendix I.

Section 291.93(5)(C) addresses those instances when a utility chooses to implement a cross-connection control program that exceeds the minimum requirements necessary for protecting public health and for complying with §290.44(h) of this title. If the utility elects to exceed the minimum requirements, the incremental cost over and above the cost of meeting the minimum

requirements cannot be passed on to the affected individual customer or included in the rates charged to any customer.

The commission has made no change in response to this comment.

Concerning §291.112(E)(e), the commenter objects to adding this section. The commenter wants to know why the proposed change is needed, how many times it has taken more than a year to complete a sale, and the problems caused by the delay in completing the sale.

While the commenter refers to §291.112(E)(e), the comments made address the addition of §291.112(e).

Texas Water Code §13.251 requires the commission to consider the factors found in Texas Water Code §13.246(c) before a certificate of convenience and necessity can be sold, assigned, or leased. The requirements found in §13.246(c) include consideration “...of the need for additional service in the requested area, the effect of granting the certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area, the ability of the applicant to provide adequate service, the feasibility of obtaining service from an adjacent retail public utility, the financial stability of the applicant, including, if applicable, the adequacy of the applicant’s debt-equity ratio, environmental integrity, and the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.” It is the commission’s position that the ability of an applicant to comply with many of these requirements can change significantly in a year. It is, therefore, not an issue of how many times

this has happened, but of ensuring that the commission does not approve the application of an applicant who can no longer meet the requirements found in §13.246(c). Section 291.112(e) does allow the applicant to request from the executive director an extension of time to consummate the sale.

The commission has made no change in response to this comment.

With respect to §291.93, staff discovered during the comment period that this section needed to be modified to clarify the conditions under which a utility is required to provide notice of water use restrictions to the executive director in accordance with §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers).

The changes are designed to make this provision less restrictive. As proposed, utilities would have to notify the executive director every time that any type of water use restrictions were implemented. The requirements in §288.20 only require notification when mandatory water use restrictions are implemented.

The commission has made changes to this section to modify the language to require notice to the executive director only when a utility implements mandatory water use restrictions.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the

state; TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; TWC, §13.250, which requires a retail public utility that possesses a certificate of convenience and necessity to provide continuous and adequate service within its certified area; TWC, §13.241, which establishes requirements for granting certificates of convenience and necessity, and requirements for developing a standardized method for determining the financial, managerial, and technical capacity of a retail public utility; TWC, §13.246, which establishes requirements pertaining to applications for certificates of public convenience and necessity; TWC, §13.136, which requires utilities to file tariffs of rates, rules and regulations and annual financial reports; TWC, §13.187(a), which requires the commission to regulate utility rate changes; TWC, §11.1272, which requires the commission to adopt rules requiring public water suppliers to adopt drought contingency plans; TWC, §13.137, which requires every utility to have an office where it keeps all its books, accounts, records, and memoranda required by the commission to be kept in this state; TWC, §§11.036, 11.041, and 12.013, pertaining to the commission's jurisdiction to consider the rate charged in a contract for the resale cost of water; and TWC, §13.043(f), pertaining to the commission's appellate jurisdiction to consider the water or sewer service rate charged by one retail public utility to another.

The amendments implement TWC, Chapters 11, 12, and 13.

SUBCHAPTER A : GENERAL PROVISIONS

§291.3

§291.3. Definitions of Terms.

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

(1) Acquisition adjustment -

(A) The difference between:

(i) the lesser of the purchase price paid by an acquiring utility or the current depreciated replacement cost of the plant, property, and equipment comparable in size, quantity, and quality to that being acquired, excluding customer contributed property; and

(ii) the original cost of the plant, property, and equipment being acquired, excluding customer contributed property, less accumulated depreciation.

(B) A positive acquisition adjustment results when subparagraph (A)(i) of this paragraph is greater than subparagraph (A)(ii) of this paragraph.

(C) A negative acquisition adjustment results when subparagraph (A)(ii) of this paragraph is greater than subparagraph (A)(i) of this paragraph.

(2) **Affected county** - A county any part of which is within 50 miles of an international border.

(3) **Affected person** - Any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(4) **Affiliated interest or affiliate** -

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(5) **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

Workers' Compensation Commission, and institutions for higher education) which makes rules or determines contested cases.

(6) **Allocations** - For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

(7) **Base rate** - The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service, excluding stand-by fees, which does not vary due to changes in utility service consumption patterns.

(8) **Billing period** - The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

(9) **Certificate** - The definition of certificate is that definition given to certificate of convenience and necessity in this subchapter.

(10) **Certificate of Convenience and Necessity** - A permit issued by the commission 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.

(11) **Certificate of Public Convenience and Necessity** - The definition of certificate

of public convenience and necessity is that definition given to certificate of convenience and necessity in this subchapter.

(12) **Class of service or customer class** - A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.

(13) **Code** - The Texas Water Code.

(14) **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.

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

(16) **Customer service line or pipe** - The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

(17) **Facilities** - All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or

supplied for, by, or in connection with the business of any retail public utility.

(18) **Incident of tenancy** - Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(19) **License** - The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(20) **Licensing** - The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission pursuant to its authority under the Texas Water Code.

(21) **Main** - A pipe operated by a utility service provider which is used for transmission or distribution of water or to collect or transport sewage.

(22) **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 which 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.

(23) **Member** - A person who holds a membership in a water supply or sewer service

corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(24) **Membership fee** - A fee assessed each water supply or sewer service corporation service applicant which entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed pursuant to said bylaws. For purposes of Texas Water Code, §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

(25) **Municipality** - A city, existing, created, or organized under the general, home rule, or special laws of this state.

(26) **Municipally-owned utility** - Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

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

(28) **Physician** - Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

(29) **Point of use or point of ultimate use** - The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

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

(31) **Premises** - A tract of land or real estate including buildings and other appurtenances thereon.

(32) **Public utility** - The definition of public utility is that definition given to water and sewer utility in this subchapter.

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

(34) **Purchased water** - Raw or treated water purchased from a source outside the

retail public utility's system to meet system demand requirements.

(35) **Rate** - Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in the Texas Water Code, §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(36) **Ratepayer** - Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(37) **Reconnect fee** - A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §291.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

(38) **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.

(39) **Retail water or sewer utility service** - Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(40) **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 pursuant to the provisions of the Safe Drinking Water Act and as defined in Water Code, §15.602.

(41) **Service** - Any act performed, anything furnished or supplied, and any facilities 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.

(42) **Service line or pipe** - A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(43) **Sewage** - Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(44) **Standby fee** - A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(45) **Tap fee** - A tap fee is the charge to new customers for initiation of service where

no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(46) **Tariff** - The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

(47) **Temporary water rate provision** - A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(48) **Test year** - The most recent 12-month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.

(49) **Utility** - The definition of utility is that definition given to water and sewer utility in this subchapter.

(50) **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.

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

(52) **Water supply or sewer service corporation** - Any nonprofit, corporation organized and operating under the Texas Water Code, Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member controlled. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an

interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.

(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.

(C) A majority of the directors and officers of the corporation must be members of the corporation.

(D) The corporation's by-laws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(53) **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.

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

§§291.21, 291.26, 291.32

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; TWC, §13.136, which requires utilities to file tariffs of rates, rules and regulations and annual financial reports; TWC, §13.187(a), which requires the commission to regulate utility rate changes; and TWC, §11.1272, which requires the commission to adopt rules requiring public water suppliers to adopt drought contingency plans.

The amendments implement TWC, Chapters 11 and 13.

§291.21. Form and Filing of Tariffs.

(a) Approved tariff. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as noted in this subsection. A utility may charge the rates proposed under the Texas Water Code, §13.187(a) (relating to Statement of Intent to Change Rates) after the proposed effective date, unless the rates are suspended or the commission or a judge sets interim rates. The regulatory assessment required in Texas Water Code §5.235(n) does not have to be listed on the

utility's approved tariff to be charged and collected but shall be included in the tariff at the earliest opportunity. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service which enters into an agreement pursuant to Texas Water Code §13.250(b)(2), may collect charges for wastewater services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes and filing of tariffs.

(1) Tariffs filed with applications for certificates of convenience and necessity.

(A) Every public utility shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. The tariff shall be on the form the commission prescribes or another form acceptable to the commission.

(B) Every water supply or sewer service corporation shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a retail public utility.

(2) Minor Tariff Changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county can change rates for water or wastewater service without commission approval but must file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The executive director may approve the following minor changes to tariffs:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by the applicable sections;

(iii) implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water use imposed by a court, government agency, or other authority, or water use fee provision previously approved by the commission;

(iv) surcharges over a time period determined by the executive director to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or at the discretion of the executive director, other governmental requirements beyond the utility's control;

(v) addition of the regulatory assessment as a separate item or to be included in the currently authorized rate;

(vi) addition of a provision allowing a utility to collect wastewater charges pursuant to an agreement under the Texas Water Code, §13.250(b)(2); or

(vii) rate adjustments to implement authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs.

(B) The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.

