

Memorandum of Understanding between the Texas Commission on Environmental Quality (TCEQ) and the Public Utility Commission of Texas (PUC)

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC. The legislation directed the two agencies to enter into a Memorandum of Understanding (MOU) which addresses specific elements of the transfer. This MOU is adopted in accordance with that directive.

This MOU consists of the following sections:

- I. Powers and Duties
- II. Program Guidelines
- III. Program Details
- IV. Pending Items
- V. Enforcement
- VI. Information Technology
- VII. Employees
- VIII. Records Management
- IX. Funding
- X. Property and Contracts
- XI. General Provisions

I. Powers and Duties Transferred

The powers, duties, functions, programs, and activities of the TCEQ relating to the economic regulation of water and sewer service, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Section 12.013 and Chapter 13, Texas Water Code (TWC), are transferred from the TCEQ to the PUC on September 1, 2014, as provided by HB 1600 and SB 567.

The TCEQ and the PUC agree that the duties and functions transferred to the PUC on September 1, 2014 include:

- Rate-fixing power (TWC 12.013)
- Water Supply Corporation investigations (TWC 13.004)
- Emergency orders (TWC 13.041)
- Municipal appellate jurisdiction (TWC 13.042)
- Rate appeals (TWC 13.043)
- District appeals of municipal rate increases (TWC 13.044)
- Temporary rates for non-functioning systems (TWC 13.046)
- Local utility service (TWC 13.082)
- Assistance to cities (TWC 13.085)
- Reviewing municipal rates for RV parks (TWC 13.087)
- Utility records (TWC 13.131)
- Annual reports by IOUs (TWC 13.132)
- Filing of Tariffs of Rates, Rules and Regulations (TWC 13.136)
- Local office waivers (TWC 13.137)
- Rules for payment by state (TWC 13.142)
- Multiple system consolidation (TWC 13.145)
- Shut off agreements between water and sewer providers (TWC 13.147)
- Rate regulation (TWC 13.181 – 13.187)
- Energy cost adjustments (TWC 13.188)
- Certificates of Convenience and Necessity (CCN) applications (TWC 13.241 – 13.247)
- Contracts designating service area (TWC 13.248)
- Continuous and adequate service (TWC 13.250)
- Sale of Certificate (TWC 13.251)
- Completion of decertification (TWC 13.2551)
- Cease and Desist petitions (TWC 13.252)
- CCN revocations and releases (TWC 13.254)
- Single certification petitions (TWC 13.255)
- Sales, Transfer, Merger (STM) applications (TWC 13.301)
- Stock transfers (TWC 13.302)
- Loans to stockholder (TWC 13.303)
- Jurisdiction over affiliated interests (TWC 13.341)
- Disclosure of substantial interests (TWC 13.342)
- Wholesale contracts between affiliates (TWC 13.343)
- Emergency rate increases (TWC 13.4133)
- Utility Submetering (TWC 13.501 – 13.506)
- Drainage fee appeals under LGC 552.047

The TCEQ agrees to leave the current Chapter 281 and Chapter 291 rules in place until notified by the PUC that the PUC has adopted its own substantive and procedural rules applicable to the

Transferring Programs and that the PUC no longer needs the applicable portions of the TCEQ's Chapter 281 and Chapter 291 rules. The PUC will provide TCEQ with a copy of its order(s) adopting new substantive and procedural rules applicable to the Transferring Programs.

II. Program Guidelines

As required by HB 1600 and SB 567, the TCEQ and the PUC agree to cooperate regarding:

- Meeting federal drinking water standards;
- Maintaining adequate supplies of water;
- Meeting established design criteria for wastewater treatment plants;
- Demonstrating the economic feasibility of regionalization; and
- Serving the needs of economically distressed areas.

Cooperation between the two agencies will involve sharing relevant information in a timely manner and providing assistance as needed to support each agency's functions under these areas. The TCEQ and PUC shall establish an inter-agency work group to meet as needed to address these areas. The TCEQ and the PUC agree to develop additional methods of cooperation as needed to address specific issues within these five areas.

III. Program Details

A. Temporary Manager Appointment

The TCEQ and the PUC agree that each agency has the authority under TWC Section 13.4132 to appoint a temporary manager to manage and operate a utility. Both agencies agree that a temporary manager appointed by either agency has the powers and duties necessary to ensure continuous and adequate services to customers, as specified by TWC Section 13.4132(c).

