§291.76. Regulatory Assessment.

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

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

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

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

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

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

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

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

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

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

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

(3) wholesale charges from one utility service provider to another.
(g) The utility service provider may include the assessment as a separate line item on a customer's bill or include it in the retail charge.

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

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

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

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

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

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

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

(l) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.
(m) A utility service provider is exempt from the provisions of this section if the provider:

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

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

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

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

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

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

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

Adopted December 12, 2018

Effective January 3, 2019