(3) **Tariff Revisions and Tariffs Filed With Rate Changes.** The utility shall file three copies of each revision or in the case of a rate change, the number required in the application form. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(4) Each rate schedule must clearly state the territory, subdivision, city, or county wherein said schedule is applicable.

(5) Tariff sheets are to be numbered consecutively. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, shall contain sections setting forth:

- (1) a table of contents;
- (2) a list of the cities and counties, and subdivisions or systems, in which service is provided;
- (3) the certificate of convenience and necessity number under which service is provided;
- (4) the rate schedules;
- (5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms required to be completed under §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Water Systems) if the form used deviates from that specified in §290.47(d) of this title (relating to Appendices);

(6) the extension policy;

(7) an approved drought contingency plan as required by §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers); and

(8) the form of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the application number, date of the order, a list of tariff sheets filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's model tariff or any modifications of a rule in the model tariff must be clearly noted. All tariff sheets shall comply with all other sections in this chapter and shall include only changes ordered. The effective date and/or wording of the tariffs shall comply with the provisions of the order.

(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with

these sections shall be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Tariffs must be filed to reflect changes in rates or regulations set by other regulatory authorities and shall include a copy of the order or ordinance authorizing the change. Each utility operating within the corporate limits of a municipality exercising original jurisdiction must have a copy of its current tariff which has been authorized by the municipality on file with the commission.

(h) Purchased water or sewage treatment provision.

(1) A utility which purchases water or sewage treatment or pays water use fees to an underground water conservation district may include a provision in its tariff to pass through to its customers changes in such costs. The provision shall specify how it is calculated and affects customer billings.

(2) This provision must be approved by the commission in a rate proceeding. A proposed change in the method of calculation of the provision must be approved in a rate proceeding.

(3) Once the provision is approved, any revision of a utility's billings to its customers to allow for the recovery of additional costs under the provision may be made only upon issuing notice as required by paragraph (4) of this subsection. The executive director's review of a proposed revision is an informal proceeding. Only the commission, the executive director or the utility may request a

hearing on the proposed revision. The recovery of additional costs is defined as an increase in water use fees or in costs of purchased water or sewage treatment.

(4) A utility that wishes to revise utility billings to its customers pursuant to an approved purchased water or sewer treatment or water use fee provision to allow for the recovery of additional costs shall take the following actions prior to the beginning of the billing period in which the revision takes effect:

(A) submit a written notice to the executive director; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and shall contain the effective date of the change, the present calculation of customer billings, the new calculation of customer billings, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice shall include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water)(purchased sewer)(water use fee) adjustment clause to recognize (increases)(decreases) in the (water use fee)(cost of purchased)(water)(sewage treatment). The cost of these charges to customers will not exceed the (increased) (decreased) cost of (the water use fee)(purchased)(water)(sewage treatment)."

(5) Notice to the commission shall include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.

(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.

(i) Effective date. The effective date of a tariff change is the date of approval by the executive director unless otherwise stated in the letter transmitting the approval or the date of approval by the commission, unless otherwise specified in a commission order or rule. The effective date of a proposed rate increase under §13.187 of the code is the proposed date on the notice to customers and the commission, unless suspended and must comply with the requirements of §291.8(b) of this title (relating to Administrative Completeness).

(j) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, one copy of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff shall include all rules and regulations relating to or affecting the rates, utility service or extension of service or product, or commodity furnished and shall specify the CCN number and in which counties or cities it is effective.

(k) Surcharge.

(1) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(2) A surcharge to recover the actual increase in costs to the utility for sampling,

inspection fees or other governmental requirements beyond the control of the utility may be collected over a specifically authorized time period without being listed on the approved tariff if specifically authorized for the utility in writing by the executive director or the municipality exercising original jurisdiction over the utility.

(3) A utility shall use the revenues collected pursuant to a surcharge only for the purposes noted and handle the funds in the manner specified according to the notice or application submitted by the utility to the commission, unless otherwise directed by the executive director. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the executive director.

(l) Temporary water rate.

(1) A utility's tariff may include a temporary water rate provision which will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures which affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision shall allow the utility to recover from customers revenues the utility would otherwise have lost due to mandatory water use reductions in accordance with the temporary water rate provision approved by the commission. If a utility obtains a portion of its water supply from another unrestricted water source or water supplier during the time the temporary water rate is in effect, the rate resulting from implementation of the temporary water rate provision must be adjusted to account for the supplemental water supply and to limit over-recovery of revenues from customers. A

temporary water rate provision cannot be implemented by a utility if there exists an available, unrestricted, alternative water supply which the utility can use to immediately replace, without additional cost, the water made unavailable because of the action requiring a mandatory reduction of use of the affected water supply.

(2) The temporary water rate provision must be approved by the commission in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions through a limited rate proceeding. The formula for a temporary water rate provision under this paragraph is:

TGC = temporary gallonage charge

cgc = current gallonage charge

r = water use reduction expressed as a decimal fraction (the pumping restriction)

pr = percentage of revenues to be recovered expressed as a decimal fraction (i.e. 50% = 0.5)

$TGC = cgc + [(pr)(cgc)(r)/(1.0-r)]$

(A) The utility must file a temporary water rate application prescribed by the executive director and provide customer notice as required in the application, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the classes of customers affected, the rates affected, 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 and any other information which is required by the executive director in the temporary water rate application. The utility's existing rates will not be subject to review in the proceeding and the utility will only be required to support the need for the temporary rate. A request for a temporary water rate provision under this paragraph is not considered a statement of intent to increase rates subject to the 12 month limitation in §291.23 of this title, (relating to Time Between Filings.)

(B) The utility must be able to prove that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and

necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision using the formula in paragraph (3) of this subsection or any other method acceptable to the commission to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues it must submit financial data to support its existing rates as well as the temporary water rate provision even if no other rates are proposed to be changed. The utility must complete a rate application and provide notice in accordance with the requirements of §291.22 of this title (relating to Notice of Intent To Change Rates). The utility's existing rates will be subject to review in addition to the temporary water rate provision.

(B) The utility must be able to prove that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the commission in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate into effect only after:

(A) the temporary water provision has been approved by the commission and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures which affect the utility's customers' use of utility services; and,

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility can readjust its rates using the temporary water rate provision as necessary to respond to modifications or changes to the original order requiring mandatory water use reductions by reissuing notice as required by paragraph (7) of this subsection. The executive director's review of the proposed implementation of an approved temporary water rate provision is an informal proceeding. Only the commission, the executive director, or the utility may request a hearing on the proposed implementation.

(7) A utility that wishes to place a temporary water rate into effect shall take the following actions prior to the beginning of the billing period in which the temporary water rate takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the executive director; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and shall contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate is implemented. The notice shall include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Texas Natural Resource Conservation Commission to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from (\$ per 1,000 gallons to \$ per 1,000 gallons)."

(8) A utility must stop charging a temporary water rate as soon as is practical after the order which required mandatory water use reduction is ended but in no case later than the end of the billing period which was in effect when the order was ended. The utility must notify its customers of the date that the temporary water rate ends and that its rates will return to the level authorized before the temporary water rate was implemented.

(9) If the commission initiates an inquiry into the appropriateness or the continuation of a temporary water rate, it may establish the effective date of its decision on or after the date the inquiry is filed.

§291.26. Suspension of Rates.

(a) The executive director or the commission may suspend the rate change if the utility has failed to properly complete the rate application, has included in the cost of service for the noticed rates rate case expenses other than those necessary to complete and file the application, or has failed to comply with the notice requirements and proof of notice requirements. The utility shall not renotify its customers of a new proposed effective date until the utility receives written notification from the executive director that all deficiencies have been corrected.

(b) The effective date of any rate change may be suspended by the commission or the executive director if the utility does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity.

§291.32. Rate Design.

(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses (unless an alternative rate method is used as set forth in §291.34 of this title (relating to Alternative Rate Methods), and preserve the financial integrity of the utility.

(b) Conservation.

(1) In order to encourage the prudent use of water or promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage within any customer class.

(2) After receiving final authorization from the regulatory authority through a rate change proceeding, a utility may implement a water conservation surcharge using an inclining block rate or other conservation rate structure. A utility may not implement such a rate structure to avoid providing facilities necessary to meet the commission's minimum standards for public drinking water systems. A water conservation rate structure may generate revenues over and above the utility's usual cost of service:

(A) to reduce water usage or promote conservation either on a continuing basis or in specified restricted use periods identified in the utility's approved drought contingency plan required by §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers) included in its tariff in order to:

(i) comply with mandatory reductions directed by a wholesale supplier or underground water district; or

(ii) conserve water supplies, maintain acceptable pressure or storage, or other reasons identified in its approved drought contingency plan;

(B) to generate additional revenues necessary to provide facilities for maintaining or increasing water supply, treatment, production, or distribution capacity.