The TCEQ and the PUC agree to:

Notify each other once either agency reasonably anticipates issuing an order appointing or reappointing a temporary manager pursuant to TWC Section 13.4132.

Provide a copy of any order appointing or reappointing a temporary manager to the other agency within one business day after issuance of the order.

Provide notice of the TCEQ's Commission Agenda or PUC's Open Meetings Agenda to each other once an item is scheduled to be heard involving the appointment or reappointment of a temporary manager so the agencies are present, when necessary, for actions regarding a temporary manager appointment or reappointment.

Inform each other of any hearings or mediation processes related to a temporary manager or receivership of a retail water or sewer utility.

Notify each other on the referral of a water or sewer utility to the Office of the Attorney General (OAG) for the appointment of the receiver.

For the purpose of this section of the MOU, the form and method of all filings and notifications to the PUC and TCEQ will be established by the inter-agency work group.

B. Other Areas of Coordination

The TCEQ agrees to:

Provide a copy of an order(s) approving a district conversion for any district holding a CCN with the PUC within five business days from the date the order is issued by the TCEQ to proceed with the creation of the district.

Provide the PUC a copy of documentation received by the TCEQ from a district to demonstrate that a successful confirmation election was held and votes were canvassed, thereby confirming and approving a district conversion. This information should be provided to the PUC within five business days of receiving the information from the district.

Provide the PUC a copy of any TCEQ approved Drought Contingency Plans (DCPs) for Investor-Owned Utilities within five business days from the date the DCP is approved by the TCEQ.

Notify the PUC of changes in status to a public water system (PWS) or water quality (WQ) permit. Changes in status include, but are not limited to, changes in address or contact information, activation changes, changes in the responsible party. Notification of the change should be made within of 30 days after TCEQ is notified of the change.

The TCEQ will allow PUC to use conference rooms in TCEQ regional offices if space is available. Requests for use of regional office space must be submitted to the regional office at least 3 days in advance.

TCEQ will provide the PUC with its regional staff work plan upon request to assist with coordination efforts regarding travel.

The PUC agrees to:

Provide relevant retail public utility data to TCEQ as agreed upon by both agencies within a maximum timeframe of 30 days so that Regulatory Assessment Fee (RAF) billing and collections can be completed.

PUC will provide relevant data needed by TCEQ through the PUC Interchange website. The PUC will provide TCEQ with the control number(s) in which Annual Reports of Investor-Owned Utilities may be accessed electronically through the PUC's Interchange website.

TCEQ may also access PUC filings by subscribing to the Interchange Filings Notification System.

Request that all CCN applicants needing to construct a new PWS or WQ system submit the required information for approval to the TCEQ in accordance with the PUC's rules.

Notify the TCEQ if a new utility is created to assist collection of the RAF.

For an entity that is requesting registration as an exempt utility and that meets the definition of a PWS, require the entity to submit plans and specifications to the TCEQ for approval of the PWS in accordance with the PUC's rules.

Notify the TCEQ within 30 days after a CCN or STM application is approved and a final order is issued by the PUC that involves an addition, change, or deletion of a PWS, district, or WQ permit from a CCN.

Both agencies agree to:

Notify each other within 24 hours of obtaining knowledge of a retail public water or sewer utility outage.

Notify each other within two business days of obtaining knowledge of an unauthorized retail water or sewer utility, an unauthorized sewer system, or public water system.

Notify each other at least 30 days before making any changes to an agency form, website address, proposed rule, or publication, which affects the functions or actions of the other agency.

Notify each other if notification is received that a retail public utility has filed for bankruptcy protection or has received notice of foreclosure.

Notify each other within five business days if a petition is filed under TWC Sections 11.041, 12.081, or 13.043. The TCEQ and PUC also agree to notify each other when a petition filed under one of these provisions is referred to the State Office of Administrative Hearings (SOAH). The TCEQ and PUC agree to copy each other on any letter sent to a petitioner notifying them that their wholesale petition must be filed with the other agency.

Refer any complaints that relate to the other agency's area of responsibility to the other agency within two business days from either the date that the complaint was received or the date the referring agency determined that the complaint related to the other agency's area of responsibility.

