The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §35.202.

**Background and Summary of the Factual Basis for the Proposed Rule**

The proposed rulemaking is intended to implement statutory changes made by House Bill (HB) 3542 and Senate Bill (SB) 700 of the 86th Texas Legislature, 2019.

SB 700 amends Texas Water Code (TWC), Chapters 5 and 13 to authorize the TCEQ to issue emergency orders with or without a hearing to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection. Additionally, TCEQ can issue an emergency order to compel a retail public utility to provide an emergency interconnection for not more than 90 days if necessary to ensure safe drinking water or environmental protection. The legislation also amends TWC, Chapter 5 to allow the commission by order or rule to delegate to the executive director of the TCEQ the authority to receive applications, issue emergency orders under TWC, §13.041(h), and authorize in writing a representative or representatives to act on the executive director's behalf. SB 700 took effect on September 1, 2019.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapter 291, Utility Regulations.
Section Discussion

In addition to the proposed revisions associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where the proposal of additional subsections, paragraphs, subparagraphs, etc. are proposed, subsequent re-lettering or renumbering are modified accordingly. These changes are non-substantive and are not specifically discussed in this preamble.

§35.202, Emergency Order to Compel Utility to Provide Service or Interconnection

The commission proposes new §35.202 to allow the commission or executive director to issue emergency orders to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection, or provide an emergency interconnection for not more than 90 days.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency.

The agency estimates that 329 retail public utilities are operated by units of local
government and have a certificate of convenience and necessity and would be affected by this proposed rulemaking. Assuming these units of local government comply with safe drinking water laws and regulations, no fiscal implications are anticipated for units of local government as a result of administration or enforcement of the proposed rule. If a unit of local government is out of compliance, then the agency may order it to provide an emergency interconnection with a neighboring retail public utility. If this were to occur, there would likely be a one-time cost to the unit of local government.

This rulemaking addresses necessary changes in order to implement SB 700 and HB 3542. The proposed rulemaking includes additional authority that would allow the agency to issue emergency orders to ensure safe drinking water or environmental protection or provide a limited emergency interconnection. The rulemaking also makes non-substantive or stylistic changes.

**Public Benefits and Costs**

Ms. Bearse determined that for each year of the first five years the proposed rule would be in effect, the public benefit anticipated would be improved readability and compliance with state law.

The proposed rulemaking is not anticipated to impact the estimated 605 investor-owned water and sewer utilities in Texas. Because this fiscal analysis assumes that entities are in compliance with state rules and regulations regarding safe drinking
water, no fiscal implications are anticipated for businesses or individuals.

**Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking would not adversely affect a local economy in a material way for the first five years that the proposed rule would be in effect.

**Rural Communities Impact Assessment**

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rule would be in effect. The proposed rule would apply statewide and have the same effect in rural communities as in urban communities.

**Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule would be in effect.

**Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a Small
Business Regulatory Flexibility Analysis is not required because the proposed rule would not adversely affect a small or micro-business in a material way for the first five years the proposed rule would in effect.

**Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking would expand an existing regulation to comply with the state law that authorizes the agency to issue emergency orders to ensure safe drinking water or environmental protection or provide a limited emergency interconnection. The proposed rulemaking would not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

**Draft Regulatory Impact Analysis Determination**

The proposed rulemaking is intended to implement statutory changes made by HB 3542 and SB 700 of the 86th Texas Legislature, 2019, to add a new section to reflect changes to Texas Water Code, Chapters 5 and 13. New §35.202 adds authority to allow
the executive director to issue emergency orders to compel a retail public utility to provide water and/or sewer service to ensure safe drinking water or environmental protection, or provide an emergency interconnection for not more than 90 days.

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a major environmental rule. The specific intent is to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rule would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rule would not adversely affect in a
material way the economy, a sector of the economy, competition, or jobs.

Second, the proposed rulemaking does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed any express requirement of TWC, Chapter 5 or 13, which relates to orders issued by the commission, orders issued by the executive director, and emergency orders; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency.

Since this proposed rulemaking does not meet the statutory definition of a major environmental rule" nor does it meet any of the four applicability requirements for a
Takings Impact Assessment

The commission prepared a takings impact assessment for the proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of the proposed rule is to ensure consistency between the rules and their applicable statutes as amended by recent legislation and grant the commission and executive director authority to compel a retail public utility with a certificate of public convenience and necessity to provide water and/or sewer service that complies with statutory and regulatory requirements of the commission and to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water and/or sewer service for up to 90 days.

The proposed regulations would not affect a landowner's rights in private real property because this proposed rulemaking would not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rule does not constitute a taking because it would not burden private real property.

Consistency with the Coastal Management Program

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

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

**Announcement of Virtual Hearing**

The commission will hold a *virtual* public hearing on this proposal on November 10, 2020, at 10:00 a.m. Central Standard Time. The virtual hearing is structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to and after the virtual hearing via the Team Live Event Q&A chat function.

Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend the hearing should contact Sandy Wong, General Law Division at (512) 239-1802 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.
Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want their attendance on record must register by November 6, 2020. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on November 9, 2020 to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NWY0ZjlyM2YtNjc1OC00YWNmLWE1NjAtNDIjYWFhMTc2ZWE5%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22IsBroadcastMeeting%22%3atrue%7d.

Submittal of Comments

Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should
reference Rule Project Number 2020-011-291-OW. The comment period closes on November 17, 2020. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Brian Dickey, Water Supply Division, (512) 239-0963.
SUBCHAPTER E: EMERGENCY ORDERS FOR UTILITIES

§35.202

Statutory Authority
The new rule is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state; and TWC, §13.041(b), concerning General Powers of Utility Commission and Commission; Rules; Hearings, which provides the commission with the authority to adopt any rules reasonably required in the exercise of its powers and jurisdiction.

The proposed new rule implements Senate Bill 700 passed by the 86th Texas Legislature, 2019.

§35.202. Emergency Order to Compel Utility to Provide Service or Interconnection.

(a) The commission or executive director may compel a retail public utility that has obtained a certificate of public convenience and necessity to provide water or sewer service, or both, that complies with all statutory and regulatory requirements of the commission if necessary to ensure safe drinking water or environmental
(b) The commission or executive director may compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if necessary to ensure safe drinking water or environmental protection.

(c) Notice of an action under this section is adequate if the notice is mailed or hand-delivered to the last known address of the retail public utility's headquarters.