(3) All additional revenues over and above the utility's usual cost of service collected under paragraph (2) of this subsection:

(A) must be accounted for separately and reported to the executive director, as requested;

(B) are considered customer contributed capital unless otherwise specified in a commission order; and

(C) may only be used in a manner approved by the executive director for applications not subject to hearing under Texas Water Code, §13.187(b).

(c) Volume charges. Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.

(d) Surcharges.

(1) Capital improvements. In a rate proceeding, the commission may authorize collection of additional revenues from the customers to provide funds for capital improvements

necessary to provide facilities capable of providing adequate and continuous utility service, and for the preparation of design and planning documents.

(2) Debt repayments. In a rate proceeding, the commission may authorize collection of additional revenues from customers to provide funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all of the requirements of the Texas Water Development Board in regard to financial assistance from the Safe Drinking Water Revolving Fund.

SUBCHAPTER D : RECORDS AND REPORTS

§291.74

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; and TWC, §13.137, which requires every utility to have an office where it keeps all its books, accounts, records, and memoranda required by the commission to be kept in this state.

The amendments implement TWC, Chapter 13.

§291.74. Maintenance and Location of Records.

Unless otherwise permitted by the commission, all records required by these sections or necessary for the administration thereof shall be kept within the State of Texas at a central location or at the main business office located in the immediate area served. These records shall be available for examination by the commission or its authorized representative between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, except holidays. The executive director may consider alternate hours of inspection if the utility provides a written request 72 hours in advance of any scheduled inspection.

SUBCHAPTER E : CUSTOMER SERVICE AND PROTECTION

§§291.81, 291.83, 291.85, 291.86, 291.87, 291.88, 291.89

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; and TWC, §13.250, which requires a retail public utility that possesses a certificate of convenience and necessity to provide continuous and adequate service within its certified area.

The amendments implement TWC, Chapter 13.

§291.81. Customer Relations.

(a) Information to customers.

(1) Upon receipt of a request for service or service transfer, the utility shall fully inform the service applicant or customer of the cost of initiating or transferring service. The utility shall clearly inform the service applicant which service initiation costs will be borne by the utility and which costs are to be paid by the service applicant. The utility shall inform the service applicant if any cost information is estimated. Also see §291.85 of this title (relating to Response to Requests for Service by a Retail Public Utility Within Its Certificated Area).

(2) The utility shall notify each service applicant or customer who is required to have a customer service inspection performed. This notification must be in writing and include the applicant's or customer's right to get a second customer service inspection performed by a qualified inspector at their expense and their right to use the least expensive backflow prevention assembly acceptable under §290.44(h) of this title (relating to Water Distribution) if such is required. The utility will ensure that the customer or service applicant receives a copy of the completed and signed customer service inspection form and information related to thermal expansion problems which may be created if a backflow prevention assembly or device is installed.

(3) Upon request, the utility shall provide the customer or service applicant with a free copy of the applicable rate schedule from its approved tariff. A complete copy of the utility's approved tariff shall be available at its local office for review by a customer or service applicant upon request.

(4) Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) shall be labeled to indicate the size, design capacity, and any pertinent information which will accurately describe the utility's facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and will be available for commission inspection during normal working hours.

(5) Each utility shall maintain a current copy of the commission's substantive rules, Chapter 291 of this title (relating to Utility Regulations) at each office location and make them available for customer inspection during normal working hours.

(6) Each water utility shall maintain a current copy of §§290.38 - 290.47 of this title (relating to Rules and Regulations for Public Water Systems), at each office location and make them available for customer inspection during normal working hours.

(b) Customer complaints. Customer complaints are also addressed in §291.82 of this title (relating to Resolution of Disputes).

(1) Upon receipt of a complaint from a customer or service applicant, either in person, by letter or by telephone, the utility shall promptly conduct an investigation and report its finding(s) to the complainant.

(2) In the event the complainant is dissatisfied with the utility's report, the utility must advise the complainant of their recourse through the Texas Natural Resource Conservation Commission complaint process, and that such process can be initiated by contacting the Consumer Assistance Coordinator, Water Utilities Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The commission encourages all complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(3) Each utility shall make an initial response to the executive director within 15 days of receipt of a complaint from the commission on behalf of a customer or service applicant. The commission or the executive director may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission or the executive director may require continuation or restoration of service.

(4) The utility shall keep a record of all complaints for a period of two years following the final settlement of each complaint. The record of complaint shall include the name and address of the complainant, the date the complaint was received by the utility, a description of the nature of the complaint, and the adjustment or disposition of the complaint.

(c) Telephone number. For each of the systems it operates, the utility must maintain and note on the customer's monthly bill either a local or toll free telephone number (or numbers) to which a customer can direct questions about their utility service.

(d) Local office. Unless authorized by the executive director pursuant to a written request, each utility shall have an office in the county or immediate area (within 20 miles) of a portion of its utility service area in which it keeps all books, records, tariffs, and memoranda required by the commission and at which it will accept customer payments or applications for service. Unless authorized by the executive director pursuant to a written request, each utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where payments can be made to restore service after disconnection for nonpayment, nonuse or other reasons specified in §291.88 of this title (relating to Discontinuance of Service).

§291.83. Refusal of Service.

(a) Grounds for refusal to serve. A utility may decline to serve a service applicant for the following reasons:

(1) the service applicant is not in compliance with state or municipal regulations applicable to the type of service requested;

(2) the service applicant is not in compliance with the rules and regulations of the utility governing the type of service requested which are in its approved tariff on file with the commission;

(3) the service applicant is indebted to any utility for the same type of service as that requested. However, in the event the indebtedness of the service applicant is in dispute, the service applicant shall be served upon complying with the deposit requirements in §291.84 of this title (relating to the Service Applicant and Customer Deposit) and upon a demonstration that the service applicant has complied with all of the provisions of §291.87(k) of this title (relating to Disputed Bills);

(4) the service applicant's primary point of use is outside the certificated area;

(5) standby fees authorized under §291.87(o) of this title (relating to Billing) have not been paid for the specific property or lot on which service is being requested; or

(6) the utility is prohibited from providing service under Vernon's Texas Civil Statutes, Local Government Code, §212.012 or §232.029.

(b) Service Applicant's recourse. In the event the utility refuses to serve a service applicant under the provisions of these sections, the utility shall inform the service applicant in writing of the basis of its refusal and that the service applicant may file a complaint with the commission thereon.

(c) Insufficient grounds for refusal to serve. The following shall not constitute sufficient cause for refusal of service to a present customer or service applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules;

(3) failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;

(4) failure to pay the bill of another customer at the same address except where a change of customer identity is made to avoid or evade payment of a utility bill;

(5) failure to pay for the restoration of a tap removed by the utility at its option or removed as the result of tampering or delinquency in payment by a previous customer;

(6) the service applicant or customer chooses to use a type of backflow prevention assembly approved under §290.44(h) of this title (relating to Water Distribution) even if the assembly is not the one preferred by the utility; or

(7) failure to comply with regulations or rules for anything other than the type of utility service specifically requested including failure to comply with septic tank regulations or sewer hook-up requirements.

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

(a) Except as provided for in subsection (e) of this section, every retail public utility shall serve each qualified service applicant within its certificated area as soon as is practical after receiving a completed application. A qualified service applicant is an applicant who has met all of the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service including the delivery to the retail public utility of any customer service inspection certificates required by §290.46(j) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(1) Where a new service tap is required, the retail public utility may require that the property owner make the request for the tap to be installed. The utility may require a service applicant to provide written documentation to establish the applicant's legal right to occupy or use the premises at which service is being requested. Documentation may be in the form of a lease, contract for deed, or a warranty deed. A purchase contract is not sufficient unless the applicant provides documentation that the sale has been closed.

(2) Upon request for service by a service applicant, the retail public utility shall make available an application for service and information about customer service inspections and accept a completed written application for service and a completed customer service inspection form signed by any inspector recognized under §290.46(j)(1) of this title.

(3) Except for good cause, at a location where service has previously been provided the utility must reconnect service within three working days after the applicant has submitted a completed application for service and met any other requirements in the utility's approved tariff.

(4) A request for service that requires a tap but does not require line extensions, construction, or new facilities shall be filled within ten working days after a completed service application has been accepted.

(5) If construction is required to fill the order and if it cannot be completed within 30 days, the retail public utility shall provide a written explanation of the construction required and an expected date of service.

(b) Except for good cause shown, the failure to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from a qualified applicant may constitute refusal to serve, and may result in the assessment of administrative penalties or revocation of the certificate of convenience and necessity or the granting of a certificate to another retail public utility to serve the applicant.

(c) The cost of extension and any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be provided to the customer in writing upon assessment of the costs of necessary line work, but before construction begins. Also see §291.81(a)(1) of this title (relating to Customer Relations).

(d) Where recorded public utility easements on the service applicant's property do not exist or public road right-of-way easements are not available to access the property of a service applicant, the retail public utility may require the service applicant or land owner to grant a permanent recorded public utility easement dedicated to the retail public utility which will provide a reasonable right of access and use to allow the retail public utility to construct, install, maintain, inspect and test water and/or sewer facilities necessary to serve that applicant. As a condition of service to a new subdivision, retail public utilities may require developers to provide permanent recorded public utility easements to and throughout the subdivision sufficient to construct, install, maintain, inspect, and test water and/or sewer facilities necessary to serve the subdivision's anticipated service demands upon full occupancy.