Coordinate on the review of Business Plans and Financial and Managerial reviews submitted by the same entity to both agencies.

Coordinate with the Office of the Attorney General on receivership matters.

Establish a business process for situations requiring financial assurance to demonstrate adequate financial and/or managerial capability to maintain and operate a retail public water or sewer utility. The inter-agency workgroup will be responsible for establishing, adjusting and maintaining the business process described herein.

Notify each other of a change in an email address, FTP site address, or other electronic communication item change that impacts business processes for the other agency.

Electronic access for TCEQ to review business plan correspondence and memos will be available through the PUC Interchange website.

In addition to the provisions discussed in this section, the TCEQ provided the PUC with a Utilities As-Is Business Process Document and a TCEQ-PUC Program Area Crosswalk, the final versions of which are attached to this MOU, as Exhibit A and B, respectively. The final versions of these documents reflect additional discussions between the TCEQ and the PUC and replace any earlier versions of these documents. These documents provide additional details on the

functions of the TCEQ and PUC and identify areas where coordination between the two agencies is required.

The TCEQ and the PUC agree that the areas identified in the Utilities As-Is Business Process Document and the TCEQ-PUC Program Area Crosswalk as needing additional discussion and decision will be addressed by the inter-agency workgroup to be established by both agencies. The inter-agency workgroup may make changes to the crosswalk as needed.

The TCEQ will provide the PUC with a report of all entities delinquent on the RAF on a monthly basis. The PUC will use this report to verify that applicants are not delinquent on the RAF prior to issuing a final order in accordance with the PUC's rules.

IV. Pending Items

The TCEQ and the PUC agree that all applications, orders, and other matters within the scope of the functions, programs, powers, duties, or activities transferred to the PUC, which are pending before the TCEQ on September 1, 2014, are transferred to the PUC on that date.

The TCEQ and the PUC agree that all pending cases at the State Office of Administrative Hearings (SOAH) within the scope of the functions, programs, powers, duties, or activities transferred to the PUC on September 1, 2014, are transferred to the PUC on that date. The PUC Staff will make an appropriate filing in all cases pending at SOAH as soon as reasonably practicable after the effective date of the transfer on September 1, 2014, to notify SOAH and the parties to these cases that PUC Staff is replacing the Executive Director of the TCEQ as a party in these cases.

The TCEQ and the PUC agree that all pending lawsuits against the TCEQ which involve appeals of TCEQ decisions within the scope of the functions, programs, powers, duties, or activities transferred to the PUC are the responsibility of the PUC after the transfer. The TCEQ and the PUC will coordinate with the Office of the Attorney General as needed to ensure that these lawsuits are transferred to the PUC. TCEQ agrees to cooperate with and assist, as necessary, the PUC and the Attorney General in working on appeals of TCEQ decisions.

V. Enforcement

The TCEQ agrees to:

Pursue appropriate enforcement actions for violations of TCEQ rules, excluding violations related to the areas of responsibility transferred to the PUC as follows: Section 291.21 (Form and Filing of Tariffs), Section 291.83 (Refusal of Service), Section 291.85 (Response to Requests for Service by a Retail Public Utility Within its Certificated Area), Section 291.87 (Billing), Section 291.88 (Discontinuance of Service), Section 291.89 (Meters), and Section 291.90 (Continuity of Service); and Section 291.101 (Certificate Required)

Notify PUC regarding any potential violations of PUC requirements identified by TCEQ.

Provide available information to the PUC as requested to assist with enforcement actions. The information provided may include technical information and data regarding the status of a PWS

or WQ permit, water availability information, chemical data and analysis, information on fees, mapping information, water quality data, receivership and temporary manager data, compliance data, etc.

In response to a general complaint, investigate those issues under the jurisdiction of the TCEQ. The TCEQ will refer to the PUC, as appropriate, those complaints under the jurisdiction of the PUC. The TCEQ will coordinate with the PUC on matters of joint jurisdiction.

The PUC agrees to:

Notify TCEQ regarding any potential violations of TCEQ requirements identified by PUC.

Provide available information to the TCEQ as requested to assist with enforcement actions. The information provided may include financial and managerial analysis and data regarding the status of a retail water or sewer utility, rate/tariff information, compliance information, utility data information, mapping information and receivership and temporary manager data.

In response to a general complaint, investigate those issues under the jurisdiction of the PUC. The PUC will refer to the TCEQ, as appropriate, those complaints under the jurisdiction of the TCEQ. The PUC will coordinate with the TCEQ on matters of joint jurisdiction.

Both agencies agree to:

Communicate and coordinate directly with each other on matters relating to enforcement, as appropriate.

Work to institute an effective system by which coordination and collaboration can be achieved to efficiently address enforcement actions relating to each agency's respective jurisdiction.

VI. Information Technology

The TCEQ staff completed documenting the business processes and other processes affected by the move of the utilities and rates programs to the PUC, including PWS, WQ and district functions that will remain with the TCEQ but that are impacted by the move. The work flow diagrams graphically represented the Water Supply Division's business processes for the processes that are staying with the TCEQ, as well as the processes that are transferring to the PUC. Plans and specification reviews and the district business processes are two processes that will remain at TCEQ, but will be affected when the Utilities' processes move to PUC.

Business Processes-IT Requirements

Access to TCEQ's water district's GIS mapping data is available through the Water Utilities Map Viewer.

Access to TCEQ's Groundwater Conservation Districts GIS mapping data will be provided through the TCEQ's website.

Public Water System information is accessible through TCEQ's database Texas Drinking Water Watch.

TCEQ will provide access to view the status of plans and specifications reviews and or preliminary engineering reports on the TCEQ's website.

TCEQ will provide PUC complete CCN datasets into a file geodatabase (gdb) format for the Transferring Programs, current as of the effective date of the transfer.

PUC will provide relevant data needed by TCEQ through processes defined by the Inter-Agency Workgroup by the 5th business day of each month.

PUC and the Texas Natural Resources Information System hosted by the Texas Water Development Board (TWDB) will provide relevant Geospatial Information System data through processes defined by the Inter-Agency Workgroup by the 5th business day of each month.

TCEQ has provided PUC with all relevant tables, data, and application information to enable the development of the water utilities program at the PUC. TCEQ and PUC will continue to cooperate through the Inter-Agency Workgroup to ensure that mutual requirements for technical assistance are met.

Integrated Water Utilities Database (iWUD) Map Viewer

TCEQ has provided the iWUD Viewer source code and geodatabase tables to the Texas Natural Resources Information System hosted by the Texas Water Development Board (TWDB) and will continue to work with them and PUC through the Inter-Agency Workgroup to ensure that mutual requirements for technical assistance are met.

VII. Employees

Passage of HB 1600, the PUC Sunset Legislation, enacted the contingency rider in Article IX, Section 18.15 of the Appropriations Act. This rider requires TCEQ to transfer twenty Full Time Equivalents (FTEs) to the PUC on September 1, 2014.

In implementing the rider, the TCEQ will transfer to the PUC:

- Fourteen current TCEQ employees
 - four attorneys; and
 - ten program staff
- Six vacancies

The transferring employees have been selected and will begin reporting to the PUC offices on September 1, 2014.

VIII. Records Management

The records associated with the Transferring Programs shall automatically become records of the PUC on September 1, 2014. All other TCEQ records shall remain TCEQ records On September 1, 2014. The PUC will not assume TCEQ's existing contract with PacoTech Inc.

The TCEQ will compile all files and records associated with the water and wastewater utility rate and CCN programs that are transferring to the PUC. This should include but is not limited to CCN maps, contracts, filings for contested case matters, and text files for publications and forms that are associated with the water and wastewater utility rate and CCN programs transferring to the PUC. All records of the TCEQ transferred to the PUC will be transferred in the format in which they were maintained by the TCEQ. The inventory of all files to be transferred will include files/records from the following TCEQ offices, regardless of format, such as paper, cassette, VHS, disc, electronic, microfilm and microfiche:

- Central File Room (CFR)
- Office of Chief Clerk (OCC)
- Office of Water/Water Supply Division (WSD)
- Office of Legal Services/Environmental Law (OLS)
- Transferring Programs Staff (files stored on workstations, network shares, and portable media)
- TCEQ Library
- TCEQ Publication (text files for documents and forms that are regarding authorities transferring to the PUC as part of this effort)

TCEQ will provide the PUC with an index of all records transferred to the PUC with the shipment scheduled for August 25, 2014. An updated comprehensive list will be provided with the final shipment. This list will be provided as an excel spreadsheet and a hard copy.