(e) Service Extensions by a Water Supply or Sewer Service Corporation or Special Utility District.

(1) A water supply or sewer service corporation or a special utility district organized under Chapter 65 of the code is not required to extend retail water or sewer utility service to a service applicant in a subdivision within its certificated area if it documents that:

(A) the developer of the subdivision has failed to comply with the subdivision service extension policy as set forth in the tariff of the corporation or the policies of the special utility district; and

(B) the service applicant purchased the property after the corporation or special utility district gave notice of its rules which are applicable to service to subdivisions in accordance with the notice requirements in this subsection.

(2) Publication of notice, in substantial compliance with the form notice in Appendix A, in a newspaper of general circulation in each county in which the corporation or special utility district is certificated for utility service of the requirement to comply with the subdivision service extension policy constitutes notice under this subsection. The notice must be published once a week for two consecutive weeks on a biennial basis and must contain information describing the subdivision service extension policy of the corporation or special utility district. The corporation or special utility district must be able to provide proof of publication through an affidavit of the publisher of the newspaper that specifies each county in which the newspaper is generally circulated.

Appendix A

NOTICE OF REQUIREMENT TO COMPLY WITH THE
SUBDIVISION SERVICE EXTENSION POLICY OF
(name of water supply corporation/special utility district)

Pursuant to Chapter 13.2502 of the Texas Water Code, _____ Water Supply Corporation/Special Utility District hereby gives notice that any person who subdivides land by dividing any lot, tract, or parcel of land, within the service area of _____ Water Supply Corporation/Special Utility District, Certificate of Convenience and Necessity No.

_____, in _____ County, into two or more lots or sites for the purpose of sale or development, whether immediate or future, including re-subdivision of land for which a plat has been filed and recorded or requests more than two water or sewer service connections on a single contiguous tract of land must comply with [title of subdivision service extension policy stated in the tariff/policy] (the "Subdivision Policy") contained in _____ Water Supply Corporation's tariff/Special Utility District's policy.

_____ Water Supply Corporation/Special Utility District is not required to extend retail water or sewer utility service to a service applicant in a subdivision where the developer of the subdivision has failed to comply with the Subdivision Policy.

Applicable elements of the Subdivision Policy include:

Evaluation by _____ Water Supply Corporation/Special Utility District of the impact a proposed subdivision service extension will make on _____ Water Supply Corporation's/ Special Utility District's water supply/sewer service system and payment of the costs for this evaluation;

Payment of reasonable costs or fees by the developer for providing water supply/sewer service capacity;

Payment of fees for reserving water supply/sewer service capacity;

Forfeiture of reserved water supply/sewer service capacity for failure to pay applicable fees;

Payment of costs of any improvements to _____ Water Supply Corporation's/Special Utility District's system that are necessary to provide the water/sewer service;

Construction according to design approved by _____ Water Supply Corporation/Special Utility District and dedication by the developer of water/sewer facilities within the subdivision following inspection.

_____ Water Supply Corporation's/Special Utility District's tariff and a map showing _____ Water Supply Corporation's/Special Utility District's service area may be reviewed at _____ Water Supply Corporation's/ Special Utility District's offices, at [address of the water supply corporation/special utility district]; the tariff/policy and service

area map also are filed of record at the Texas Natural Resource Conservation Commission in Austin, Texas and may be reviewed by contacting the TNRCC, c/o Utilities and Districts Section, Water Permits & Resource Management Division, P. O. Box 13087, Austin, Texas 78711.

(3) As an alternative to publication of notice, a corporation or special utility district may demonstrate by any reasonable means that a developer has been notified of the requirement to comply with the subdivision service extension policy, including:

(A) an agreement executed by the developer;

(B) correspondence with the developer that sets forth the subdivision service extension policy; or

(C) any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.

(4) For purposes of this subsection:

(A) "Developer" means a person who subdivides land or requests more than two water or sewer service connections on a single contiguous tract of land.

(B) "Service applicant" means a person, other than a developer, who applies for retail water or sewer utility service.

§291.86. Service Connections.

(a) Water Service Connections.

(1) Tap Fees. The fees for initiation of service, where no service previously existed, shall be in accordance with the following:

(A) The fee charged by a utility for connecting a residential service applicant's premises to the system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and administrative costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.

(B) Whether listed on the utility's approved tariff or not, the tap fee charged for all service connections requiring meters larger than 3/4 inch shall be limited to the actual cost of materials, labor and administrative costs for making the individual service connection and road construction or impact fees charged by authorities with control of road use and a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.

(C) An additional fee may be charged to a residential service applicant, if stated on the approved tariff, for a tap expense not normally incurred; for example, a road bore for customers outside of subdivisions or residential areas.

(2) Installation and Service Connection.

(A) The utility shall furnish and install, for the purpose of connecting its distribution system to the service applicant's property, the service pipe from its main to the meter location on the service applicant's property. See also §291.86(a)(3) of this title (relating to Service Connections). For all new installations, a utility-owned cut-off valve shall be provided on the utility side of the meter. Utilities without customer meters shall provide and maintain a cut-off valve on the customer's property as near the property line as possible. This does not relieve the utility of the obligation to comply with §291.89 of this title (relating to Meters).

(B) The service applicant shall be responsible for furnishing and laying the necessary service line from the meter to the place of consumption and shall keep the service line in good repair. For new taps or for new service at a location with an existing tap, service applicants may be required to install a customer owned cut-off valve on the customer's side of the meter or connection. Customers who have damaged the utility's cut-off valve or curb stop through unauthorized use or tampering may be required to install a customer owned cut-off valve on the customer's side of the meter or connection within a reasonable time frame of not less than 30 days if currently connected or prior to restoration of service if the customer has been lawfully disconnected under these rules. The customer's responsibility shall begin at the discharge side of the meter or

utility's cut-off valve if there are no meters. If the utility's meter or cut-off valve is not on the customer's property, the customer's responsibility will begin at the property line.

(3) Location of meters. Meters shall be located on the customer's property, readily accessible for maintenance and reading and, so far as practicable, the meter shall be at a location mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from damage.

(4) Relocation and conversion of meters. If an existing meter is moved to a location designated by the customer for the customer's convenience, the utility may not be responsible except for negligence. The customer may be charged the actual cost of relocating the meter. If the customer requests that an existing meter be replaced with a meter of another size or capacity, the customer may be charged the actual cost of converting the meter including enlarging the line from the main to the meter if necessary.

(b) Sewer Service Connections.

(1) Tap Fees. The fees for initiation of sewer service, where no service previously existed, shall be in accordance with the following:

(A) The fee charged by a utility for connecting a residential service applicant's premises to the sewer system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and

administrative costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.

(B) The fee charged for all commercial or nonstandard service connections shall be set at the actual cost of materials, labor and administrative costs for making the service connection and road construction or impact fees charged by authorities with control of road use and may include a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.

(C) A fee in addition to the standard tap fee may be charged for a new residential service connection which requires expenses not normally incurred if clearly identified on the approved tariff; for example, a road bore for service applicants outside of subdivisions or residential areas.

(D) Tap fees for sewer systems designed to receive effluent from a receiving tank located on the customer's property, whether fed by gravity or pressure into the utility's sewer main, may include charges to install a receiving tank and appurtenances on the customer's property and service line from the tank to the utility's main which meets the minimum standards set by the utility and authorized by the commission. The tank may include grinder pumps, etc. to pump the effluent into the utility's main. Ownership of and maintenance responsibilities for the receiving tank and appurtenances shall be specified in the utility's approved tariff.

(2) Installation and Service Connections.

(A) The utility shall furnish and install, for the purpose of connecting its collection system to the service applicant's service line, the service pipe from its main to a point on the customer's property.

(B) The customer shall be responsible for furnishing and laying the necessary customer service line from the utility's line to the residence.

(3) Maintenance By Customer.

(A) The customer service line and appurtenances installed by the customer shall be constructed in accordance with the laws and regulations of the State of Texas governing plumbing practices which must be at least as stringent and comprehensive as one of the following nationally recognized codes: the Southern Standard Plumbing Code, the Uniform Plumbing Code, and/or the National Standard Plumbing Code, or other standards as prescribed by the commission.

(B) It shall be the customer's responsibility to maintain the customer service line and any appurtenances which are the customer's responsibility in good operating condition, such as, clear of obstruction, defects, leaks or blockage. If the utility can provide evidence of excessive infiltration or inflow into the customer's service line or failure to provide proper pretreatment, the utility may, with the written approval of the executive director, require that the customer repair the line or eliminate the infiltration or inflow or take such actions necessary to correct the problem. If the

customer fails to correct the problem within a reasonable time, the utility may disconnect the service after notice as required under §291.88 of this title (relating to Discontinuance of Service). Less than ten days notice may be given if authorized by the executive director.