The information transferred to PUC will be boxed and indexed and delivered by TCEQ to PUC's office in the Travis Building no later than September 1, 2014.

Agency records managed within the Central File Room will be boxed by the following sort order:

Record Series Type (CCN, SAP)
Primary Filing ID (CCN – Certificate Number, SAP – Registration Number)
Document Type (Correspondence, Maps, Reports)
Year Date (2005-2006, 2007-2008, 2009-2010)
Volume (01, 02, 03)

Records affected by the transfer will be inventoried to a standard filing box with a unique box barcode. In addition, each box will be numbered in order (001, 002, 003...etc.). The description of files within each box will be documented on the outside of the box.

In the event records are returned or submitted to the Central File Room during the boxing process, every effort will be made to file that information in its appropriate location within the boxes. However, if the filing range is already boxed and there is no room to interfile the new information, the data will be collected, sorted by Primary ID order, and inventoried to boxes after the current inventory is completed.

All active cases will be boxed and transferred with the assigned staff person. Any case requiring action within a specified time after the transfer will be labeled in a way to indicate that action is required. Cases which require action within a specified time will be noted on the list of active cases provided to the PUC.

All documents received by the TCEQ after September 1, 2014 which should have been filed with the PUC will be delivered to the PUC by carrier on a weekly basis.

IX. Funding

Passage of HB 1600, the PUC Sunset Legislation, enacted the contingency rider in Article IX, Section 18.15 of the Appropriations Act. This rider requires TCEQ to transfer approximately \$1.43 million from the Water Resource Management Account #153 in Fiscal Year (FY) 2015 to support the activities associated with the FTE transfers, as well as operational costs. Additionally, the transfer includes \$184,000 in Water Resource Management Account #153 funds to cover the cost of the contract with the State Office of Administrative Hearings for water and utility case hearings.

In implementing the rider, the TCEQ will authorize a cash transfer in FY '15 of approximately \$1.63 million to the PUC in two payments based on the following:

- On September 1, 2014, transfer one-fourth of the total, approximately \$406,746; and
- On December 1, 2014, transfer three-fourths of the total, approximately \$1,220,237.

The transferred amounts are calculated based on the following:

- all salary costs associated with transferring staff and vacancies, including base salary and a 2% increase in FY '15;
- SOAH-related costs; and
- operational costs.

In addition, the TCEQ will ensure that there are sufficient funds in Account #153 to support the FY '15 health and retirement benefits costs associated with the 20 FTEs.

X. Property and Contracts

Property

The TCEQ will deliver to the PUC office in the Travis Building, located at 17th & Congress, one drafting table currently used by TCEQ to develop maps for CCNs.

Contracts

TCEQ has no contracts solely related to the Transferring Programs. TCEQ has a contract to assess and assist both public drinking water and wastewater systems in Texas to improve their financial, managerial, and technical capabilities (FMT). TCEQ and PUC will enter into an interagency agreement regarding the utility assessment and assistance portion of the current FMT contract. PUC will provide FMT referrals to TCEQ regarding utility activities and will reimburse those activities and TCEQ's proportional contract administration expenses. TCEQ will continue to directly manage the FMT contract and provide the contractor's reports to PUC.

XI. General Provisions

The term of this MOU shall be from the Effective Date until termination of this Agreement. Any amendment to the MOU shall be made by mutual agreement of the parties.

Both agencies agree that they will revisit this MOU approximately one year after its Effective Date to determine if any amendments are needed.

This MOU shall be effective on September 1, 2014, and it shall continue in effect thereafter until it is terminated by operation of law or by a written agreement signed by authorized representatives of both parties.

It is the intention of the parties that the details relating to the provisions of this MOU shall be worked out, in good faith, by both parties.

Each agency has and reserves the right to take whatever actions necessary to pursue or preserve any legal remedies available to that agency and nothing in this MOU is intended to waive or foreclose any such right.

This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Richard A. Hyde, P.E.
Executive Director
TCEQ

Date

Brian Lloyd
Executive Director
PUC

Date