(C) If the customer retains ownership of receiving tanks and appurtenances located on the customer's property under the utility's tariff, routine maintenance and repairs are the customer's responsibility. The utility may require in its approved tariff that parts and equipment meet the minimum standards set by the utility to ensure proper and efficient operation of the sewer system but cannot require that the customer purchase parts or repair service from the utility.

(c) Line extension and construction charges. Each utility shall file its extension policy with the commission as part of its tariff. The policy shall be consistent and nondiscriminatory. No contribution in aid of construction may be required of any service applicant except as provided for in the approved extension policy.

(1) Contributions in aid of construction shall not be required of individual residential service applicants for production, storage, treatment, or transmission facilities unless that residential customer places unique, non-standard service demands upon the system, in which case, the customer may be charged the additional cost of extending service to and throughout his property, including the cost of all necessary collection or transmission facilities necessary to meet the service demands anticipated to be created by that property.

(2) Developers may be required to provide contributions in aid of construction in amounts sufficient to reimburse the utility for:

(A) existing uncommitted facilities at their original cost if the utility has not previously been reimbursed. A utility shall not be reimbursed for facilities in excess of the amount the utility paid for the facilities. A utility is not required to allocate existing uncommitted facilities to a developer for projected development beyond a reasonable planning period; or

(B) additional facilities compliant with the commission's minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water or the commission's minimum design criteria for wastewater collection and treatment facilities and to provide for reasonable local demand requirements. Income tax liabilities which may be incurred due to collection of contributions in aid of construction may be included in extension charges to developers. Additional tax liabilities due to collection of the original tax liability may not be collected unless they can be supported and are specifically noted in the approved extension policy.

(3) For purposes of this subsection, a developer is one who subdivides or requests more than two water service connections or sewer service connections on a single contiguous tract of land.

(d) Cost utilities and service applicants shall bear.

(1) Within its certificated area, a utility shall be required to bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential service applicant within a platted subdivision unless the utility can document:

(A) that the developer of the subdivision refused to provide facilities compatible with the utility's facilities in accordance with the utility's approved extension policy after receiving a written request from the utility; or

(B) that the developer of the subdivision defaulted on the terms and conditions of a written agreement or contract existing between the utility and the developer regarding payment for services, extensions, or other requirements; or in the event the developer declared bankruptcy and was therefore unable to meet obligations; and

(C) that the residential service applicant purchased the property from the developer after the developer was notified of the need to provide facilities to the utility.

(2) A residential service applicant may be charged the remaining costs of extending service to his property; provided, however, that the residential service applicant may only be required to pay the cost equivalent to the cost of extending the nearest water main or wastewater collection line, whether or not that line has adequate capacity to serve that residential service applicant. The following criteria shall be considered to determine the residential service applicant's cost for extending service:

(A) the residential service applicant shall not be required to pay for costs of

main extensions greater than two inches in diameter for water distribution and pressure wastewater collection lines and six inches in diameter for gravity wastewater lines.

(B) Exceptions may be granted by the executive director if:

(i) adequate service cannot be provided to the applicant using the maximum line sizes listed due to distance or elevation, in which case, it shall be the utility's burden to justify that a larger diameter pipe is required for adequate service;

(ii) larger minimum line sizes are required under subdivision platting requirements or building codes of municipalities within whose corporate limits or extraterritorial jurisdiction the point of use is located; or

(iii) the residential service applicant is located outside the CCN service area.

(C) If an exception is granted, the utility must establish a proportional cost plan for the specific extension or a rebate plan which may be limited to seven years to return the portion of the applicant's costs for oversizing as new customers are added to ensure that future applicants for service on the line pay at least as much as the initial service applicant.

(3) The utility shall bear the cost of any oversizing of water distribution lines or wastewater collection lines necessary to serve other potential service applicants or customers in the immediate area or for fire flow requirements unless an exception is granted under paragraph (2)(B) of this subsection.

(4) For purposes of determining the costs that service applicants shall pay, commercial customers with service demands greater than residential customer demands in the certificated area, industrial, and wholesale customers may be treated as developers. A service applicant requesting a one inch meter for a lawn sprinkler system to service a residential lot is not considered nonstandard service.

(e) Other Fees for Service Applicants. Except for an affected county, utilities shall not charge membership fees or application fees.

§291.87. Billing.

(a) Authorized rates. Bills shall be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b) Due date. The due date of the bill for utility service shall not be less than 16 days after issuance unless the customer is a State Agency. If the customer is a State Agency, the due date for the

bill shall be not less than 30 days after issuance unless otherwise agreed to by the State Agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, shall constitute proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either \$5.00 or 10% for all customers may be made on delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments which were not delinquent.

(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential customer if the customer's bill is more than three

times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge which shall not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) The customer's bill shall show all the following information, if applicable, and shall be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

- (B) the number and kind of units metered;
- (C) the applicable rate class or code;
- (D) the total amount due for water service;
- (E) the amount deducted as a credit required by a commission order;
- (F) the amount due as a surcharge;
- (G) the total amount due on or before the due date of the bill;
- (H) the due date of the bill;
- (I) the date by which customers must pay the bill in order to avoid addition of
a penalty;
- (J) the total amount due as penalty for nonpayment within a designated period;
- (K) a distinct marking to identify an estimated bill;

(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(M) the total amount due for sewer service;

(N) the gallonage used in determining sewer usage;

(O) the local telephone number or toll free number where the utility can be reached.

(3) Except for an affected county, charges for nonutility services or any other fee or charge not specifically authorized by the code or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility which serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates which will accurately reflect the cost of service to each class of customer.

(g) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount which was underbilled. The backbilling shall not exceed 12 months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.89 of this title (relating to Meters). If the underbilling is \$25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(h) Estimated bills. When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.

(i) Prorated charges for partial-month bills. When a bill is issued for a period of less than one month, charges should be computed as follows:

(1) Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.

(2) Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(3) Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.

(j) Prorated charges due to utility service outages. In the event that utility service is interrupted for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(k) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility and a payment equal to the customer's average monthly usage at current rates must be received by the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by these sections.

(2) Notwithstanding any other section of this chapter, the customer shall not be required to pay the disputed portion of a bill which exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage shall be the average of the

customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage shall be estimated on the basis of usage levels of similar customers under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service shall not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.88 of this title (relating to Discontinuance of Service).

(l) Notification of alternative payment programs or payment assistance. Any time a customer contacts a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide information to the customer in English and in Spanish if requested of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.

(m) Adjusted bills. There shall be a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills shall be based on at least 12 consecutive months of comparable usage

history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months. This subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or

(4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.

(n) Equipment damage charges. A utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes which the system cannot properly treat. The utility may charge for all actual costs necessary to correct service diversion or

unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the executive director.

(o) Fees. Except for an affected county, utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.

(1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:

(A) under a contract and only in accordance with the terms of the contract; or

(B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change application has been properly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission or executive director.

(C) for purposes of this subsection, a manufactured housing rental community can only be charged standby fees under a contract or if the utility installs the facilities necessary to provide individually metered service to each of the rental lots or spaces in the community.

(2) Except as provided in §291.88(h)(2) of this title (relating to Discontinuance of Service) and §291.89(c) (relating to Meters) other fees listed on a utility's approved tariff may be charged when appropriate. Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.

(p) Payment with cash. When a customer pays any portion of a bill with cash, the utility must issue a written receipt for the payment.

(q) Voluntary contributions for certain emergency services.

(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:

(A) describing the procedure by which the customer may make a contribution with the customer's bill payment;

(B) designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(C) informing the customer that a contribution is voluntary;

(D) if applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and

(E) describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it is not required to be paid.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(A) the utility's expenses in administering the contribution program; or

(B) 5.0% of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service.

§291.88. Discontinuance of Service.

(a) Disconnection with notice.

(1) Notice requirements. Proper notice shall consist of a separate written statement which a utility must mail or hand deliver to a customer before service may be disconnected. The notice must be provided in English and Spanish if necessary to adequately inform the customer and must include the following information:

(A) the words "termination notice" or similar language approved by the executive director written in a way to stand out from other information on the notice;

(B) the action required to avoid disconnection, such as paying past due service charges;

(C) the date by which the required action must be completed to avoid disconnection. This date must be at least ten days from the date the notice is provided unless a shorter time is authorized by the executive director;

(D) the intended date of disconnection;

(E) the office hours, telephone number, and address of the utility's local office;

(F) the total past due charges;

(G) all reconnect fees that will be required to restore water or sewer service if service is disconnected.

(H) if notice is provided by a sewer service provider under subsection (e) of this section, the notice must also state:

(i) that failure to pay past due sewer charges will result in termination of water service; and

(ii) that water service will not be reconnected until all past due and currently due sewer service charges and the sewer reconnect fee are paid.

(2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:

(A) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.

(i) Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.

(ii) Payment at a utility's office or authorized payment agency is considered payment to the utility.

(iii) The utility is not obligated to accept payment of the bill when an employee is at the customer's location to disconnect service;

(B) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others;

(C) operation of non-standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(D) failure to comply with deposit or guarantee arrangements where required by §291.84 of this title (relating to Service Applicant and Customer Deposit); and

(E) failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section.

(b) Disconnection without notice. Utility service may be disconnected without prior notice for the following reasons:

(1) where a known and dangerous condition related to the type of service provided exists. Where reasonable, given the nature of the reason for disconnection, a written notice of the disconnection, explaining the reason service was disconnected, shall be posted at the entrance to the property, the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) where service is connected without authority by a person who has not made application for service;

(3) where service has been reconnected without authority following termination of service for nonpayment under subsection (a) of this section;

(4) or in instances of tampering with the utility's meter or equipment, bypassing the same, or other instances of diversion as defined in §291.89 of this title (relating to Meters).

(c) Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:

- (1) failure to pay for utility service provided to a previous occupant of the premises;

- (2) failure to pay for merchandise, or charges for non-utility service provided by the utility;

- (3) failure to pay for a different type or class of utility service unless the fee for such service is included on the same bill or unless such disconnection is in accordance with subsection (e) of this section;

- (4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

- (5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §291.89 of this title (relating to Meters);

- (6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control;

- (7) failure to comply with regulations or rules regarding anything other than the type of service being provided including failure to comply with septic tank regulations or sewer hook-up requirements;

(8) refusal of a current customer to sign a service agreement; or,

(9) failure to pay standby fees.

(d) Disconnection due to utility abandonment. No public utility may abandon a customer or a certificated service area unless it has complied with the requirements of §291.114 of this title (relating to Requirement to Provide Continuous and Adequate Service) and obtained approval from the commission.

(e) Disconnection of water service due to nonpayment of sewer charges.

(1) Where sewer service is provided by one retail public utility and water service is provided by another retail public utility, the retail public utility that provides the water service shall disconnect water service to a customer who has not paid undisputed sewer charges if requested by the sewer service provider and if an agreement exists between the two retail public utilities regarding such disconnection or if an order has been issued by the commission specifying a process for such disconnections.

(A) Before water service may be terminated, proper notice of such termination must be given to the customer and the water service provider by the sewer service provider. Such notice must be in conformity with subsection (a) of this section.

(B) Water and sewer service shall be reconnected in accordance with subsection (h) of this section. The water service provider may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. The water service provider may require the customer to pay any water service charges which have been billed but remain unpaid prior to reconnection. The water utility may require the sewer utility to reimburse it for the cost of disconnecting the water service in an amount not to exceed \$50. The sewer utility may charge the customer its approved reconnect fee for nonpayment in addition to any past due charges.

(C) If the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer charges, the commission may issue an order requiring disconnections under specified conditions.

(D) The commission will issue an order requiring termination of service by the retail public utility providing water service if either:

(i) the retail public utility providing sewer service has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service; or,

(ii) the commission finds that an order is necessary to effectuate the purposes of the Texas Water Code.

(2) A utility providing water service to customers who are provided sewer service by another retail public utility may enter into an agreement to provide billing services for the sewer service provider. In this instance, the customer may only be charged the tariffed reconnect fee for nonpayment of a bill on the water service provider's tariff.

(f) Disconnection for ill customers. No utility may discontinue service to a delinquent residential customer when that customer establishes that some person residing at that residence will become seriously ill or more seriously ill if service is discontinued. To avoid disconnection under these circumstances, the customer must provide a written statement from a physician to the utility prior to the stated date of disconnection. Service may be disconnected in accordance with subsection (a) of this section if the next month's bill and the past due bill are not paid by the due date of the next month's bill, unless the customer enters into a deferred payment plan with the utility.

(g) Disconnection upon customer request. A utility shall disconnect service no later than the end of the next working day after receiving a written request from the customer.

(h) Service restoration.

(1) Utility personnel must be available during normal business hours to accept payment on the day service is disconnected and the day after service is disconnected, unless the disconnection is at the customer's request or due to the existence of a dangerous condition related to the type of service provided. Once the past due service charges and applicable reconnect fees are paid

or other circumstances which resulted in disconnection are corrected, the utility must restore service within 36 hours.

(2) Reconnect Fees.

(A) A reconnect fee, or seasonal reconnect fee as appropriate, may be charged for restoring service if listed on the utility's approved tariff.

(B) A reconnect fee may not be charged where service was not disconnected, except in circumstances where a utility representative arrives at a customer's service location with the intent to disconnect service because of a delinquent bill, and the customer prevents the utility from disconnecting the service.

(C) Except as provided under §291.89(c) of this title (relating to Meters) when a customer prevents disconnection at the water meter or connecting point between the utility and customer sewer lines, a reconnect fee charged for restoring water or sewer service after disconnection for nonpayment of monthly charges shall not exceed \$25 provided the customer pays the delinquent charges and requests to have service restored within 45 days. If a request to have service reconnected is not made within 45 days of the date of disconnection, the utility may charge its approved reconnect fee or seasonal reconnect fee.

§291.89. Meters.

(a) Meter requirements.

(1) Use of meter. All charges for water service shall be based on meter measurements, except where otherwise authorized in the utility's approved tariff.

(2) Installation by utility. Unless otherwise authorized by the commission, each utility shall provide, install, own and maintain all meters necessary for the measurement of water provided to its customers.

(3) Standard type. No utility shall furnish, set up, or put in use any meter which is not reliable and of a standard type which meets industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation or experimental purposes.

(4) One meter is required for each residential, commercial, or industrial service connection. An apartment building, condominium, manufactured housing community, or mobile home park may be considered by the utility to be a single commercial facility for the purpose of these sections. The executive director may grant an exception to the individual meter requirement if the plumbing of an existing multiple use or multiple occupant building would prohibit the installation of individual meters at a reasonable cost or would result in unreasonable disruption of the customary use of the property.

(b) Meter readings.

(1) Meter unit indication. In general, each meter shall indicate clearly the gallons of water or other units of service for which charge is made to the customer.

(2) Reading of meters.

(A) Service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each month, but may be read at other than monthly intervals if authorized in the utility's approved tariff.

(B) The utility shall charge for volume usage at the lowest block charge on its approved tariff when the meter reading date varies by more than two days from the normal meter reading date.

(c) Access to meters and utility cutoff valves.

(1) At the customer's request, utility employees must present information identifying themselves as employees of the utility in order to establish the right of access.

(2) Utility employees shall be allowed access for the purpose of reading, testing, installing, maintaining and removing meters and using utility cutoff valves. Conditions that may

hinder access include, but are not limited to, fences with locked gates, vehicles or objects placed on top of meters or meter boxes, and unrestrained animals.

(3) When access is hindered on an ongoing basis, utilities may, but are not required to, make alternative arrangements for obtaining meter readings as described in paragraphs (4) and (5) of this subsection. Alternative arrangements for obtaining meter readings shall be made in writing with a copy provided to the customer and a copy filed in the utility's records on that customer.

(4) If access to a meter is hindered and the customer agrees to read his own meter and provide readings to the utility, the utility may bill according to the customer's readings; provided the meter is read by the utility at regular intervals (not exceeding six months) and billing adjustments are made for any overcharges or undercharges.

(5) If access to a meter is hindered and the customer does not agree to read their own meter, the utility may bill according to estimated consumption; provided the meter is read by the utility at regular intervals (not exceeding three months) and billing adjustments are made for any overcharges or undercharges.

(6) If access to a meter is hindered and the customer will not arrange for access at regular intervals, the utility may relocate the meter to a more accessible location and may charge the customer for the actual cost of relocating the meter. Before relocating the meter, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of relocating the meter, an explanation of

the condition hindering access and what the customer can do to correct that condition, and information on how to contact the utility. The notice shall give the customer a reasonable length of time to arrange for utility access so the customer may avoid incurring the relocation cost. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.

(7) If access to a meter, cutoff valve or sewer connection is hindered by the customer and the customer's service is subject to disconnection under §291.88 of this title (relating to Discontinuance of Service), the utility may disconnect service at the main and may charge the customer for the actual cost of disconnection and any subsequent reconnection. The utility shall document the condition preventing access by providing photographic evidence or a sworn affidavit. Before disconnecting service at the main, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of disconnecting service at the main and reconnecting service and shall give the customer at least 72 hours to correct the condition preventing access and to pay any delinquent charges due the utility before disconnection at the main. The customer may also be required to pay the tariffed reconnect fee for nonpayment in addition to delinquent charges even if service is not physically disconnected. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.

(d) Meter tests on request of customer.

(1) Upon the request of a customer, each utility shall make, without charge a test of the accuracy of the customer's meter. If the customer asks to observe the test, the test shall be

conducted in the customer's presence or in the presence of the customer's authorized representative.

The test shall be made during the utility's normal working hours at a time convenient to the customer.

Whenever possible, the test shall be made on the customer's premises, but may, at the utility's discretion, be made at the utility's testing facility.

(2) Following the completion of any requested test, the utility shall promptly advise the customer of the date of the test, the result of the test, who made the test and the date the meter was removed if applicable.

(3) If the meter has been tested by the utility or a testing facility at the customer's request, and within a period of two years the customer requests a new test, the utility shall make the test, but if the meter is found to be within the accuracy standards established by the American Water Works Association, the utility may charge the customer a fee which reflects the cost to test the meter, but this charge shall in no event be more than \$25 for a residential customer.

(e) Meter testing.

(1) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial. The test shall be conducted in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association or other procedures approved by the executive director.

(2) The utility shall provide the necessary standard facilities, instruments, and other

equipment for testing its meters in compliance with these sections. Any utility may be exempted from this requirement by the commission provided that satisfactory arrangements are made for testing its meters by another utility or testing facility equipped to test meters in compliance with these sections.

(3) Measuring devices for testing meters may consist of a calibrated tank or container for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory as may be approved by the commission or executive director. The executive director can also authorize the use of a volumetric container for testing meters without a laboratory certification when it is in the best interest of the customer and utility to reduce the cost of testing. If a weight standard is used, the scales shall be tested and calibrated periodically by an approved laboratory and a record maintained of the results of the test.

(4) Standards used for meter testing shall be of a capacity sufficient to insure accurate determination of meter accuracy and shall be subject to the approval of the commission.

(5) A standard meter may be provided and used by a utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated at least once per year unless a longer period is approved by the executive director to insure its accuracy within the limits required by these sections. A record of such tests shall be kept by the utility for at least three years following the tests.

(f) Meter test prior to installation. No meter shall be placed in service unless its accuracy has

been established. If any meter shall have been removed from service, it must be properly tested and adjusted before being placed in service again. No meter shall be placed in service if its accuracy falls outside the limits as specified by the American Water Works Association.

(g) Bill adjustment due to meter error. If any meter is found to be outside of the accuracy standards established by the American Water Works Association, proper correction shall be made of previous readings for the period of six months immediately preceding the removal of such meter from service for the test, or from the time the meter was in service since last tested, but not exceeding six months, as the meter shall have been shown to be in error by such test, and adjusted bills shall be rendered. No refund is required from the utility except to the customer last served by the meter prior to the testing. If a meter is found not to register for any period, unless bypassed or tampered with, the utility shall make a charge for units used, but not metered, for a period not to exceed three months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.

(h) Meter tampering. For purposes of these sections, meter tampering, bypass, or diversion shall be defined as tampering with a water or sewer utility company's meter or equipment causing damage or unnecessary expense to the utility, bypassing the same, or other instances of diversion, such as physically disorienting the meter, objects attached to the meter to divert service or to bypass, insertion of objects into the meter, other electrical and mechanical means of tampering with, bypassing, or diverting utility service, removal or alteration of utility-owned equipment or locks, connection or reconnection of service without utility authorization, or connection into the service line of adjacent customers or of the utility. The burden of proof of meter tampering, bypass, or diversion

is on the utility. Photographic evidence must be accompanied by a sworn affidavit by the utility when any action regarding meter tampering as provided for in these sections is initiated. A court finding of meter tampering may be used instead of photographic or other evidence, if applicable.

SUBCHAPTER F : QUALITY OF SERVICE

§291.93

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; and under TWC, §13.250, which requires a retail public utility that possesses a certificate of convenience and necessity to provide continuous and adequate service within its certified area.

The amendments implement TWC, Chapter 13.

§291.93. Adequacy of Water Utility Service.

Sufficiency of service. Each retail public utility which provides water service shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

(1) The water system quantity and quality requirements of the commission shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of the water supplied for household usage.

Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.

(2) In cases of drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, to comply with a state agency or court order on conservation or other reasons identified in the utility's approved drought contingency plan required by §288.20 of this title (relating to Drought Contingency Plans for Municipal Uses by Public Water Suppliers), restrictions may be instituted to limit water usage in accordance with the utility's approved drought contingency plan. For utilities, these temporary restrictions must be in accordance with an approved drought contingency plan. Unless specifically authorized by the executive director, retail public utilities may not use water use restrictions in lieu of providing facilities which meet the minimum capacity requirements of the commission's rules in Chapter 290 of this title (relating to Rules and Regulations for Public Water Systems), or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

(A) An approved drought contingency plan must be on file with the utility's approved tariff to comply with §288.20 of this title. The utility may not implement mandatory water use restrictions without an approved drought contingency plan unless authorized by the executive director.

(B) Temporary restrictions must be in accordance with the utility's approved drought contingency plan on file or specifically authorized by the executive director. The utility shall file a status report with the executive director in accordance with the requirements and time frames in the drought contingency plan for as long as water use restrictions continue or as required by the executive director. The executive director may suspend implementation of the restrictions at any time with written notice to the utility.

(C) The utility must provide written notice to each customer in accordance with the drought contingency plan prior to implementing the provisions of the plan. Mailed notice is acceptable and water use restrictions may be enforced by the utility if notice is mailed 72 hours prior to the start of rationing. If notice is hand delivered, the utility cannot enforce the provisions of the plan for 24 hours after notice is provided unless authorized by the executive director. Customer notice must contain:

- (i) the date water use restrictions is to begin;
- (ii) the expected duration of the water use restrictions;
- (iii) the restrictions or stage of the plan being implemented and the specific restrictions which apply; and
- (iv) the penalties for violations of the drought contingency plan.

(D) Notice shall be provided to the commission in accordance with §288.20(b) of this title and prior to implementing the mandatory provisions of the plan.

(3) A retail public utility that possesses a certificate of public convenience and necessity that has reached 85% of its capacity as compared to the most restrictive criteria of the commission's minimum capacity requirements in Chapter 290 of this title shall submit to the executive director a planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area. A report is not required if the source of supply available to the utility service provider is reduced to below the 85% level due to a court or agency conservation order unless that order is expected to extend for more than 18 months from the date it is entered in which case a report shall be required.

(A) After any commission field inspection, a retail public utility must analyze the system's capacity to determine if it has reached 85% of its capacity. If the retail public utility has reached 85% of its capacity, it must file this report no later than 90 days after the date of a commission letter detailing the results of the inspection. Capacity is considered to be the overall rated capacity in number of residential connection equivalents based on the most restrictive criteria for production, treatment, storage, or pumping.

(B) The report should be submitted in writing and should contain the following:

(i) a brief description of the overall utility system and service area;

(ii) an analysis of the plant capacity as defined in subparagraph (A) of this paragraph;

(iii) details on how the retail public utility will provide service to the remaining areas within the boundaries of its certificated area. This includes projections of cost and expected design and installation dates for additional facilities.

(C) The executive director may waive or limit the reporting requirements if the retail public utility demonstrates that the projected growth of the area will not require the retail public utility to exceed 100% of its current capacity for the next five years.

(D) Any retail public utility required to file reports under this section of the rules, including those requesting waivers, shall file updated reports within 90 days after the retail public utility receives a copy of each subsequent commission field inspection report until the system demand is below 85% capacity.

(E) Submission of this report shall not relieve the retail public utility from abiding by the requirements of other regulatory agencies as set forth in §291.92 of this title (relating to Requirements by Others).

(4) Each retail public utility which possesses or is required to possess a certificate of convenience and necessity shall furnish safe water which meets the minimum quality criteria for drinking water prescribed by the commission. The supply must meet the requirements of Health and Safety Code, §341.031 and commission rules. A utility or water supply corporation which is authorized to operate without a certificate of convenience and necessity pursuant to Health and Safety Code, §13.242(c) may be required by the executive director to meet the minimum criteria prescribed by the commission if so instructed in writing.

(5) In order to protect the public health at all times, each retail public utility must promptly take all reasonable actions necessary which include implementing an effective cross-connection control program necessary to comply with §290.44(h) of this title (relating to Water Distribution). If a utility elects to develop and implement a program that exceeds the minimum requirements set forth in §290.44(h) of this title, it must secure the prior approval of the executive director and may be required to fund any expenses above the costs associated with meeting the minimum requirements without reimbursement. For example, a requirement that customers on systems without documented health hazards have backflow prevention assemblies tested on an annual basis would need to be funded by the utility without reimbursement.

(6) Every retail public utility shall maintain its facilities to protect them from contamination, ensure efficient operation, and promptly repair leaks.

SUBCHAPTER G : CERTIFICATES OF CONVENIENCE AND NECESSITY

§§291.102, 291.106, 291.112

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; TWC, §13.241, which establishes requirements for granting certificates of convenience and necessity, and requirements for developing a standardized method for determining the financial, managerial, and technical capacity of a retail public utility; and TWC, §13.246, which establishes requirements pertaining to applications for certificates of public convenience and necessity.

The amendments implement TWC, Chapter 13.

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

(a) In determining whether to grant a new certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Health and Safety Code, Chapter 341 and commission rules and has access to an adequate supply of water.

(2) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules, and the Texas Water Code.

(b) Where a new certificate of convenience and necessity is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system;

(2) copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system;

(3) copies of written responses from each of the systems from which written requests for service were made or evidence that they failed to respond;

(4) a description of the type of service that a neighboring public drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) an analysis of all necessary costs for constructing, operating, and maintaining the

new system for at least the first five years, including such items as taxes and insurance;

(6) an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system or sewer system for at least the first five years.

(c) The commission may approve applications and grant or amend a certificate only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area;

(3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity; and

(8) the probable improvement in service or lowering of cost to consumers in that area.

(e) The commission may require an applicant utility to provide financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(f) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has the meaning assigned in Texas Water Code, §15.001.

(g) For two or more retail public utilities that apply for a certificate of convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area as defined in Texas Water Code, §15.001, the executive director shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially

and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted using a standard form designed by the executive director and will include:

- (1) all criteria from subsections (a) - (f) of this section;
- (2) source water adequacy;
- (3) infrastructure adequacy;
- (4) technical knowledge of the applicant;
- (5) ownership accountability;
- (6) staffing and organization;
- (7) revenue sufficiency;
- (8) credit worthiness;
- (9) fiscal management and controls;

(10) compliance history; and

(11) planning reports or studies by the applicant to serve the proposed area;

§291.106. Notice for Applications for Certificates of Convenience and Necessity.

(a) If an application for issuance or amendment of a certificate of public convenience and necessity is filed, the applicant will prepare a notice or notices, as prescribed in the commission's application form, which will include the following:

(1) All information outlined in the Administrative Procedure Act, Government Code, Chapter 2001;

(2) all information stipulated in the commission's Instructions for Completing an Application for a Certificate of Convenience and Necessity; and

(3) a statement that persons who wish to intervene or comment upon the action sought should contact the Utility Rates and Services Section, Water Utilities Division, Texas Natural

Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and/or mailing.

(1) For applications for issuance of a new certificate of public convenience and necessity, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within five miles of the requested service area boundaries, and any city with an extra-territorial jurisdiction which overlaps the proposed service area boundaries.

(2) For applications for an amendment of a certificate of public convenience and necessity, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles of the requested service area boundaries, and any city with an extra-territorial jurisdiction which overlaps the proposed service area boundaries.

(3) Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.

(4) Utilities that are required to possess a certificate but that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date those rates were instituted and any other information required in the application.

(5) Within 30 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.

c) The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) The commission may require the applicant to deliver notice to other affected persons or agencies.

§291.112. Transfer of Certificate of Convenience and Necessity.

(a) Effective date of transfer. A certificate is issued in personam, continues in force until further order of the commission, and may be transferred only by the approval of the commission. Any

attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Sale, assignment, or lease of certificate of convenience and necessity. Except as provided by the Texas Water Code, §13.255, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the Texas Water Code, §13.246(c). The sale, assignment, or lease shall be on the conditions prescribed by the commission.

(c) Notice of proposed sale, acquisition, lease, rental, merger, or consolidation and transfer of a certificate of convenience and necessity.

(1) Unless notice is waived by the executive director for good cause shown, mailed notice shall be given to customers of the water or sewer system to be sold, acquired, leased or rented or merged or consolidated and other affected parties as determined by the executive director on the form prescribed by the executive director and shall include the following:

(A) the name and business address of the currently certificated retail public utility and the retail public utility which will acquire the facilities or certificate;

(B) a description of the service area of the retail public utility being transferred;

(C) the anticipated effect of the acquisition or transfer on the operation or the rates and services provided to customers being transferred; and

(D) a statement that persons who wish to comment upon the action sought should contact the designated representative of the executive director at the commission's mailing address within 30 days of mailing or publication of notice, whichever occurs later.

(2) The commission may require the applicant to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the area in which the retail public utility being transferred is located and publication may be allowed in lieu of individual notice as required in this subsection.

(3) The applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles of the requested service area boundaries, and any city with an extraterritorial jurisdiction which overlaps the proposed service area boundaries.

(4) If the executive director does not request a hearing, the commission may approve the transfer by order at a regular meeting of the commission.

(5) The commission may approve a sale, acquisition, lease or rental, or merger or consolidation and/or transfer of a certificate of convenience and necessity if it determines that the transaction is in the public interest after considering:

(A) if notice has been properly given;

(B) if the retail public utility which will acquire the facilities or certificate is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors set forth in the Texas Water Code, §13.246(c). The commission may refuse to approve a sale, acquisition, lease, rental, merger, or consolidation and/or transfer where conditions of a judicial decree, compliance agreement or other enforcement order have not been substantially met;

(C) the experience of the person purchasing or acquiring the water or sewer system as a utility service provider;

(D) the history of the person or an affiliated interest of the person in complying with the requirements of the commission or the Texas Department of Health or of properly managing or using revenues as a utility service provider; or

(E) the ability of the person purchasing or acquiring the water or sewer system to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system.

(d) Reporting of customer deposits. Within 30 days after the sale or transfer of any utility or operating units thereof, the seller shall file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who

have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.

(e) Expiration of executive director's approval for sale. The executive director's approval of a sale expires one year from the date of the executive director's written approval of the sale. If the sale has not been consummated within that period and unless the applicant has requested and received an extension from the executive director, the approval is void and the applicant must reapply for approval of the sale. The executive director will review the application as though it was being filed for the first time (de novo).

SUBCHAPTER I : WHOLESALE WATER OR SEWER SERVICE

§291.128, 291.131, 291.132, 291.134

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §13.041(b), which requires the commission to adopt rules reasonably required to exercise its jurisdiction; TWC, §§11.036, 11.041, and 12.013, pertaining to the commission's jurisdiction to consider the rate charged in a contract for the resale cost of water; and TWC, §13.043(f), pertaining to the commission's appellate jurisdiction to consider the water or sewer service rate charged by one retail public utility to another.

The amendments implement TWC, Chapters 11, 12, and 13.

§291.128. Petition or Appeal Concerning Wholesale Rate.

This subchapter sets forth substantive guidelines and procedural requirements concerning:

(1) a petition to review rates charged for the sale of water for resale filed pursuant to Texas Water Code, Chapter 11 or 12; or

(2) an appeal pursuant to Texas Water Code, §13.043(f) (appeal by retail public utility concerning a decision by a provider of water or sewer service).

§291.131. Executive Director's Review of Petition or Appeal.

(a) When a petition or appeal is filed, including a petition subject to the Texas Water Code, §11.041, the executive director shall determine within ten days of the filing of the petition or appeal 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 §291.130 of this title (relating to Petition or Appeal). If the executive director determines that the petition or appeal does not meet the requirements of §291.130 of this title, the executive director shall inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies. If the executive director determines that the petition or appeal does meet the requirements of §291.130 of this title, the executive director shall forward the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing.

(b) For a petition or appeal to review a rate that is charged pursuant to a written contract, the executive director will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on public interest.

(c) For a petition or appeal to review a rate that is not charged pursuant to a written contract, the executive director will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate.

(d) If the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction.

§291.132. Evidentiary Hearing on Public Interest.

(a) If the executive director forwards a petition to the State Office of Administrative Hearings pursuant to §291.131(a) and (b) of this title (relating to Executive Director's Review of Petition or Appeal), the State Office of Administrative Hearings shall conduct an evidentiary hearing on public interest to determine whether the protested rate adversely affects the public interest.

(b) Prior to the evidentiary hearing on public interest, discovery shall be limited to matters relevant to the evidentiary hearing on public interest.

(c) The administrative law judge shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law concerning whether the protested rate adversely affects the public interest, and shall submit this recommendation to the commission.

(d) The seller and buyer may agree to consolidate the evidentiary hearing on public interest and the evidentiary hearing on cost of service. If the seller and buyer so agree the administrative law judge shall hold a consolidated evidentiary hearing.

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

(a) If as a result of the evidentiary hearing on public interest the commission determines the protested rate does not adversely affect the public interest, the commission will deny the petition or appeal by final order. The commission must state in the final order that dismisses a petition or appeal the bases upon which the commission finds the protested rate does not adversely affect the public interest.

(b) If the commission determines the protested rate adversely affects the public interest, the commission will remand the matter to the State Office of Administrative Hearings for further evidentiary proceedings on the rate. The remand order is not a final order subject to judicial review.

(c) No later than 90 days after the petition or appeal is forwarded to the State Office of Administrative Hearings for an evidentiary hearing on the rate pursuant to subsection (b) of this section or §291.131(a) and (c) of this title (relating to Executive Director's Review of Petition or Appeal), the seller shall file with the Office of Chief Clerk five copies of a cost of service study and other information which supports the protested rate.

(d) Prior to the evidentiary hearing on the rate, discovery shall be limited to matters relevant to the evidentiary hearing on the rate.

(e) The administrative law judge shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law recommending a rate and shall submit this recommendation to

the commission. The commission shall set a rate consistent with the ratemaking mandates of Texas Water Code, Chapters 11, 12, and 13. If the protested rate was charged pursuant to a written contract, the commission must state in a final order the bases upon which the commission finds the protested rate adversely affects the public interest.